



# *Hastings District Council*

Civic Administration Building  
Lyndon Road East, Hastings

Phone: (06) 871 5000

Fax: (06) 871 5100

[WWW.hastingsdc.govt.nz](http://WWW.hastingsdc.govt.nz)

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## OPEN A G E N D A

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### COMMISSIONER HEARING MEETING

Meeting Date: **Monday, 23 July 2018**

Time: **9.00am**

Venue: **Council Chamber  
Ground Floor  
Civic Administration Building  
Lyndon Road East  
Hastings**

**A LIMITED NOTIFIED RESOURCE CONSENT TO SUBDIVIDE 52  
AND 80 RAYMOND ROAD, HAUMOANA TO CREATE 12 LIFESTYLE  
LOTS NOT MEETING THE MINIMUM LAND AREA IN THE PLAINS  
PRODUCTION ZONE (RMA20170355)  
(A & J MAURENBRECHER AND D & A EVANS)**

|                             |  |
|-----------------------------|--|
| <b>Hearing Commissioner</b> | <b>Chair:</b> Commissioner Jenny Hudson            |
| <b>Officer Responsible</b>  | Environmental Consents Manager: Murray Arnold      |
| <b>Reporting Planner</b>    | Snr Environmental Consents Planner – Michelle Hart |
| <b>Committee Secretary</b>  | Christine Hilton (Extn 5633)                       |

# HASTINGS DISTRICT COUNCIL

A COMMISSIONER HEARING WILL BE HELD IN THE COUNCIL  
CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING,  
LYNDON ROAD EAST, HASTINGS ON  
MONDAY, 23 JULY 2018 AT 9.00AM

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1. **APOLOGIES**

There were no apologies..

2. **A LIMITED NOTIFIED RESOURCE CONSENT TO SUBDIVIDE 52 AND 80  
RAYMOND ROAD, HAUMOANA TO CREATE 12 LIFESTYLE LOTS NOT  
MEETING THE MINIMUM LAND AREA IN THE PLAINS PRODUCTION  
ZONE (RMA20170355) - A & J MAURENBRECHER AND D & A EVANS**

**DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS THREE  
SEPARATE DOCUMENTS**

|                          |   |              |
|--------------------------|---|--------------|
| <b><u>Document 1</u></b> | The covering administrative report  | <b>Pg 3</b>  |
|                          | <b>Attachment A</b> Planner's Report  | <b>Pg 6</b>  |
|                          | <b>Attachment S</b> Report on Prehearing Meeting held on<br>13 April 2018                     | <b>Pg 61</b> |
| <b><u>Document 2</u></b> | Containing this attachment  |              |
|                          | <b>Attachment B</b> Section 95 Notification Assessment<br>Report                              |              |
|                          | <b>Attachment C</b> Application   |              |
|                          | <b>Attachment D</b> Scheme Plan of Proposed<br>Subdivision                                    |              |
|                          | <b>Attachment E</b> Soil Reports  |              |
|                          | <b>Attachment F</b> Detailed site Investigation Reports -<br>National Environmental Standards |              |
| <b><u>Document 3</u></b> | Containing this attachment  |              |
|                          | <b>Attachment G</b> Traffic Report  |              |
|                          | <b>Attachment H</b> HPUDS Information Submitted with<br>Report                                |              |
|                          | <b>Attachment I</b> Wastewater Assessments  |              |
|                          | <b>Attachment J</b> Viticulture Report  |              |
|                          | <b>Attachment K</b> Hastings District Council<br>Development Engineer's Comments              |              |
|                          | <b>Attachment L</b> Submission of Mark Graham - 65<br>Raymond Road                            |              |
|                          | <b>Attachment M</b> Submission of W & F Gunn - 57<br>Raymond Road                             |              |

- Attachment N** Peer Review of "Fruition" Soil Report by AgFirst
- Attachment O** Letter from Owners of 12 Raymond Road
- Attachment P** Affected Persons Consents Received
- Attachment Q** Regional Policy Statement
- Attachment R** Certificate of Title
- Attachment S** Report on Pre-Hearing meeting held 13 April 2018

The Application and Submissions can be viewed on the Council website and a reference hardcopy is held at the Council Civic Administration Building.

The associated web site links are:

[www.hastingsdc.govt.nz/meetings](http://www.hastingsdc.govt.nz/meetings) and  
[www.hastingsdc.govt.nz/resourceconsents](http://www.hastingsdc.govt.nz/resourceconsents)

**REPORT TO:** COMMISSIONER HEARING

**MEETING DATE:** MONDAY 23 JULY 2018

**FROM:** COMMITTEE SECRETARY  
CHRISTINE HILTON

**SUBJECT:** A LIMITED NOTIFIED RESOURCE CONSENT TO SUBDIVIDE 52 AND 80 RAYMOND ROAD, HAUMOANA TO CREATE 12 LIFESTYLE LOTS NOT MEETING THE MINIMUM LAND AREA IN THE PLAINS PRODUCTION ZONE (RMA20170355) - A & J MAURENBRECHER AND D & A EVANS

Item 2

Attachment A

## 1.0 INTRODUCTION

- 1.1 This is a covering report relating to a Limited Resource Consent application by A & J Maurenbrecher and D & A Evans which seeks to subdivide 52 and 80 Raymond Road, Haumoana to create 12 Lifestyle lots in the Plains Production Zone.
- 1.2 This agenda can be viewed on the Council website and a reference hardcopy is held at the Ground Floor Reception, Council's Civic Administration Building, Lyndon Road East, Hastings and at each of the district libraries (in Havelock North, Flaxmere and Hastings).
- 1.3 For ease of reference the recommendation from the attached Planner's Report is also set out below, as part of this covering report.

*(Note: The heading for the attached Planning report refers to a Hearings Committee meeting on 8 June 2018. This is because the original report was referred on to this current Commissioner Hearing being held on 23 July 2018).*

## 2.0 RECOMMENDATION

That pursuant to Rules SLD25 (Subdivision) of the Proposed Hastings District Plan (As Amended by Decisions 15 September 2015) and Sections 104, 104B, 104D, 106, 108 of the Resource Management Act 1991, consent is DECLINED to A&J Maurenbrecher and D&A Evans to:

Subdivide 52 Raymond Road being Lot 1 DP 22124 (CFR HBP4/839) and 80 Raymond Road being Lot 5 Deeds Plan 800 (CFR HB80/1) as follows:

### 52 Raymond Road

Lot 7 comprising 3000m<sup>2</sup>  
 Lot 8 comprising 3000m<sup>2</sup>  
 Lot 9 comprising 1.2 hectares  
 Lot 10 comprising 1.3 hectares  
 Lot 11 comprising 1.3 hectares  
 Lot 12 comprising 1.6 hectares

### 80 Raymond Road

Lot 1 comprising 4800m<sup>2</sup>  
 Lot 2 comprising 3500m<sup>2</sup>  
 Lot 3 comprising 7000m<sup>2</sup>  
 Lot 4 comprising 3000m<sup>2</sup>  
 Lot 5 comprising 6500m<sup>2</sup>

Lot 6 comprising 2.3 hectares

**WITH THE REASONS FOR THIS RECOMMENDATION BEING:**

1. The adverse effects on the environment will be no more than minor.
2. The following persons are considered to be adversely affected by the proposed subdivision for the reasons stated below;

|                 |  |
|-----------------|--|
| 65 Raymond Road | Alison Margaret McDonald, Mark Lynedoch Graham, John Anthony McAra   |
| 56 Raymond Road | Shelly Jane Bridgeman, Kevin Jaffe & Robert McLean                   |
| 37 Raymond Road | Kim Rebecca Alebardi, Michael James Alebardi & Emma Elizabeth Dawson |
| 57 Raymond Road | BvonD Trust Limited, Fiona Myra Gunn & Warren Bruce Gunn             |

- The visual amenity and rural character of the location will be compromised as a direct result of the subdivision, given the cluster effect that will occur subsequent to the subdivision and following developments.
  - The proposed subdivision is likely to result in adverse traffic effects on these people that would be considered more than minor within this defined area of Raymond Road where the affected persons have been used to a lesser level of traffic movements.
3. The proposed subdivision is overall contrary to the relevant Objectives, Policies and other provisions of the Proposed Hastings District Plan in that:
    - The application will not retain the land based productive potential of the parent site (objective PSMO2);
    - That the subdivision is not for the purpose of a land based productive use (PSMP1);
    - The versatile land of the subject site will be further fragmented and formalised by the proposed subdivision (objective PPO1);
    - The subdivision does not result in the amalgamation of lots into larger land parcels (policy PPP1);
    - Approving the subdivision will not restrict the creation of this lifestyle site to those where the balance is amalgamated with one or more adjoining sites to form a complying site (PPP6);
    - The application will not result in greater flexibility in options for use of the versatile land of the subject sites (objective PPO2);
    - The subdivision will likely result in a reduced potential for the versatile land of the parent sites to be used in a productive and sustainable manner (policy PPP11).
  4. The proposal is a significant departure from the clear and understood policy direction for Plains Production Zone subdivision. As such it is considered that the application will undermine public confidence in and adversely affect the integrity of the District

Plan. In addition, it will create an adverse precedent effect.

5. The application is inconsistent with Part II of the Resource Management Act 1991. This is because, in the opinion of the reporting planner, the proposal;

- will not result in the efficient use and development of the natural and physical land resource;
- will not safeguard the Plains Production Zone soil resource; and
- will result in the formal fragmentation of a Plains Zone site to the extent that the land will have reduced potential to be utilised productively in the future.

As such, it is considered that the purpose of the Act, being the sustainable management of natural and physical resources, will be better achieved if the application is declined.

#### Attachments:

|   |  |            |            |
|---|--|------------|------------|
| A | Planner's Report   | 56999#0117 |            |
| B | Section 95 Notification Assessment Report                              | 56999#0066 | Document 2 |
| C | Application  | 56999#0068 | Document 2 |
| D | Scheme Plan of Proposed Subdivision                                    | 56999#0070 | Document 2 |
| E | Soil Reports   | 56999#0071 | Document 2 |
| F | Detailed site Investigation Reports - National Environmental Standards | 56999#0072 | Document 2 |
| G | Traffic Report   | 56999#0073 | Document 3 |
| H | HPUDS Information Submitted with Report                                | 56999#0075 | Document 3 |
| I | Wastewater Assessments   | 56999#0076 | Document 3 |
| J | Viticulture Report   | 56999#0077 | Document 3 |
| K | Hastings District Council Development Engineer's Comments              | 56999#0064 | Document 3 |
| L | Submission of Mark Graham - 65 Raymond Road                            | 56999#0090 | Document 3 |
| M | Submission of W & F Gunn - 57 Raymond Road                             | 56999#0087 | Document 3 |
| N | Peer Review of "Fruition" Soil Report by AgFirst                       | 56999#0079 | Document 3 |
| O | Letter from Owners of 12 Raymond Road                                  | 56999#0092 | Document 3 |
| P | Affected Persons Consents Received                                     | 56999#0074 | Document 3 |
| Q | Regional Policy Statement  | 56999#0091 | Document 3 |
| R | Certificate of Title   | 56999#0069 | Document 3 |
| S | Report on Prehearing Meeting held on 13 April 2018                     | 56999#0118 |            |

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REPORT TO: HEARINGS COMMITTEE

MEETING DATE: 8 June 2018

FROM: MICHELLE HART  
SENIOR ENVIRONMENTAL CONSENTS PLANNER

SUBJECT: LIMITED NOTIFIED APPLICATION FOR NON-COMPLYING SUBDIVISION IN THE PLAINS PRODUCTION ZONE AT 52 & 80 RAYMOND ROAD, HAUMOANA

**NOTE:** This report sets out the advice of the reporting planner. This report has yet to be considered by the Hearings Committee delegated by the Council to determine this application. The recommendation is not the decision on this application. A decision will only be made after the Commissioners have considered the application and heard the applicant and any submitters.

#### EXECUTIVE SUMMARY

|   |  |
|---|--|
| <b>Applicant:</b>                         | A & J Maurenbrecher and D & A Evans  |
| <b>Applicant's Agent</b>                  | Proarch Consultants Limited<br>PALMERSTON NORTH  |
| <b>Site Address:</b>                      | 52 and 80 Raymond Road, Haumoana   |
| <b>Legal Descriptions:</b>                | Lot 1 DP 22124 (CFR HBP4/839) – 6.0000 hectares<br><br>Lot 5 Deeds Plan 800 (CFR HB80/1) – 4.6412 hectares |
| <b>Site Areas:</b>                        | Total - 10.6412 hectares   |
| <b>Zoning:</b>                            | Plains Production Zone   |
| <b>PID:</b>                               | 59668 & 56999  |
| <b>Proposal:</b>                          | Subdivision to create 12 undersized lots in the Plains Production Zone                                     |
| <b>District Plan Provisions:</b>          | Rule <b>SLD25</b> of the Proposed District Plan (Eplan)  |
| <b>Assessment of Status:</b>              | <b>Non-Complying Activity</b>  |
| <b>Date consent application received:</b> | 19 September 2017  |

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1. The applicants propose to subdivide twelve (12) lots from two existing land titles at 52 and 80 Raymond Road, Haumoana. Six titles will be created from 80 Raymond Road and six titles will be created from 52 Raymond Road. The minimum lot size in the Plains Production Zone is 12 hectares. The proposal does not comply with this minimum and neither does it comply with the Plains Lifestyle site provisions. These prescribe a minimum of 2500m<sup>2</sup> and maximum of 5000m<sup>2</sup> and require that the balance area is amalgamated with an adjoining site. Overall the proposal has a non-complying activity status under the provisions of the Proposed District Plan.
2. The proposal is described in the application documentation received in **Attachments C to G**. The application is briefly summarised as follows:

The applicant has provided an assessment of effects of the activity on the environment.

The assessment highlights the proposed mitigating factors relating to the rules the proposal does not meet and focuses mainly on the 'limited productive potential' of the soils. The assessment concludes that *the effects of the proposal are considered to be minor, or able to be mitigated to the point where they are less than minor on the basis that they;*

- *Have been specifically identified in the HPUDS review as being potentially suitable for low density development*
- *Are free of natural hazards*
- *Are physically separated from adjoining productive uses by a natural terrace area*
- *Have sub-optimal soils which have been demonstrated to have very limited productive potential*
- *Are located within 500 metres of a community focal point*
- *Are located immediately opposite an existing low density settlement*
- *Are located within easy commuting distance of all major centres within the Hawke's Bay*
- *Have been assessed in terms of traffic effects, which have been confirmed as being minor*
- *Will provide for additional choice for development in this area, and directs development away from truly versatile soils*



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The applicant has also assessed the application against the provisions of the Proposed District Plan, HB Regional Policy Statement, HB Regional Council Plans, NZ Coastal Policy Statement, National Policy Statement on Urban Development Capacity and National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011. This all contained within the application in **Attachment C**.

The applicant has also undertaken an assessment of affected parties and submitted affected persons consents with the application (**Attachment P**). These did not however cover all properties that potentially could be considered affected by the proposed subdivision. The applicant requested that the proposal be notified on a limited basis to those parties that the Council consider affected, that had not already provided affected persons consent.

3. Additional information submitted by the applicant to satisfy a request pursuant to section 92 of the Resource Management Act 1991 is included in **Attachments H to K**.

The following table identifies the various attachments to this report.

|              |  |
|--------------|--|
| Attachment B | Section 95 Notification Assessment Report                              |
| Attachment C | Application  |
| Attachment D | Scheme Plan of Proposed Subdivision                                    |
| Attachment E | Soils Reports  |
| Attachment F | Detailed Site Investigation Reports - National Environmental Standards |
| Attachment G | Traffic Report   |
| Attachment H | HPUDS Information Submitted with Report                                |
| Attachment I | Waste Water Assessments  |
| Attachment J | Viticulture Report   |
| Attachment K | Hastings District Council Development Engineer's Comments              |
| Attachment L | Submission of ML Graham  |
| Attachment M | Submission of W & F Gunn   |
| Attachment N | Peer Review of 'Fruition' Soil Report by AgFirst                       |
| Attachment O | Letter from owners of 12 Raymond Road                                  |
| Attachment P | Affected Persons Consents Received                                     |
| Attachment Q | Regional Policy Statement – Managing the Built Environment             |
| Attachment R | Relevant Certificates of Title (CFR's)                                 |
| Attachment S | Report on Pre-Hearing meeting held 13 April 2018                       |

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4. A notification report pursuant to section 95 of the Resource Management Act was undertaken which identified parties potentially affected by the proposed subdivision. Four properties were identified as affected, leading to the limited notification decision. The notification report is in **Attachment B** and covers the following matters;
- (a) Description of the proposal;
  - (b) Section 92 request and response;
  - (c) Background to the proposal;
  - (d) Site description including photographs of the site and surrounding environment;
  - (e) Assessment in accordance with National Environmental Standards for Assessing and Managing Soil Contaminants in Soil to Protect Human Health Regulations 2011;
  - (f) Assessment of the proposal against the provisions of the Proposed Hastings District Plan;
  - (g) Resource Management Act 1991 Notification Provisions which included an Assessment of Effects on the Environment and Assessment of Affected Persons.

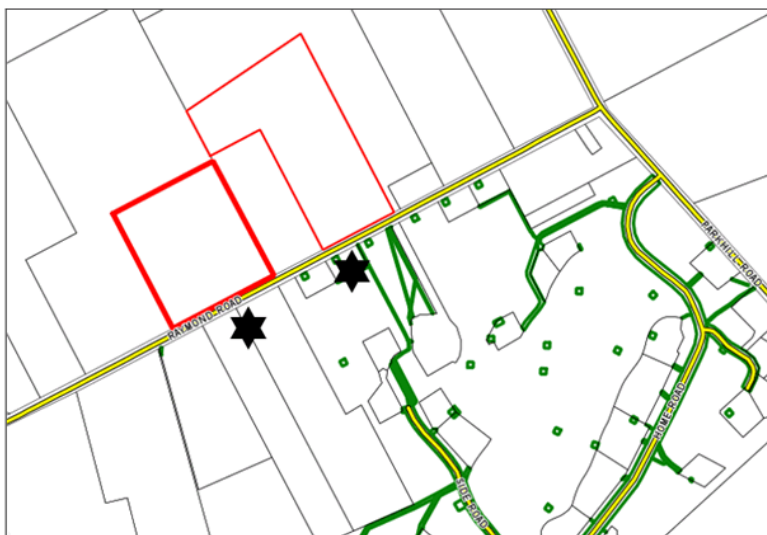
The application was limited notified on 7 February 2018 to persons considered to be affected by the proposed development, these persons were:

| Street Number   | Legal Description   | Registered Owners  |
|-----------------|---------------------|--|
| 65 Raymond Road | Lot 1 & 2 DP 389240 | Alison Margaret McDonald, Mark Lynedoch Graham, John Anthony McAra   |
| 56 Raymond Road | Lot 5 DDP 625       | Shelly Jane Bridgeman, Kevin Jaffe & Robert McLean                   |
| 37 Raymond Road | LOT 3 DP 411112     | Kim Rebecca Alebardi, Michael James Alebardi & Emma Elizabeth Dawson |
| 57 Raymond Road | Lot 2 DP411112      | BvonD Trust Limited, Fiona Myra Gunn & Warren Bruce Gunn             |

5. A total of 2 submissions were received with both being in opposition to the proposal. Copies of these submissions are in **Attachment L**

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**and M.** The submissions were received from the owners and/or occupiers of the properties as shown in **Figure 1** below.



**Figure 1: Location of Submitters**

6. A summary of submissions is as follows:

| No | Submitter | Comments   |
|----|-----------|--|
| 1  | ML Graham | <p>The submitter raises the following concerns:</p> <ul style="list-style-type: none"> <li>• Questions the argument that the land is not viable for productive purposes when the applicant (at 52 Raymond Road) has been farming (apples and berries) for the past 25 years;</li> <li>• The soils in the area <b>do</b> produce outstanding wine grapes and agrees with the Peer Review that viticulture is the dominant land use and that the vineyards are performing well;</li> <li>• Does not agree with the applicants view that <i>while the site is capable of being productive it does not follow that it requires protection accorded to the elite soils of the Plains Zone</i> and compared this ideal with how</li> </ul> |

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Item 2

Attachment A

|   |              |   |
|---|--------------|---|
|   |              | <p>the soils were regarded in the Gimlett Gravels area of Hastings;</p> <p>The submitter seeks that consent be <b>declined</b>.</p>   |
| 2 | W and F Gunn | <p>The submitter raises the following concerns:</p> <ul style="list-style-type: none"> <li>• Loss of amenity through change in built form of the area directly opposite and being contrary to what can be expected from a Plains Production Zone site;</li> <li>• Increase in traffic movements to and from new sites opposite;</li> <li>• It is a fragmented approach to the creation of lifestyle sites within the area;</li> <li>• Precedent effects for other properties along Raymond Road in the Plains Production Zone wishing to subdivide to create lifestyle sites;</li> <li>• Cumulative effects changing the nature of the surrounding environment in a fragmented and haphazard way;</li> <li>• This application would be better achieved through a plan change to allow appropriate community consultation and setting of appropriate outcomes and controls for development.</li> </ul> <p>The submitter seeks that consent be <b>declined</b>.</p> <p>If approved however, the submitter seeks; a reduced speed limit along Raymond Road and the setting of development controls to mitigate adverse effects through setting appropriate consent conditions, such as covenants, height</p> |

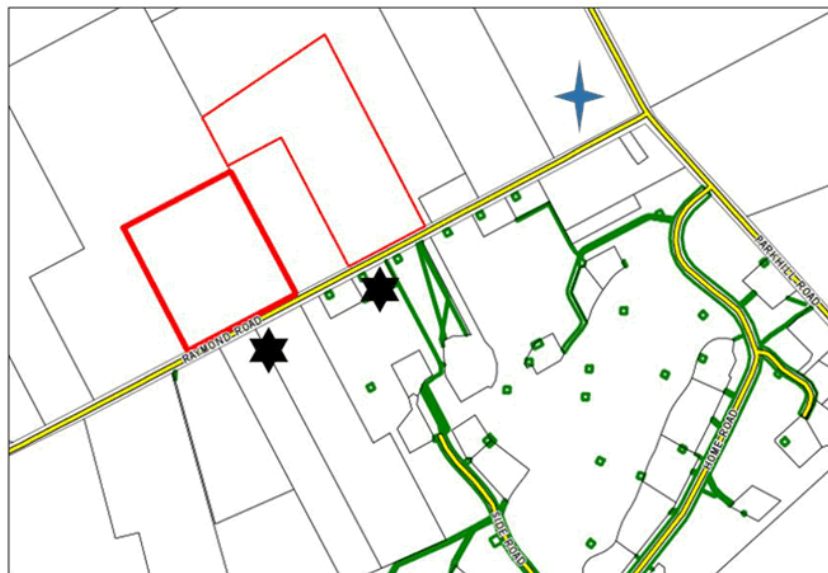
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|  |   |
|--|---|
|  | restrictions and built form guidelines for any future titles. |
|--|---|

A copy of the submissions are attached to this report (**refer to Attachments L and M**).

**Note:** The issues raised in the submissions are addressed and reflected in the body of the section 104 assessment that follows.

7. In addition to the submissions received, a letter of concern about the proposal was sent in by B Polderman and K Brann who own a property at 12 Raymond Road (**see Figure 2 - blue star**). These persons were not notified of the Resource Consent application. A copy of their letter is attached in **Attachment O**.



**Figure 2: Location of concerned residents not notified**

8. This hearings report focuses on the section 104 of the Resource Management Act 1991 matters as the assessment of effects on the wider environment have been addressed in the Section 95 notification assessment in **Attachment B**.
9. From initial assessments the proposal taken as a whole is considered to be contrary to the objectives and policies of the Proposed District Plan. It is also considered that the grant of consent would create an

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adverse precedent and potentially undermine the integrity of the Proposed Plan.

10. On balance it is recommended that the application is declined.

### **REPORTING PLANNER**

11. My full name is Michelle Ann Hart. I am currently employed as a Senior Environmental Consents Planner with the Hastings District Council.
12. I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court's Consolidated Practice Note (2014), and I agree to comply with it as if this hearing were before the Environment Court. I confirm that the issues addressed in this hearing report are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Item 2

Attachment A



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**ASSESSMENT PURSUANT TO SECTION 104 OF THE RESOURCE MANAGEMENT ACT 1991****1.0 STATUTORY CONSIDERATIONS**

1.1 With regard to resource consent applications for non-complying activities Section 104D of the Act states:

(1) *Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*

(a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*

(b) *the application is for an activity that will not be contrary to the objectives and policies of—*

(i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*

(ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*

(iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

1.2 The notification assessment concluded that the adverse effects of the activity on the wider environment are less than or no more than minor. The assessment however also concluded that the effects could be minor or more than minor in respect to four properties and for this reason the application was limited notified. As such the proposal marginally passes the 'gateway' tests required by section 104D but can continue to be substantively considered under the remaining tests in section 104 of the Act.

1.3 Subject to Part II of the Resource Management Act 1991, Section 104(1) sets out those matters that Council must have regard to. Such matters include:

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- (a) *Any actual and potential effects on the environment of allowing the activity; and*
- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) *Any relevant provisions of:*
  - (i) *a national environmental standard:*
  - (ii) *other regulations:*
  - (iii) *a national policy statement:*
  - (iv) *a New Zealand coastal policy statement:*
  - (v) *a regional policy statement or proposed regional policy statement:*
  - (vi) *a plan or proposed plan; and]*
- (c) *Any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

## 2.0 ASSESSMENT OF ENVIRONMENTAL EFFECTS (SECTION 104(1)(A) and Section 104D)

- 2.1 The following assessment of the application has been carried out in accordance with these sections of the Act.
- 2.2 A full assessment of effects on the environment has been considered in 8.0 of the Section 95 Assessment (**Attachment B**). In my opinion there are no additional adverse effects on the environment, therefore for the reasons set out in that assessment, I have concluded that the effects on the wider environment will be no more than minor. The assessment however also concluded that the effects could be minor or more than minor in respect to four properties and for this reason the application was limited notified.
- 2.3 As set out above, section 104D of the RMA sets out the 'gateway test' for non-complying activities. A consent authority may only grant consent for a non-complying activity if it is satisfied that either the adverse effects on the environment will be minor, or that the activity is one that will not be contrary to the objectives and policies of the



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relevant plan or proposed plan. If either of the limbs of the test has been passed then the application is able to be considered for approval subject to consideration under section 104 of the RMA. If the application fails both tests of section 104D then the application must be refused. As the conclusion above is, that the effects on the wider environment will be no more than minor, but that they will be minor in respect of 4 properties it is considered that the application marginally meets the first 'gateway test'.

### 3.0 ASSESSMENT OF RELEVANT PROVISIONS OF STANDARDS, POLICY STATEMENTS OR PLANS (Section 104(1)(b))

The following will assess whether the proposal is contrary to any relevant provisions of -

- (i) a national environmental standard:
- (ii) other regulations:
- (iii) a national policy statement:
- (iv) a New Zealand coastal policy statement:
- (v) a regional policy statement or proposed regional policy statement:
- (vi) a plan or proposed plan.

The Proposed Hastings District Plan (PDP) as amended by decisions on submissions was notified on 12<sup>th</sup> September 2015 and the PDP provisions took legal effect on this date. The appeals period closed on 23<sup>rd</sup> October. An appeal was received in relation to the zoning of the site being Plains Production Zone (withdrawn) but not the subdivision rules.

There are no outstanding Appeals that would affect these properties. Therefore it is considered that the provisions of the Proposed District Plan, as they relate to this application are beyond the point of challenge and the Operative District Plan can be treated as inoperative in accordance with Section 86F of the Resource Management Act 1991. As such, no further assessment against the Operative District Plan is considered necessary.

#### 3.1 National Environmental Standards (NES) (Section 104(1)(b)(i))

- 3.1.1 As stated in the section 95 report in **Attachment B**, the application included a Detailed Site Investigation report (DSI) (**Attachment C**) which identified that soil contamination exceeded the applicable

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standard at some test sites in respect of 80 Raymond Road only. The DSI makes recommendations and therefore is in compliance with Regulation 10 (2)(d) and therefore falls to be a Restricted Discretionary Activity under the NES.

- 3.1.2 Should the application be approved, relevant conditions would need to be imposed in line with the recommendations of the DSI. The proposal is not considered to be contrary to the NES.

3.2 **National Policy Statement on Urban Development Capacity 2016 (Section 104(1)(b)(iii))**

- 3.2.1 The National Policy Statement on Urban Capacity requires Council to provide for an adequate or sufficient supply of land for urban development. The application states that *this proposal will provide additional supply for low density residential development*. While this may be the case, the purpose of this Policy Statement is to provide direction to decision makers under the Resource Management Act 1991 on planning for **urban environments**. The subject properties are located within the rural environment and therefore the 'Statement' has limited applicability in respect of this proposed subdivision.

3.3 **New Zealand Coastal Policy Statement (Section 104(1)(b)(iv))**

- 3.3.1 The Coastal Policy Statement seeks to avoid inappropriate subdivision within the Coastal area. The subject sites are not located within the Coastal Environment and therefore this does not apply.

3.4 **Hawke's Bay Regional Policy Statement (RPS) (Section 104(1)(b)(v))**

- 3.4.1 As required under Section 75(3) of the RMA, District Plans must give effect to the RPS (embedded in the Hawke's Bay Regional Resource Management Plan (RRMP)). In this regard, Section 3.1B Managing the Built Environment of the Hawkes Bay is particularly relevant (refer to **Attachment Q** for a full copy of Section 3.1B).

- 3.4.2 The significant issues identified in the RPS are as follows;

**UD1** *The adverse effects of sporadic and unplanned urban development (particularly in the Heretaunga Plains sub-region), on:*

- a) *the natural environment (land and water);*

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- b) the efficient provision, operation, maintenance and upgrading of physical infrastructure or services (particularly strategic infrastructure); and*
- c) the economic, cultural and social wellbeing of the Region's people and communities*

**UD2** *The adverse effects from urban development encroaching on versatile land (particularly in the Heretaunga Plains sub-region where the land supports regionally and nationally significant intensive economic activity), and ultimately the adverse effects of this on the economic wellbeing of the Region's people and communities both now and for future generations.*

The RPS/RRMP provides direction and guidance for managing these two issues through encouraging compact and strongly connected urban form (OBJ UD1); intensification of existing residential areas (OBJ UD2); and planned provision for urban development (OBJ UD4).

3.4.3 The relevant objectives and policies of the RPS/RRMP are as follows;

**OBJ UD1** *Establish compact, and strongly connected urban form throughout the Region, that:*

- a) achieves quality built environments that:
 
  - i. provide for a range of housing choices and affordability,*
  - ii. have a sense of character and identity,*
  - iii. retain heritage values and values important to tangata whenua,*
  - iv. are healthy, environmentally sustainable, functionally efficient, and economically and socially resilient, and*
  - v. demonstrates consideration of the principles of urban design;**
- b) avoids, remedies or mitigates reverse sensitivity effects in accordance with objectives and policies in Chapter 3.5 of this plan;*
- c) avoids, remedies or mitigates reverse sensitivity effects on existing strategic and other physical infrastructure in*

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*accordance with objectives and policies in Chapter 3.5 and 3.13 of this plan;*

*d) avoids unnecessary encroachment of urban activities on the versatile land of the Heretaunga Plains; and*

*e) avoids or mitigates increasing the frequency or severity of risk to people and property from natural hazards.*

**OBJ UD2** *Provide for residential growth in the Heretaunga Plains sub-region through higher density development in suitable locations.*

**Principal reasons and explanation**

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

**OBJ UD4** *Enable urban development in the Heretaunga Plains sub-region, in an integrated, planned and staged manner which: a) allows for the adequate and timely supply of land and associated infrastructure; and b) **avoids inappropriate lifestyle development, ad hoc residential development and other inappropriate urban activities in rural parts of the Heretaunga Plains sub-region.***

**Principal reasons and explanation**

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



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**POL UD1** In providing for urban activities in the Heretaunga Plains sub-region, territorial authorities **must place priority on:**

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

**Principal reasons and explanation**

Efficient utilisation of existing infrastructure investment (or planned infrastructure already committed to (e.g. by funding) by not yet constructed) and **the retention of the versatile land of the Heretaunga Plains for existing and foreseeable future primary production must underpin all decisions surrounding provision for urban activity in the Heretaunga Plains sub-region in order to achieve the desired settlement pattern outlined in HPUDS2010.** For clarification, the supply of land for residential and industrial activities where they support effective and efficient use and management of versatile land would not conflict with Policy UD1, and would assist in achieving Policy UD1(a).

**POL UD3** In the Heretaunga Plains sub-region, district plans shall **include policies and methods discouraging or avoiding ad hoc residential development** and further rezoning for rural residential purposes or lifestyle development **outside existing rural residential zones.**

**Principal reasons and explanation**

Similar to urban development, rural residential or lifestyle development can also act to remove valuable land from agricultural production and can also impact on the productivity of other land (i.e. rural or industrial), in particular through reverse sensitivity. These forms of development should not be confused with residential development (eg: farm houses) that is ancillary to primary production activities or to boundary adjustments that may effectively create a lifestyle site by reducing the land area surrounding a dwelling to create a larger more productive balance title. Provision for rural residential and lifestyle development should be carefully managed to minimise fragmentation of the versatile land of the

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*Heretaunga Plains. There is currently an excess supply of rural residential zoned areas within the Heretaunga Plains sub-region, considered sufficient to cater for projected demand for rural residential lots in the sub-region through to 2045, and further rezoning for this purpose is considered unnecessary for the foreseeable future.*

**POL UD4.3** Within the Heretaunga Plains sub-region, areas where future residential greenfield growth for the 2015-2045 period has been identified as appropriate and providing choice in location, **subject to further assessment referred to in POL UD10.1, POL UD10.3, POL UD10.4 and POL UD12**, are:

...

f) Haumoana (south of East Road) / Te Awanga

All indicative areas are shown in Schedule XIVa.<sup>1b</sup>

**1b All spatial areas are indicative only until formalised via a plan change; and reference should be made to the Heretaunga Plains Urban Development Strategy for more information on these future greenfield growth areas.**

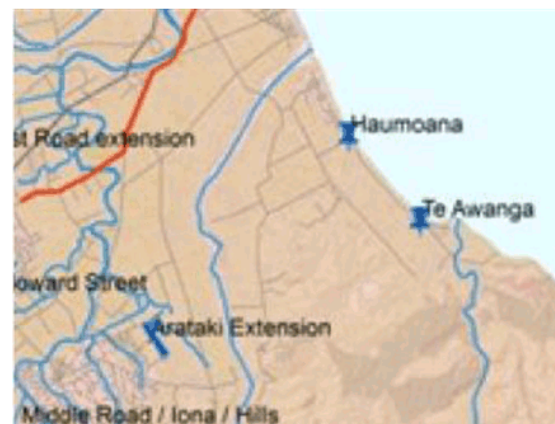


Image from Schedule XIVa –Heretaunga Plains sub-region - indicative location map of residential greenfield growth areas for period 2015 -2045

3.4.4 The RPS/RRMP and the specific section on 'Managing the Built Environment' which contains the provision set out above has been developed to implement the principles and purposes of the Heretaunga Plains Urban Development Strategy (HPUDS). It prioritises the retention of the versatile land of the Heretaunga

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Plains, and seeks to ensure efficient utilisation of infrastructure (existing and planned) (POL UD1); identifies areas for new residential greenfield growth (POL UD4.3) and specific non-growth areas POL UD4.4); plus criteria for identifying new residential greenfield growth where not part of an identified growth area (POL UD4.2).

- 3.4.5 Policy UD3 specifically identifies the risk of fragmentation of versatile land associated with rural residential development outside existing rural residential zones and considers that further zoning for this purpose is unnecessary in the period up to 2045 given the current supply and projected demand. Of key importance, the RPS also discourages inappropriate ad hoc urban development *within* the greenfield growth areas identified under POL UD4.3 prior to rezoning taking place (POL UD10.2). This proposal is contrary to this policy, which states that such development is to be avoided.
- 3.4.6 Instead, Policy UD10.1 requires the preparation of comprehensive structure plans to accompany any proposals for greenfield growth and for such plans to be included in the District Plan. Policy UD10.3 requires that such a structure plan be prepared as a single plan for the whole greenfield area. While Haumoana is identified as a future greenfield growth area, this proposal will pre-empt a comprehensive structure plan for this area.
- 3.4.7 The RPS/RRMP provides matters for decision making (POL UD12) and identifies triggers for review of the RPS (POL UD14.1 and 14.2). Such triggers would be if a review of HPUD's recommends that change is required; household or population growth by more than 10% over 5 consecutive years; agreement between HPUD's partners that there is insufficient growth areas; or exceptional circumstances have occurred such that a review is necessary.
- 3.4.8 The application includes limited commentary in respect of consistency with the RPS/RRMP but rather focuses on the sites having '*limited productive potential*' and that '*subdivision is not an inappropriate use of the site*'. Key reasons given in the application include the poor quality of the soils (thus not impacting on the Plains Productive Zone productive capacity); the location of the area not being an excluded growth area (Policy UD4.4); and its appropriateness in terms of the existing infrastructure in the immediate area including roading, community infrastructure (the school) and the ability for on-site servicing.

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It is my opinion however, that the objectives and policies around greenfield growth areas (HPUDS) are clearly aimed at preventing ad hoc resource consent applications to subdivide land within the Heretaunga Plains for rural residential/lifestyle development purposes before a comprehensive structure plan is prepared, enabling the greenfield growth area to be rezoned at the appropriate time.

3.4.9 Upon analysis and in the context of this proposal, the relevant objectives and policies of the RPS/RRMP address the following matters;

- Preventing the loss of productive/versatile land and soils (POL UD1);
- Avoiding unnecessary encroachment of urban activities on the versatile land of the Heretaunga Plains (OBJ UD4);
- Sustainable management of the versatile land of the Heretaunga Plains (POL UD1);
- Avoiding ad hoc residential development (POL UD3);
- Maintaining the openness of the Heretaunga Plains;
- A building scale that is compact and of low intensity;
- Avoiding inefficient use of existing and planned infrastructure (UD10.1, UD10.3);
- Avoiding development in areas subject to natural hazards;
- Transport and connections considerations;
- Reverse sensitivity effects;
- Ensuring compact and strongly connected urban form.

3.4.10 Sustainable management within the context the Heretaunga Plains includes retention of the nationally significant versatile land where the land supports regional and nationally significant intensive economic activity, and ultimately the economic wellbeing of the Region's people and communities. This approach was a key outcome of HPUDS now embedded in the RPS/RRMP. The outcome sought is to maintain the versatile land by ensuring that growth needs are strategically planned and adhoc fragmentation of the resource does not occur.

3.4.12 As the proposed subdivision will not directly result in widespread loss of productive versatile land, taking into account the total land area of the Heretaunga Plains, and the conclusion reached on soil



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effects in the section 95 notification assessment (**Attachment B**), it is considered that the proposal (in and of itself) is not consistent with this aspect of the RPS /RRMP.

3.4.11 I consider that the proposed sites will not directly compete with the existing or planned urban growth areas within the urban limits closer to Napier or Hastings. Furthermore, the services are dealt with on site rather than relying on a Council reticulated system. For these reasons, it is considered that the proposal will not undermine the current or future infrastructure investments that will be made within the urban limits, as addressed under POL UD1.

3.4.12 The proposed subdivision is also not considered to represent urban sprawl due to its distance from the defined urban edges of Napier and Hastings (a more obvious example of urban sprawl would be a greater number of sites being located near or on the edge of the defined urban areas) however it does represent an adhoc development due to the nature of the proposed subdivision within a location on the edge of the Plains Production Zone and where established zones offering a variety of lifestyle options exist in the surrounding area.

3.4.13 While the soils report (Fruition Horticulture) submitted with the application identifies some limitations with the sites soils to justify the subdivision, the appraisal does not distinguish the soils of these sites from the wider Plains resources in any specific manner that is sufficient to support the subdivision. Classification of the soils is only one consideration of the protection of versatile land, and giving approval to a non-complying subdivision on the basis of soil limitations alone would not give effect to Objective UD1 and UD4 which seeks to avoid the adverse effects of unnecessary and unplanned encroachment on the versatile land of the Heretaunga Plains. In this respect I consider the proposed subdivision to be **contrary** to UD3 of the RPS which directs local authorities to discourage or avoid rural residential development outside of the existing rural residential zones.

### RPS Conclusion

3.4.14 In conclusion, I consider that this current proposal to subdivide an area of 10.6412 hectares (comprised in two separate ownerships) to create 12 lifestyle lots (non-complying) is contrary to the RPS that seeks to manage the adverse effects of sporadic and

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unplanned growth and the adverse effects from urban and inappropriate lifestyle development encroaching on versatile land of the Heretaunga Plains. Furthermore, the question of limited soil versatility and land parcel size is not sufficient to justify approving an ad hoc lifestyle subdivision of the land for that purpose.

### 3.5 **Proposed Hastings District Plan (Section 104(1)(b)(vi))**

#### 3.5.1 **Subdivision: General Assessment Criteria – 30.1.8**

Section 30.1.8 of the Proposed District Plan sets out the assessment criteria for controlled, restricted discretionary and discretionary activities. Although the application is a non-complying activity, the following assessment criteria provides a useful and relevant guide in assessing the application.

#### 3.5.2 **Structure Plans**

There is no structure plan for this area.

#### 3.5.3 **Subdivision Design**

This criterion including the six key design elements are considered more relevant to large scale subdivision and urban areas. Given the existing development on the site and that the subdivision involves the creation of just ten additional lots, it is considered that the six key design elements are not relevant.

#### 3.5.4 **Property Access**

The section 95 assessment in section 4.4 of **Attachment B** considered these matters and concluded that subject to the imposition of conditions, the proposed development can be safely and efficiently integrated into the District's Roading Network without resulting in effects on the wider environment that would be more than minor.

#### 3.5.5 **Water Supply, Wastewater Disposal and Stormwater Disposal**

As noted in the section 95 assessment in section 8.1 of **Attachment B**, all sites are sufficiently large enough to adequately provide for

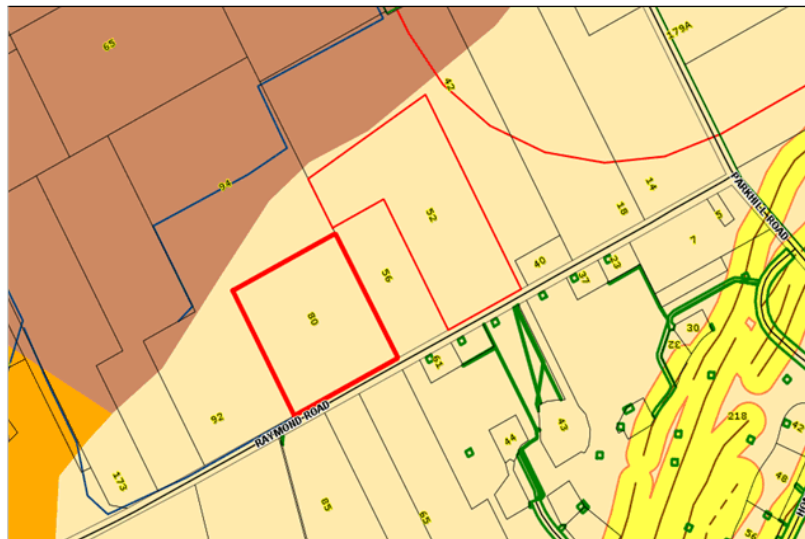
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onsite infrastructure in terms of water and wastewater. Storm water will continue to be discharged via natural drainage.

### 3.5.6 Natural Hazards

Section 106(1)(a) and (b) of the Resource Management Act 1991 states the circumstances when the Council may decline an application for subdivision consent in relation to natural hazards.

As can be seen from the map below, both properties are outside of the area identified on the Council's IntraMaps as being of high liquefaction vulnerability (brown zone) as surveyed by (GNS Science Report, December 2017). No other hazards have been identified in relation to both sites. There is no reason therefore to decline the application in terms of section 106.



### 3.5.7 Building platforms

The scheme plan (**Attachment C**) shows 30 x 30 building platforms on each of the new lots. On this matter this condition is achieved. However for Lots 4, 5, 7 and 8 these platforms do not meet the 15m yard setback and therefore if this subdivision is approved it should include a yard waiver to reduce the yard for these lots. It is noted however, that the applicant has offered a no complaints covenant be placed on the titles in the application. This means that the rights

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of adjacent properties to continue lawfully established activities are protected from adjoining lifestyle properties.

### 3.5.8 Esplanade Areas (Reserves and Strips)

This is not applicable to this application.

### 3.6 Hastings Proposed District Plan – Relevant Objectives and Policies

The assessment of a proposal's consistency with the objectives and policies requires that an overall assessment is made of how the proposal 'sits' within the policy framework of the Plan as a whole, rather than whether each objective and policy is individually satisfied. That said, case law confirms that where a proposal is contrary to a provision, which when the plan is read as a whole, is very important and central to the proposal, a finding that it is contrary to the objectives and policies of the plan as a whole can be reached (*Akaroa Civic Trust v Christchurch City Council*, [2010] NZEnvC110, *Queenstown Central Limited v Queenstown Lakes District Council* [2013 NZHC 817]). This is particularly the case for the second gateway test in section 104D (1)(b), as would apply if a finding were reached that adverse effects of the subdivision on the environment are more than minor (noting my finding at 1.2 above that the first gateway test of minor effects is only 'marginally' met) .

Noting this point, it is the overall intent of the below objectives and policies that has been assessed in this case, but with a focus on those objectives and policies that are of central importance to the application.

The relevant objectives and policies as they relate to this application are as follows:

#### 3.6.1 Section 2.8 – Rural Resource Strategy

*RRSO1 To promote the maintenance of the life-supporting capacity of the Hastings District's rural resources at sustainable levels.*

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*RRSP1 Reflect the various characteristics and distribution of the rural resources to enable the sustainable management of these characteristics.*

*RRSP2 Provide for a wide range of activities to establish, which complement the resources of the rural area, provided that the sustainability of the natural and physical resources of the area is safeguarded.*

*RRSO2 To enable the efficient and innovative use and development of rural resources while ensuring that adverse effects associated with activities are avoided, remedied or mitigated.*

*RRSO3 To enable the effective operation of primary production activities within established amenity levels in the rural areas of the Hastings District.*

*RRSP4 Rural land close to urban areas or on arterial or national traffic corridors will be managed to avoid sporadic and uncontrolled conversion to activities that will individually or cumulatively adversely affect the sustainability of the rural resource base and the efficiency of the road network.*

The thrust of the RRS is to provide for activities that complement the rural resource within the overarching premise of protecting the physical and natural rural resources at sustainable levels.

The methods for achieving the direction set out in this strategy include the various rural zonings including the 'Plains Production' and 'Rural Residential' zones. The Plains Production zone provides for the productive use of the fertile soils (as well as Class 7 gravel areas suitable for viticulture) close to urban centres; while the Rural Residential zone provides specific areas for low density residential development. Additional residential opportunities are provided through the Plains Zone and Rural Zone lifestyle site provisions, Conservation Lots and Papakainga development.

The proposal is considered to be contrary to RRSO1, RRSP1 and RRSP2 as it does not promote the maintenance of the life-supporting capacity of Hastings District's rural resources at sustainable levels. The proposal results in 12 new lifestyle sites that



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due to their proposed size are not physically suitable for productive purposes at sustainable and economic levels.

The subject sites and the surrounding sites on this northern side of Raymond Road are zoned Plains Production in the Proposed District Plan. There is no evidence to suggest that this zoning is incorrect in terms of the characteristics that define that zone being primarily flat land with soils that have the ability to be used for horticultural and/or viticulture purposes. The existing orcharding and berry growing activity on 52 Raymond Road and the current orcharding, viticulture, and horticultural activities, in the surrounding environment also suggests that this zoning is appropriate. It is noted that 80 Raymond Road is not being used for any significant horticultural use, however this does not suggest that this land use could not be established with some success. The peer review of the soils report undertaken by AgFirst identifies that area as successfully growing grapes and would also be suited to niche crops.

The proposed subdivision will result in fragmentation of the subject sites. It is difficult to conclude that fragmentation of Plains Production Zone land through subdivision will achieve an objective that seeks to promote the maintenance of the life-supporting capacity of the rural land resource.

Overall, it is considered that the proposed subdivision is contrary to RRSO1 and policies RRSP1 and RRSP2.

In terms of RRSO2, the proposal is not considered an efficient or innovative use or development of the rural resource. The desire to be innovative would have resulted in a different proposal being put forward and not one that is merely a subdivision to create lifestyle lots.

As the subject sites already contain residential development it is considered that the proposal will not prevent the effective operation of primary production activities on sites in the surrounding area. The existing development and proposed lot boundaries are also setback from the larger productive activities on the nearby sites. As such, it is considered that the proposal is not contrary to RRSO3.

As stated earlier in this report the applicant has offered a no complaints covenant be placed on the titles in the application. This

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means that the rights of adjacent properties to continue lawfully established activities are protected from adjoining lifestyle properties.

### 3.6.2 Section 6.1 – Plains Strategic Management Area

The Proposed District Plan identifies a range of 'strategic management areas' that reflect area specific unique features and identify overarching Objectives and Policies to maintain these. The relevant Objectives and Policies in respect of this proposal include:

*PSMO1 The land based productive potential and open nature of the Plains environment is retained.*

**This is an overarching objective.**

*PSMP1 Require that the subdivision of land within the Plains Strategic Management Area shall be for the purpose of a land based productive use.*

*PSMP2 Require that activities and buildings in the Plains environment be linked to land based production and are of a scale that is compatible with that environment.*

*PSMP3 Require that activities and buildings in the Plains environment do not compromise the open nature and amenity arising from land based production.*

*PSMP4 Limit commercial and industrial activities to those that have a direct relationship to crops grown and/or stock farmed within the Plains environment.*

*PSMP5 Establish clear and distinct urban boundaries to prevent incremental creep of urban activities into the Plains Production Zone.*

*PSMP6 Provide for other primary production activities that are not reliant on the life supporting capacity of the soil, provided they are an appropriate scale for a land based production environment and compatible with the amenity expectations of the Plains environment.*

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*PSMO2Settlements within the Plains environment do not compromise the productive nature of the soils.*

The need to retain the land based primary productive potential and open nature of the plains environment and the need to avoid fragmentation of the Plains land resource are the two most important themes running through the Council's strategic direction for the future in the Plains Strategic Management Area. PSMO1 requires the productive potential and open nature of the environment be retained. It is considered that subdividing the subject site where no amalgamation of the balance site (of which there are none) is proposed will not retain the land based productive potential in the future. In this regard the proposal is contrary to the first part of the overarching objective.

The proposed subdivision will result in fragmentation of the subject sites. It is noted that 52 Raymond road is marked by the presence of a natural terrace along the back boundary. This becomes less marked by the time it reaches 80 Raymond Road. Formalizing this 'natural' boundary through subdivision would mean that future uses that may have involved all pieces of the site as a whole, will not be able to occur. In addition, the subdivision is not for the purpose of land based productive use. For these reasons it is considered to be contrary to policy PSMP1.

PSMP2 requires that all activities and buildings in the Plains environment be linked to land based production and are of a scale that is compatible with that environment. It could be argued that the larger lots which are over 1 hectare could be used for a limited scale land based productive activity; the reality however is that in most lifestyle situations this is not the case and these subdivisions often result in what amounts to large lot residential development not reflecting the intent of the underlying zone. It is however noted that the applicant (A Maurenbrecher of 52 Raymond Road) is intending to continue with the berry block surrounding their existing dwelling and accessory buildings, which is in keeping with this policy. On balance however, it is my view that the proposed subdivision is largely contrary to this policy.

In respect of PSMP3 it is considered that the proposed lifestyle sites would create a clustered effect not envisaged by the zone provisions and will be of a size, number and shape that will have an effect on



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the open nature and amenity of the zone to a point where the proposed subdivision would be contrary to this policy.

Given that the proposed subdivision is silent on any additional activities such as industrial and commercial activities which could be established as of right on each of the new lots subject to a limited scale, and that the applicant has not offered to restrict some future development, it is considered that the proposal is contrary to PSMP4.

While proposed Lot 12, containing the dwelling and buildings for 52 Raymond Road, will continue to be used for berry growing, the proposal does not specifically include additional land use activities including primary production on any other sites. It is considered therefore that PSMP6 is not of direct relevance.

The subject site and surrounding area is not considered to be a settlement as referred to in the overarching objective PSMO2. Therefore, it is not considered that this objective or policy has relevance to the proposed subdivision.

### 3.6.3 Overall conclusion on Plains Strategic Management Area (SMA) objectives and policies:

In the context of this particular application, being a non-complying Plains Production Zone subdivision, I consider that objective PSMO1 and policy PSMP1 should be afforded most weight as they are the most relevant. The consequence of a subdivision of this nature (one which is not compliant with the zone rules) is that once subdivided and consequently developed for residential purposes it is highly unlikely that any parcel of land or part thereof will be re-amalgamated in the future. The proposal creates 12 lifestyle sites that will not retain the land based productive potential of the versatile land of the Heretaunga Plains. For this reason, and given that the subdivision is not for the purpose of a land based productive use, it is considered contrary to the Plains SMA objectives and policies as a whole.

### 3.6.4 Section 6.2 – Plains Production Zone

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- PPO1 To ensure that the versatile land across the Plains Production Zone is not fragmented or compromised by building and development.*
- PPP1 Encourage the amalgamation of existing Plains Production Zone lots into larger land parcels.*
- PPP3 Limit the number and scale of buildings (other than those covered by Policy PPP4) impacting on the versatile soils of the District.*
- PPP6 Restrict the ability to create lifestyle sites within the Plains Production Zone to those from an existing non-complying site where the balance of the site is amalgamated with one or more adjoining sites to form a complying site.*
- PPO2 To provide for flexibility in options for the use of versatile land.*
- PPP8 Provide for industrial and commercial activities in the Plains Production Zone where they are linked to the use of the land and with limits on the scale and intensity to protect soil values and rural character.*
- PPP11 Require that any subdivision within the Plains Production Zone does not result in reducing the potential for versatile land to be used in a productive and sustainable manner.*
- PPO3 To retain the rural character and amenity values of the Plains Production Zone.*
- PPP13 Require that any new development or activity is consistent with the open and low scale nature that comprises the rural character and amenity of the Plains Production Zone.*
- PPP14 Require that any new activity locating within the Plains Production Zone shall have a level of adverse effects on existing lawfully established land uses that are no more.*

It has been noted earlier that the site is appropriately zoned (Plains Production) and in respect of 52 Raymond Road is largely being used for orchard and berry growing activities, which contradicts the argument that the land holds limited productive potential. The land

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clearly is considered versatile as it has appropriately been zoned as such. This is a characteristic of soils in the Plains Production Zone.

The proposed subdivision will result in fragmentation of versatile land with little chance of reversal into the future. As such, it is considered that the proposed subdivision is directly contrary to PPO1 as it will result in permanent and multiple fragmentation of the subject sites.

There is the potential for land use development and associated effects that could occur on the sites in their present form. However, while there is some degree of development that could occur on the on the sites I consider that this would not be as significant or permanent to that arising as a result of the proposed subdivision. This is a reflection that subdividing land is not just a series of lines on a plan but rather is a gateway to other activities establishing that may not otherwise have been considered. With new certificates of title comes the likelihood of new owners and new expectations of what they want to do with that land.

The proposed subdivision does not involve the amalgamation of any proposed lot into a larger parcel to meet the overarching objective and policies for the Plains Production Zone. As such, it is considered contrary to PPP1.

Given that the application is silent on potential development on the new sites, it is considered that the proposal is not necessarily contrary to PPP3.

In relation to policy PPP6, the intent is to restrict the ability to create lifestyle sites within the Plains Production Zone to those from existing non complying sites but where the balance is amalgamated with or one or more sites to form a complying site. This proposal does not include balance lots.

The Proposed Plan defines lifestyle sites in Section 33.1 as follows;

*Lifestyle Site: means a site created and used for rural residential living in the Plains and Rural SMA's.*

I consider that the proposed subdivision fits within this definition given the size and shape of the resulting lots. Notwithstanding this, the proposed subdivision triggers the first part of policy PPP6 in that

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the existing subject sites are non-complying in size. The proposal however is in direct conflict with the second part of the policy in that there is no amalgamation of the balance to another site to achieve a minimum size of 12 hectares (there are in effect no balance lots). The amalgamation of sites is the key to preserving the versatile land in the Plains Production Zone for productive purposes. The amalgamation requirement of this policy envisages that lifestyle sites can only be created under this defined criteria. The proposed subdivision is therefore considered overall to be contrary to policy PPP6.

PPO2 and PPP8 provide flexibility in respect of the use of the versatile land in the Plains Production Zone. As the proposal is silent on any new industrial or commercial activities enabled by the subdivision, PPO2 and PPP8 hold little relevance in terms of this application.

In respect of PPP11, subdivision must not reduce the potential for versatile land be used in productive manner. The proposed subdivision will result in the fragmentation of the subject sites and will reduce the potential future use of the site in terms of sustainable production. This is considered a greater reduction in potential than would likely occur if the site was left un-subdivided or even if the crops were removed and the land left in pasture. The wording of the policy is directive in that it requires all subdivisions in the Plains Production Zone to not reduce that potential. Furthermore, as the proposed subdivision does not include an amalgamation with any other land parcel that could increase the potential of the land through more viable landholdings, this is another example of an overall reduction in the potential of the site. The proposed subdivision is therefore considered to be contrary to PPP11.

Objective PPO3 and policy PPP13 relate to the retention rural character and amenity values of the Plains Production Zone. The application states that the clustering of potential houses resulting from the creation of new lots is consistent with surrounding sites. I disagree with this statement and as can be seen in the aerial photograph below, the surrounding environment contains development that is more sporadic than clustered. It is noted that these other developments are located in the nearby Rural Residential and Tuki Tuki Special Character zones where each zone has different standards and expectations on how the land can be used. It is considered that this subdivision will result in a cluster of



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houses within a defined area and this level of development is likely to result in such a visual change that would result in this application being contrary to PPO3 and PPP13.



Policy PPP14 relates to reverse sensitivity. Based on the setback distances for the larger nearby land holdings and the building line and development restrictions proposed, it is considered that future activities will not result in reverse sensitivity effects on lawfully established land uses in the surrounding area. Accordingly, the proposal is not contrary to PPP14 and likewise will not result in reverse sensitivity effects.

### 3.6.5 Overall conclusion on Plains Production Zone objectives and policies:

In the context of this particular application, being a non-complying Plains Production Zone subdivision, I consider that greater weight should be afforded to the following objectives and policies;

- objective PP01 (versatile land is not fragmented)
- policy PPP1 (amalgamation of existing lots)
- policy PPP6 (lifestyle sites only where balance amalgamated)

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- policy PPP11 (subdivision not reduce productive potential).

This is due to the consequential effects of a subdivision application being of greater permanence to that of a landuse application i.e. once subdivided it is highly unlikely to be re-amalgamated in the future. In addition, the three policies referred to provide specific direction on the way in which subdivision should occur within the Plains Production Zone. With regard to the other objectives and policies, some are still relevant however it is acknowledged that they relate more generally to landuse management such as providing for land based production and limiting commercial and industrial activities.

For this reason, as the proposal is considered to be contrary to these most relevant objectives and policies, it is also considered as a whole to be contrary to the Plains Production policy framework.

### 3.6.6 Section 30.1 – Subdivision and Land Development

*SLDO1 To enable subdivision of land that is consistent with each of the Objectives and Policies for the various SMA, Zones, Precincts, or District Wide Activities in the District Plan.*

*SLDO2 To ensure that sites created by subdivision are physically suitable for a range of land use activities allowed by the relevant Section Rules of the District Plan.*

*SLDP1 That standards for minimum and maximum site sizes be established for each SMA/Zone in the District.*

*SLDO4 To ensure that land which is subdivided is, or can be, appropriately serviced to provide for the likely or anticipated use of the land, so as to ensure the health and safety of people and communities, and the maintenance or enhancement of amenity values and the avoidance of reverse sensitivity effects.*

*SLDP8 Ensure provision of onsite services for water supply, wastewater disposal and stormwater disposal for sites outside of the reticulated urban areas unless the provision of reticulated services is identified as an appropriate work to mitigate adverse effects on the environment.*

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*SLDP9 Ensure that where sites are not connected to a public water supply, wastewater disposal or stormwater disposal system, suitable provision can be made on each site for an alternative water supply or method of wastewater disposal or stormwater disposal, which can protect the health and safety of residents and can avoid any significant adverse effects on the environment.*

*SLDP10 Require the provision of safe and practicable access for pedestrians and vehicular traffic from a public road to each site.*

*SLDP14 Ensure that earthworks associated with providing vehicle access, building platforms or services on land being subdivided will neither detract from the visual amenities of the area, nor have adverse environmental impacts, such as dust, or result in the destruction of heritage sites (include archaeological sites), cause natural hazards, or increase the risk of natural hazards occurring.*

*SLDP15 Ensure that subdivision or developments do not result in adverse effects on the environment by requiring upon subdivision or development a means of connection to a water supply and services for the disposal of wastewater and stormwater.*

*SLDP16 To ensure that, when assessing the subdivision of existing sites, reverse sensitivity effects are considered, and avoided where practicable or otherwise mitigated.*

Standards for minimum and maximum site sizes have been established for the Plains Production Zone. The minimum lot size for a new Plains Production Zone site is 12 hectares. The minimum area for plains lifestyle sites is 2500m<sup>2</sup> (net site area) and the maximum area is 5000m<sup>2</sup> (net site area). It is noted that six of the lots comply with the minimum and maximum net site areas stated above whereas the remaining proposed lots exceed 5000m<sup>2</sup> net site area. In addition, the intention of the subdivision standards is that there can be no net increase in the number of sites, with amalgamation of sites being a pre-requisite for the creation of lifestyle sites. Lifestyle subdivision sites shall only be applicable for an existing site smaller than 12ha. The site(s) being amalgamated

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with does not have to be less than 12 hectares, but does have to be adjoining. This proposal does not meet the maximum lifestyle site area, the number of additional sites that can be created requirements, nor the amalgamation of any balance area.

As concluded above, whilst the proposed subdivision is not contrary to some of the objectives and policies for the Plains SMA and Plains Production Zone is it considered to be, overall, contrary to the policy direction and intent of these sections. Fundamentally the proposal will not retain the potential for the site to be used productively and it will lead to the permanent and multiple fragmentation of two sites which are appropriately zoned, Plains Production. For these reasons, it is considered that the proposal will not ensure subdivision of land that is consistent with the relevant SMA/Zone objectives and policies. It is therefore considered that the application is contrary to SLDO1, SLDO2 and SLDP1.

Hastings District Council's GIS (IntraMaps) reveals that the sites where the lifestyle lots are to be located have 'very low to low' levels of liquefaction vulnerability. Therefore, it is not considered that the proposal is contrary to the objective and policies relating to natural hazards.

It has been established elsewhere in this report, in the section 95 notification report in **Attachment B** and in the application material submitted by the applicant that the proposed subdivision can be adequately serviced and is therefore not contrary to SLD04, SLDP08 and SLDP9. Access to the sites would be required to be upgraded in accordance with the Engineering Code of Practice as confirmed by the Hastings District Council Development Engineer. The proposed vehicle access would require an upgrade as confirmed by Councils development engineer. I consider therefore that the proposal is not contrary to the objective and policies relevant to provision of safe and practicable access (SLDP10).

While not all the proposed sites are able to achieve setbacks in respect of the building platforms from the nearby horticultural activities, it is considered that the resulting development could achieve the 15m setback secured by consent notice on the relevant lots (only if the application is approved). On this basis it is considered that there will not be reverse sensitivity effects generated by the proposed subdivision. Accordingly, the proposed



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subdivision is not considered contrary to the objective and policies relevant to reverse sensitivity (SLDP16, SLDO4).

### 3.6.7 **Overall conclusion on objectives and policies:**

On balance, and when reading the Objectives and Policies as a whole and in the context of this non-complying Plains Production Zone subdivision application, it is considered that the proposal, is overall, contrary to the relevant Objectives and Policies of the Proposed Hastings District Plan.

## 4.0 **OTHER MATTERS 104(1)(c)**

Section 104(1)(c) makes provision for '*Any other matters the consent authority considers relevant and reasonably necessary to determine the application*'. The following matters can be considered under this provision.

### 4.1 **Heretaunga Plains Urban Development Strategy (HPUDS)**

- 4.1.1 The applicant has provided in section 6.4 Page 28 – 31 of their application AEE, an assessment of the application in terms of HPUDS (**Refer Attachment C**). Their assessment is guided by section 3.2.1 and section 3.2.2 of HPUDS and POL UD4.2 of the RRMP which outlines the criteria for introducing greenfield growth areas and additional 'reserve' areas. The criteria referenced in the AEE from HPUDS is as follows:

*All greenfield growth areas, other than those areas already deemed appropriate in Section 2.2.2 (residential) or Section 2.3 (business land) of this Strategy, will be assessed against the criteria listed below:*

*a) Must form an extension contiguous with existing urban areas and settlements.*

*b) Land is identified as having low versatility, and/or productive capacity has been compromised by:*

- i. Size and shape of land parcels that mitigates against productive use*
- ii. Surrounding land uses and reverse sensitivity*
- iii. Lack of water and/or poor drainage.*

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*c) Clear natural boundaries exist, or logical greenbelts could be created to establish a defined urban edge.*

*d) Supports compact urban form.*

*e) Can be serviced at reasonable cost.*

*f) Can be integrated with existing development.*

*g) Can be integrated with the provision of strategic and other infrastructure (particularly strategic transport networks in order to limit network congestion, reduce dependency on private motor vehicles and promote the use of active transport modes).*

*h) An appropriate separation distance from electricity transmission infrastructure should be maintained in order to ensure the continued safe and efficient operation and development of the electricity transmission network.*

*i) Promotes, and does not compromise, social infrastructure including community, education, sport and recreation facilities and public open space.*

*j) Avoids or mitigates the following locational constraints:*

- i. projected sea level rise as a result of climatic changes*
- ii. active coastal erosion and inundation*
- iii. stormwater infrastructure that is unable to mitigate identified flooding risk*
- iv. flood control and drainage schemes that are at or over capacity*
- v. active earthquake faults*
- vi. high liquefaction potential*
- vii. nearby sensitive waterbodies that are susceptible to potential contamination from on-site wastewater systems or stormwater discharges*
- viii. no current wastewater reticulation and the land is poor draining*
- ix. identified water short areas with the potential to affect the provision of an adequate water supply.*

4.1.2 This application is for a subdivision of 12 non-complying lifestyle lots in the Plains Production Zone and while the proposed development may be able to meet some of the criteria set out in the

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recent district plan review and the 2017 review of HPUDS, neither process supported the rezoning of this area for greater intensification. It was considered that doing so would be premature and pre-emptive of the broader planning process, which included a planned review of HPUDS and a 'Master Plan' for the Cape Coast. It is noted that this 'Master Plan' is currently on hold pending the outcome of the Clifton-Tangoio Coastal Strategy which involves direct input from the Hawkes Bay local authorities. The recommendations of the Joint Committee were presented to Council on 22 March 2018, however Council wish to take more time to consider the recommendations and following workshops, the outcomes will be reported back to Council by the end of June 2018.

- 4.1.3 While the applicants are correct in that the subject site has been referred to in HPUDS, the document is however non-committal about the development of this area and it is still subject to further review.
- 4.1.4 To confirm the above, the following statement in HPUDS 2017 for Haumoana reads as follows (refer specifically to bold text):

**Haumoana**

*Haumoana is a popular coastal settlement located approximately 9km east of Hastings. The settlement is low lying and parts of it have been subject to flooding coastal inundation, and coastal erosion. Infrastructure limitations and topographical considerations generally make the settlement unsuitable for further growth. There is however a small area of land located off the southern side of East Road and contiguous to the existing Coastal Residential Zone and close to the Suburban Commercial Zone off Clifton Road, that is free of flooding and coastal hazard constraints and suitable for residential growth. **There is also an area of approximately 20ha on the corner of Raymond Road/Parkhill Road opposite the Haumoana School on 'Ruatanui' soils (also described as 'Waipukurau 30' soils), free of flooding and coastal hazard restraints that could be suitable for coastal growth choices. This would be subject to further assessment through the proposed Masterplan process to commence after the completion of the Clifton – Tangoio Hazards Strategy. This assessment would include matters such as:***

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

4.1.5 HPUDS therefore clearly includes reference to Raymond Road and the subject sites, however it describes the area as; “*could be suitable for coastal growth choices*” and is subject to the completion of the Clifton – Tangoio Hazards Strategy. This strategy is being developed collaboratively between Hastings District Council, Hawke’s Bay Regional Council, Napier City Council, and groups representing mana whenua and/or tangata whenua through a joint committee. The recommendations of the Joint Committee were presented to Council on 22 March 2018, however Council wish to take more time to consider the recommendations and following workshops, the outcomes will be reported back to Council by the end of June 2018. The framework for Haumoana is for managed retreat in the long term (50-100yrs).

4.1.6 Therefore, while HPUDS refers to the subject site as an area for potential growth, there is no specific commitment to this area being suitable for the type of development proposed by this application. The higher level policy documents that have statutory weight such as the Regional Policy Statement have therefore not considered or given any specific direction for this area to be developed into residential lifestyle sites, certainly at this stage. Furthermore, additional assessment through the proposed Masterplan process could potentially result in a reversal of this area being considered suitable for coastal growth. On this basis therefore, it is not considered appropriate for this proposal or one similar to precede this more integrated and broader framework. In this regard it is also noted that another resource consent application is currently being considered by Council at 42 Raymond Road. This application proposes a subdivision of an adjacent 20.71 hectare Plains Production Zone site into three vacant oversized residential lifestyle lots, one complying residential lifestyle lot around an existing dwelling and a balance lot of approximately 17.85 hectares in area. This begs the question of precedent effects which are discussed in the next section.



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Item 2

Attachment A

#### 4.2 Adverse Precedent Effects

4.2.1 The potential for the grant of consent to a proposal to create an adverse precedent is an 'other matter' that may be considered under section 104(1)(c). A precedent may be created where the granting of a consent could lead to similar applications for which Council, being consistent in its approach, would need to consider granting.

4.2.2 The potential precedent relevant in this application relates to the potential for other landowners within the Plains Production Zone to seek to subdivide larger sites into lifestyle lots without an amalgamation as is required by the Plan using a similar planning argument to this application. This would be of significant concern if replicated over a number of sites some of which may be in this location. I consider that the impact on the rural resource and its availability for productive purposes should this precedent be made would be significant.

4.2.3 It is considered that the proposed application could create a precedent on the following grounds:

- There is no amalgamation of any balance lot to create a larger land parcel. Approving this application could result in a situation where there is a steady net increase in the number of lifestyle sites throughout the district thus further fragmenting the Plains Production Zone in an ad hoc and unplanned way, and reducing the potential for versatile land to be used in a productive and sustainable manner.
- The soils involved are marginal for high performance production of most intensive horticultural crops. However, with attention to appropriate soil drainage, crop performance could be substantially improved. Approval of this application on the basis that the soils are marginal for high performance crops could lead to similar planning arguments being made across the Plains Production Zone. There are a multitude of factors that must exist for soils to provide for intensive horticultural crops, such as height of water table, soil type, depth of soil, drainage ability, and risk of frost. It is therefore possible that other applications could be made in other areas of the Plains Production Zone where one or two of these factors are not as optimal as other areas.



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- There are no other particularly unique features associated with this proposal which would differentiate it from other sites within the Plains Production Zone, or even in the immediate area, given there is the possibility of utilising the site for horticultural use for the likes of grape growing or niche crops. This landuse scenario was canvassed in the AgFirst Peer Review in **Attachment N**.

4.2.4 For the above reasons, I am of the opinion that this application has the potential to set an adverse precedent.

#### 4.3 Cumulative Effects

4.3.1 The Act defines a cumulative effect as an effect that arises over time or in combination with other effects.

In this regard, it is important to assess the proposal in light of the increased density that will be created as a result of this proposed subdivision and consider the potential to generate an adverse cumulative effect. The increased traffic effects have been discussed with the outcome being that any adverse effects of increased traffic in this area of Raymond Road will be no more than minor (refer **Attachment G**).

4.3.2 The subdivision will add buildings having a cumulative effect within the immediate environment and within a zone that does not provide for this level of lifestyle development. An example of this is; without development restrictions each site would contain a dwelling (that's a given), accessory building(s) and possibly a secondary residential building (100m<sup>2</sup>) and visitor accommodation (100m<sup>2</sup>) all permitted in the Plains Production Zone.

4.3.3 While in isolation, each may have minor or less than minor effect, it is considered that the granting of consent to this proposal would however result in an incremental change, by virtue of the proposal being a subdivision. I consider that this increase in the number of sites and associated intensity of development would result in adverse cumulative effects on the environment that will be more than minor including on some adjoining neighbours (refer to assessment in **Attachment B**). Having regard to what is being proposed, it is considered that any such cumulative effects on the wider environment will at the least be minor, and there may be

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additional effects on the immediate neighbours that would be more than minor.

#### 4.4 Integrity of the Proposed District Plan

4.4.1 Any potential impact upon the integrity and consistent administration of the District Plan is considered under Section 104(1)(c). The granting of consents to non-complying activities (where the proposal lacks any unique qualities) may be considered to undermine the confidence of the public in the consistent administration of the District Plan.

4.4.2 Several Environment Court cases have considered applications for development in the Plains Zone and their impact on the integrity of the District Plan. However, it is noted that each of these following applications were assessed under a different planning document (Operative District Plan) to this particular application. This application requires detailed assessment under the Proposed District Plan (September 2015). Notwithstanding this, they are still considered relevant as a guide for the assessment of this application. In particular, it is noted that the key policy directions of the Plains Production Zone have been carried over from the Operative Plan to the Proposed.

4.4.3 In *McKenna v Hastings District Council* (W106/2008), the Environment Court declined an appeal against Council's decision to refuse consent to a non-complying subdivision application in the Plains Zone. The proposal was to create one lot of 4,018m<sup>2</sup> containing an existing house, and a balance lot of 2.5ha. The Court accepted evidence that the amalgamation provisions of the Operative Plan then in force (Policy PLP3 in particular) provided that subdivision should not occur where the balance area of proposed lifestyle lots was not being amalgamated with adjoining sites to create a complying balance site (at [23]). It found that the proposal would not encourage an amalgamation that would allow a range of activities involving the sustainable use of the resource (at [25]).

The Court therefore held that while the subdivision would have no adverse effects on the environment that were more than minor (at [27]):

*... the proposal is not only contrary to Policy PLP3 but also the overall thrust of the objectives, policies and other*

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*provisions of the District Plan. Those provisions aim to promote the sustainable management of the Heretaunga Plains land resource, finite in nature and with a productive and life-supporting capacity not just for the present, but also for future generations. The type of ad hoc subdivision and associated residential development of the land resource that is proposed would run directly counter to those provisions.*

- 4.4.4 For that reason, the Court found that the subdivision would call into question the integrity of the District Plan (at [34]). The Court went on to emphasise that *“Things do not begin and end with effects, and it must be the case that on occasion, the terms of a planning document may prevail, even if adverse effects are not decisive”* (at [37]).
- 4.4.5 On appeal, the High Court upheld the Environment Court’s approach, noting at [65]) that the lower court had found *“that notwithstanding this particular subdivision would have adverse effects that were no more than minor, it would run directly counter to the provisions of the Plan in that it would result in a land holding that could not accommodate a wider range of activities that can support the life-supporting capacity of the Plains resources; it is contrary to the intention of the Plan, which is to retain the land in rural use rather than urban use”*.
- 4.4.6 I consider this case to be directly relevant in describing the nature and importance of the Plains Production Zone provisions of the Proposed District Plan, and the strong preference for the Plains Production Zone to be used for rural, productive uses, with any subdivision for rural lifestyle purposes to be associated with amalgamation of non-complying sites (as under PPP6). It also has similarities in terms of the size of the lifestyle lots being created with half of these being oversized, there being in effect no balance sites, and the proposal does not include amalgamation with any another site.
- 4.4.7 In *McHardy v Hastings District Council* [2011] NZEnvC 339, the applicant sought to subdivide an 8.2456 ha Plains Zone site to create an additional title of 2300m<sup>3</sup> containing an existing visitor accommodation unit. While the Court agreed there were no adverse effects on the environment, the subdivision would contribute to the

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fragmentation of rural land and was inconsistent with various objectives and policies. It noted (at [33]):

*Our conclusion is that the overarching intent of the relevant plan provisions is to at least maintain, and if possible increase, the availability of land with suitable soils for productive use and to seek the sustainable utilisation of the soil resources of the Plains. Loss or damage to soils, as well as fragmentation of Plains land, are seen as threats to that resource.*

4.4.8 Having found that the application would undermine the integrity of the District Plan, the Court noted that landowners could potentially develop visitor accommodation on their land and then seek subdivision approval, “as a mechanism to circumvent the Plan provisions seeking to restrict further ad hoc residential development and urbanisation of the Plains” (at [39]). The Court declined the appeal on the basis that the proposed subdivision would not sustain the potential of the Heretaunga Plains lands to meet the needs of future generations (at [43]). This case is considered particularly relevant in emphasising the overarching intent of the (now equivalent) Proposed District Plan provisions and the problems that can emerge in future when lifestyle sites are converted to permitted uses (such as visitor accommodation) and then sought to be further subdivided .

4.4.9 The Environment Court in *Bunnings v Hastings District Council* [2011] NZEnvC 330 declined an appeal against the Council's decision to grant consent to allow the establishment of a commercial activity on the Plains Zone. In that case there were adverse effects that were more than minor as well as the proposal being contrary to the objectives and policies of the Plan, however the Court went on to consider other matters, including the integrity of the District Plan under s 104(1)(c). It held, at [156] – [157]:

*The principal other matters to which we have had regard are issues of precedent and consistent administration of the District Plan. It is well recognised that the granting of a resource consent application may give rise to an expectation that similar proposals will be similarly treated and that local authorities should demonstrate a degree of consistency in the manner in which they apply the provisions of their planning documents. We accept the*



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*evidence of Messrs Matheson and Holder that approving this application would have a precedent effect or give rise to issues of plan interpretation and integrity.*

*Bunnings contended that this was a truly exceptional situation which took it beyond the ambit of the objectives and policies and removed any precedent aspect to the grant of consent. We accept the evidence of Mr Matheson that ... there are no qualities in the Bunnings proposal that distinguish it from other commercial service/large format retail proposals of this type.*

4.4.10 In *JARA Family Trust v Hastings District Council* [2015] NZEnvC 208 the Environment Court upheld an appeal against the Council decision to decline consent to construct an industrial workshop of 2,400m<sup>2</sup> and a canopy of 1,200m<sup>2</sup> for the construction, storage, and sale of pre-fabricated residential and commercial buildings, and to utilise existing office and sales buildings of 110.4m<sup>2</sup> on a Plains Zone property at 1139 Maraekakaho Road.

4.4.11 The Council's decision was that although adverse effects on the environment were no more than minor, the activity was contrary to the objectives and policies of the Plan and would undermine the integrity of the Plan to the point that the application should be declined.

The Court determined at [35]

*We consider that the reality is that this node around the intersection of Maraekakaho and Irongate Roads has, de facto, ceased to be Plains zone land in a true sense. This piece of land, and those to its north, west and south, have, by their inherent nature in terms of productivity, and by the consent decisions that have affected them, become something of an anomaly in the Plains or Plains Production zones, and a simple recognition of that will not, we consider, do harm to the integrity of the Plains.*

4.4.12 This proposal is considered to differ significantly from the particular case outlined above for a number of reasons. The JARA case involved an industrial land use of Plains Zoned land, rather than subdivision, and so no fragmentation of versatile land was involved. As identified earlier in this report the site is considered



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to be appropriately zoned Plains Production. Whilst the surrounding environment contains some rural residential activity this is within the neighbouring Rural Residential and Tuki Tuki Special Character zone, the area also contains larger horticultural and viticultural activities. Considering the policy direction of the District Plan and the RPS, it is considered highly unlikely that the subject site and surrounding environment would be rezoned in the foreseeable future. For these reasons, the subject site is not considered an anomaly in the Plains Production Zone and therefore, the proposal is inherently different to the JARA Family Trust application. As such, the issue of District Plan integrity remains a valid consideration in the assessment of this proposal.

- 4.4.13 In that regard, this application also has more similarity to the 18 residential lot subdivision (with an average lot size of 2172m<sup>2</sup>) proposed at 380 Clifton Road, Te Awanga which was considered the Environment Court in *Te Awanga Lifestyle Limited v Hastings District Council* (W77/2009). The Environment Court found that the proposal would be contrary not only to many of the objectives and policies of the District Plan seeking to maintain the life supporting capacity of rural land, but also to other provisions of the District Plan related to managing the development and further expansion of the Te Awanga coastal settlement (at [38]). The Environment Court referenced the range of strategic studies then being undertaken by the Council including HPUDS and whereby under the former Hastings Urban Development Strategy (HUDS), two future urban areas had been signalled for Te Awanga. The Environment Court stated (at [52]):

*There is no justification to set aside the existing structure planning process, addressing the issues and constraints and the most appropriate future for the settlement, leading to a well-integrated development. The subject site may well have a role to play in the future expansion of the settlement. But that should be considered as part of a wide strategy rather than as a one-off proposal in isolation from the existing settlement. We do not suggest that further study might produce a better site for future Te Awanga residential expansion. But nor is there an urgency of need, for instance, for the relocation of threatened dwellings along the shore front, such as might justify the compromising of the plans provisions and its effectiveness and integrity as a planning instrument.*

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This finding of the Court resonates with the issues raised earlier in this report about the RPS and HPUDS 2017 review, whereby granting this subdivision could pre-empt the structure plan and Masterplan processes intended for this area.

Finally, I note that in *Beacham v Hastings District Council* (WO75/2009), the Court cautioned against the 'overuse' of the issue of District Plan integrity. It stated that only in the clearest of cases, involving an irreconcilable clash with the important provisions of the district plan, and a clear proposition that there would be materially indistinguishable and equally clashing further applications to follow would plan integrity be imperil to the point that the instant application should be declined (at [25]).

In my view, for the reasons I have set out above, there is an irreconcilable clash with important provisions of the Proposed District Plan when read overall and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow. This application proposes lifestyle sites sizes that are significantly oversized and, the proposal does not involve amalgamation of any of the sites being created as is a requirement set out in Plan standards. The proposal is therefore considered to challenge the integrity of the Plan, particularly in relation to the oversized lifestyle sites, lack of amalgamation, the net increase in the number of sites resulting from the proposal and the process provided for to create these sites. In the circumstances, it is considered that the grant of consent to this application will undermine the integrity of the Proposed Plan to the point that the application should be declined.

## 5.0 SECTION 106 OF THE RESOURCE ANAGEMENT ACT 1991

- 5.1 Section 106 of the Act states: Consent authority may refuse subdivision consent in certain circumstances:

*(1)[[A]] consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that—*

- (a) the land in respect of which a consent is sought, or any structure on the land, is or is likely to be subject to material*

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- damage by erosion, falling debris, subsidence, slippage, or inundation from any source; or*
- (b) *any subsequent use that is likely to be made of the land is likely to accelerate, worsen, or result in material damage to the land, other land, or structure by erosion, falling debris, subsidence, slippage, or inundation from any source; or*
  - (c) *sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.*

5.2 As noted earlier in this report it is considered that the applicants planning consultant has adequately addressed the potential effects of natural hazards and in doing so has assessed the section 106 requirements of the RMA. No hazards have been identified in relation to both sites. There is no reason therefore to decline the application in terms of section 106.

## 6.0 PART II OF THE RESOURCE MANAGEMENT ACT

6.1 The Act seeks to promote the sustainable management of natural and physical resources. Part II of the Act deals with the purposes and the principles of the Act.

In Section 5 of the Act, “sustainable management” is defined as:

*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while -*

- (a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

## 6.2 Section 5

6.2.1 In terms of Section 5, as stated above, it is considered that any adverse effects on the environment will be no more than minor. Notwithstanding the conclusion on adverse effects it is considered that the subdivision as a whole will not sustain the potential of the

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Plains soil resource of the subject site nor safeguard it. For these reasons it is not considered that the application will achieve sections 5(a) and (b).

6.2.2 As noted previously in this report the Proposed District Plan sets out very clearly how a subdivision is to be allowed in the Plains Zone. The provisions are arguably the most onerous of the entire Plan as this reflects the importance of protecting the Plains zone land resource.

6.3 Section 6

6.3.1 Section 6 of Part II of the Act sets out the matters of national importance. The relevant sections of Part 6 are as follows:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*
- (b) *The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

6.3.2 In terms of 6(a), the proposed subdivision will not impact on the natural character of the coastal environment or water systems.

6.3.3 In terms of 6(b), the site does not contain any 'Outstanding Landscape Areas'.

6.3.4 In terms of 6(c), no development is proposed that will adversely affect indigenous vegetation or fauna.

6.3.5 In terms of 6(d), the proposal does not change any public access arrangements.



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6.3.6 In terms of 6(e), it is not considered that there is potential for adverse effects on any archaeological sites, sites of significance, or cultural values as a result of this proposal.

6.4 Section 7

6.4.1 Section 7 of the Act identifies a number of “other matters” to be given particular regard by the Council in the consideration of any assessment for resource consent. These are:

- (a) *Kaitiakitanga:*
- (b) *The efficient use and development of natural and physical resources:*
- (c) *The maintenance and enhancement of amenity values:*
- (d) *Intrinsic values of ecosystems:*
- (f) *Maintenance and enhancement of the quality of the environment:*
- (g) *Any finite characteristics of natural and physical resources*
- (h) *The protection of the habitat of trout and salmon:*

Of particular relevance are 7(b), (c), (f) and (g).

6.4.2 In regard to Section 7(b), the proposal will not result in the efficient use and development of the key resources of the site which are the versatile land of the Plains Production Zone. This is because the subdivision will formally fragment the site with little chance of reversal or more importantly amalgamation into a larger and more economically viable land parcel.

6.4.3 In regard to Section 7(c) and (f) the issue of amenity values has been discussed in previous sections and in the section 95 assessment in **Attachment B**. It has been concluded that the proposal due to the cluster effect created by more intensive development will potentially detract from the rural character or visual amenity of the environment.

6.4.4 The subject site does contain finite resources in the form of productive soils that are both regionally and nationally significant. Therefore the proposal is considered to be inconsistent with Section 7(g) of the Act as it will formally fragment this soil resource.



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## 6.5 Section 8

6.5.1 Section 8 of the Act states that Council shall take into account the Principles of the Treaty of Waitangi in relation to managing the use, development and protection of natural and physical resources. There are no known Treaty of Waitangi issues with the proposed subdivision.

6.9 Considering the points raised above, and those in the sections of this report, it is considered that this application will not achieve the purpose of the Act being the sustainable management of natural and physical resources.

## 7.0 Part II Conclusions

Considering the points raised above, the Section 95A report in **Attachment B** and the above assessments of both the Hastings Proposed District Plan and Hawke's Bay Regional Plan sections of this report, it is considered that this application is inconsistent with Part II of the Resource Management Act 1991. This is because, in the opinion of the reporting planner the proposal;

- a) will not result in the efficient use and development of the natural and physical land resource;
- b) will not safeguard the Plains Production Zone versatile land resource; and
- c) will result in the formal fragmentation of two Plains Production Zone sites to the extent that the land will have reduced potential to be utilised productively.

## 8.0 SUMMARY AND CONCLUSION

8.1 This application is to subdivide 52 and 80 Raymond Road into two sites around existing development on both sites. The application requires resource consent as a non-complying activity as it fails to meet the maximum site areas for lifestyle lots, minimum site area in terms of the balance areas (of which there are none) and the requirement to amalgamate the balance sites.

8.2 As stated above, it is considered that, on balance, the adverse environmental effects of this activity will be no more than minor.

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- 8.3 The application is considered contrary to the relevant provisions of the Proposed District Plan. In summary, this is because;
- The application will not retain the land based productive potential of the parent site (objective PSMO2).
  - That the subdivision is not for the purpose of a land based productive use (PSMP1)
  - The versatile land of the subject site will be further fragmented and formalised by the proposed subdivision (objective PPO1)
  - The subdivision does not result in the amalgamation of lots into larger land parcels (policy PPP1)
  - Approving the subdivision would create lifestyle sites where the balance parcels are not amalgamated with one or more adjoining sites to form a complying site (PPP6)
  - The application will not result in greater flexibility in options for use of the versatile land of the subject sites (objective PPO2)
  - The subdivision will likely result in a reduced potential for the versatile land to be used in a productive and sustainable manner (policy PPP11).
- 8.4 The application is considered overall to be contrary to the Regional Policy Statement (which seeks to manage the adverse effects of sporadic and unplanned growth and the adverse effects from urban development encroaching on versatile land of the Heretaunga Plains) given the ad-hoc nature of the development being proposed.
- 8.5 The application will undermine public confidence in, and adversely affect the integrity of the District Plan, and create an adverse precedent; as the proposal is a significant departure from the clear and understood policy direction for Plains Production Zone subdivision. It is noted that this policy direction was in existence in the Operative District Plan 2003 and has been continued into the Proposed District Plan.
- 8.6 Whether viewed as a lifestyle or a standard Plain's Production Zone subdivision I do not consider that the proposal warrants approval. As a lifestyle subdivision it is diametrically opposed to the envisaged outcome of the Proposed Plan in that there is no aggregation of land, only further fragmentation. Lifestyle subdivision in the Plains Production Zone is not provided for in a general sense. It can only occur if there is an amalgamation of land to both result in a larger land parcel and to also result in zero net increase in Plain Zone sites.

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- 8.7 The application is considered inconsistent with Part II of the Resource Management Act 1991.
- 8.9 After considering the requirements of Sections 104, 104B and 104D of the Resource Management Act 1991, it is recommended that consent to this application be **declined**.

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**RECOMMENDATION**

That pursuant to Rules SLD25 (Subdivision) of the Proposed Hastings District Plan (As Amended by Decisions 15 September 2015) and Sections 104, 104B, 104D, 106, 108 of the Resource Management Act 1991, consent is DECLINED to A&J Maurenbrecher and D&A Evans to:

Subdivide 52 Raymond Road being Lot 1 DP 22124 (CFR HBP4/839) and 80 Raymond Road being Lot 5 Deeds Plan 800 (CFR HB80/1) as follows:

52 Raymond Road

Lot 7 comprising 3000m<sup>2</sup>  
Lot 8 comprising 3000m<sup>2</sup>  
Lot 9 comprising 1.2 hectares  
Lot 10 comprising 1.3 hectares  
Lot 11 comprising 1.3 hectares  
Lot 12 comprising 1.6 hectares

80 Raymond Road

Lot 1 comprising 4800m<sup>2</sup>  
Lot 2 comprising 3500m<sup>2</sup>  
Lot 3 comprising 7000m<sup>2</sup>  
Lot 4 comprising 3000m<sup>2</sup>  
Lot 5 comprising 6500m<sup>2</sup>  
Lot 6 comprising 2.3 hectares

**WITH THE REASONS FOR THIS RECOMMENDATION BEING:**

1. The adverse effects on the environment will be no more than minor.
2. The following persons are considered to be adversely affected by the proposed subdivision for the reasons stated below;

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|                 |  |
|-----------------|--|
| 65 Raymond Road | Alison Margaret McDonald, Mark Lynedoch Graham, John Anthony McAra   |
| 56 Raymond Road | Shelly Jane Bridgeman, Kevin Jaffe & Robert McLean                   |
| 37 Raymond Road | Kim Rebecca Alebardi, Michael James Alebardi & Emma Elizabeth Dawson |
| 57 Raymond Road | BvonD Trust Limited, Fiona Myra Gunn & Warren Bruce Gunn             |

- The visual amenity and rural character of the location will be compromised as a direct result of the subdivision, given the cluster effect that will occur subsequent to the subdivision and following developments.
  - The proposed subdivision is likely to result in adverse traffic effects on these people that would be considered more than minor within this defined area of Raymond Road where the affected persons have been used to a lesser level of traffic movements.
3. The proposed subdivision is overall contrary to the relevant Objectives, Policies and other provisions of the Proposed Hastings District Plan in that:
- The application will not retain the land based productive potential of the parent site (objective PSMO2);
  - That the subdivision is not for the purpose of a land based productive use (PSMP1);
  - The versatile land of the subject site will be further fragmented and formalised by the proposed subdivision (objective PPO1);
  - The subdivision does not result in the amalgamation of lots into larger land parcels (policy PPP1);
  - Approving the subdivision will not restrict the creation of this lifestyle site to those where the balance is amalgamated with one or more adjoining sites to form a complying site (PPP6);
  - The application will not result in greater flexibility in options for use of the versatile land of the subject sites (objective PPO2);
  - The subdivision will likely result in a reduced potential for the versatile land of the parent sites to be used in a productive and sustainable manner (policy PPP11).



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4. The proposal is a significant departure from the clear and understood policy direction for Plains Production Zone subdivision. As such it is considered that the application will undermine public confidence in and adversely affect the integrity of the District Plan. In addition, it will create an adverse precedent effect.
5. The application is inconsistent with Part II of the Resource Management Act 1991. This is because, in the opinion of the reporting planner, the proposal;
  - will not result in the efficient use and development of the natural and physical land resource;
  - will not safeguard the Plains Production Zone soil resource; and
  - will result in the formal fragmentation of a Plains Zone site to the extent that the land will have reduced potential to be utilised productively in the future.

As such, it is considered that the purpose of the Act, being the sustainable management of natural and physical resources, will be better achieved if the application is declined.

This report and recommendation prepared by:

Name: Michelle Hart  
Title: Senior Environmental Planner (Consents)

Signed:



Date: 4 April 2018

Report approved for release to the Hearings Committee:

Name: Murray Arnold  
Title: Environmental Consents Manager

Signed:



Date: 4 April 2018

**HASTINGS DISTRICT COUNCIL**

**Report on the Pre-hearing Meeting  
for the Proposed Subdivision of  
52 and 80 Raymond Road Haumoana**

Meeting held in the Landmarks Room, Hastings District Council  
on Friday, 13 April 2018 at 9:30am

**RMA20170355 (HDC reference PID 56999)**  
A&J Maurenbrecher and D&A Evans

**Application:**

A pre-hearing meeting pursuant to section 99 of the Resource Management Act 1991 was held at the Hastings District Council offices on Friday, 13 April 2018.

**PRESENT:**

**Hastings District Council:** Murray Arnold Environmental Consents Manager  
(Chair)

**Applicants:****A&J Maurenbrecher and D&A Evans**

Amanda Coats (Proarch Consultants Limited) (Planner,  
acting for Applicants)  
W Murphy (Landscape Architect, Pollen Workshop)  
Tony and Julie Maurenbrecher (Applicant)  
Annie Evans (Applicant)

**Submitters:**

Warren Gunn - 57 Raymond Road  
Mark Graham - 65 Raymond Road

**Consent Authority:****Hastings District Council**

Michelle Hart (Reporting Planner)  
Caleb Sutton (Team Leader Environmental  
Consents/Subdivision)

**In Attendance:**

Christine Hilton (Committee Secretary)

**1.0 BACKGROUND**

- 1.1 The applicants have applied to subdivide twelve (12) lots from two existing land titles at 52 and 80 Raymond Road, Haumoana. Six titles will be created from 80 Raymond Road and six titles will be created from 52 Raymond Road. The proposal does not comply with the minimum Lot sizes for the Plains Production zone or the maximum and minimum lot sizes of the Plains Lifestyle site provisions. Overall the proposal has a non-complying activity status under the provisions of the Proposed District Plan.
- 1.2 The application was limited notified and 2 submissions were received.
- 1.3 The application is to be heard by the Hastings District Council Hearings Committee on Friday, 8 June 2018.
- 1.4 The applicant requested a prehearing meeting, to which both submitters were invited.

**2.0 MATTERS AGREED**

In relation to the submission from W Gunn the following was agreed:

- 2.1 The applicant would prepare a draft covenant that would address height restrictions, placement of buildings, and landscaping, for all proposed Lots.
- 2.2 The applicant would prepare a draft landscape plan for proposed Lots 7 and 8.
- 2.3 The draft covenant and landscape plan would be provided to W Gunn by Wednesday, 18 April for his consideration to see if agreement can be reached with the submitter on these mitigation measures.

In relation to the submissions by Mark Graham:

- 2.4 M Graham's primary concern is that this proposal should be addressed by a Plan Change rather than an ad-hoc subdivision.
- 2.5 M Graham believes there is nothing wrong with the soils, and that the pan in the soil profile has 'pros and cons' and the 'cons' can be resolved.

**3.0 OTHER MATTERS**

In response to questions from the applicant:

- 3.1 Council staff have checked and confirm that Council's Intramaps GIS correctly shows Mr Graham's sites as zoned Tuki-tuki Special Character zone in the Proposed District Plan.

Chairperson: Murray Arnold



Date: Friday, 13 April 2018