

Wednesday, 5 June 2024

Te Hui o Te Kaunihera ā-Rohe o Heretaunga
Hastings District Council
Hearings Committee Meeting

Kaupapataka
Agenda

Plan Change 6 - Category 3 Landowner Subdivision Provisions

Te Rā Hui:
Meeting date: **Wednesday, 5 June 2024**

Te Wā:
Time: **9.30am**

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

Te Hoapā:
Contact: **Democracy and Governance Services
P: 06 871 5000 | E: democracy@hdc.govt.nz**

Te Āpiha Matua:
Responsible Officer: **Group Manager: Planning & Regulatory Services - John O'Shaughnessy**

Hearings Committee – Terms of Reference

Fields of Activity

The Hearings Committee is established to assist the Council by hearing and determining matters where a formal hearing is required in respect of a planning or regulatory function of the Council, including under the provisions of the:

- Resource Management Act 1991
- Building Act 2004
- Health Act 1956
- Dog Control Act 1996
- Litter Act 1979
- Hastings District Council Bylaws
- Local Government Act 1974
- Local Government Act 2002; and
- Hastings District Council Class 4 Gambling Venue Policy.

Membership - Up to 10 Hearings Commissioners (comprising up to 7 elected members of Council and at least 3 external appointed Independent Hearings Commissioners)

- Chair appointed by Council from the membership including external appointed members.
- Deputy Chair appointed by the Council from the membership including external appointed members.
- Under s. 39B of the Resource Management Act, the Chair must be accredited, and unless there are exceptional circumstances, appointees on hearings panels must have accreditation to make decisions on;
 - Applications for Resource Consents.
 - Notice of Requirements given under s. 168 or 189 of the Resource Management Act.
 - Requests under clause 21(1) of Schedule 1 of the Resource Management Act for a change to be made to a Plan.
 - Reviews of Resource Consents.
 - Applications to change or cancel Resource Consent Conditions.
 - Proposed Policy Statements and plans that have been notified.
 - Any hearing of an objection under s. 357C of the Resource Management Act.

Quorum

- a) For Hearings other than Council Initiated Plan Change hearings, a maximum of three members including the Chair (or Deputy Chair, in the Chair's absence) to meet for any one hearing.
- b) For Council Initiated Plan Change hearings, all members may attend and take part in the decision-making process unless the Chair exercises the power of delegation to assign any function, power or duty of the Hearings Panel to any one or more Commissioners.
- c) That on a one-off basis, for the Council Initiated Plan Change 6 hearing - Category 3 Landowner Lifestyle Subdivision Provisions, being addressed under the Severe Weather Emergency Recovery (Resource Management – Streamlined Planning Process) Order 2023, the following provisions shall apply:
 - a. The panel composition shall comprise two Independent Commissioners to consider submissions and provide the required summary reports to the Minister for the Environment.
 - b. The two Independent Commissioners on the Hearing Panel shall be the current Chair of the Council's Hearings Committee, Mr George Lyons, acting as the Chair for this hearing and Mr Kitt Littlejohn.

- c. The quorum for this Hearing Panel shall be two members.
- d) For Hearings other than Council Initiated Plan Change hearings the quorum shall be two members.
- e) For Council Initiated Plan Change Hearings, the quorum shall be three members.
- f) Members to sit on any hearing other than a Council Initiated Plan Change Hearing shall be selected by agreement between the Chair (or Deputy Chair, in the Chair's absence) and the Group Manager: Planning and Regulatory Services.
- g) For the purpose of hearing any objection in respect of the matters detailed under the Dog Control Act 1996 the Hearings Committee will consist of any three members selected by the Chair.

Kaupapataka

Agenda

Ngā mema o te Komiti

Committee Members:

Hearing Panel Members:

Chair: George Lyons (Commissioner Chair - External appointee)

Kitt Littlejohn (External appointee)

Apiha Matua

Officer Responsible:

Group Manager: Planning and Regulatory Services - John

O'Shaughnessy

Reporting Planner

Environmental Policy Manager – (Rowan Wallis)

*Te Rōpū Manapori me te
Kāwanatanga*

Democracy

Governance Services

Christine Hilton (Ext 5633)

Te Rārangi Take
Order of Business

1.0 *Apologies & Leave of Absence – Ngā Whakapāhatanga me te Wehenga ā-Hui*

Plan Change 6 - Category 3 Landowner Subdivision Provisions

2.0 **DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS TWO SEPARATE DOCUMENTS**

Document 1 The covering administrative report **Pg 1**

Attachment 1 s42A Report - Plan Change 6 Final **Pg 3**

The Agenda documents and Submissions can be viewed on the Council website.

Wednesday, 5 June 2024

Te Hui o Te Kaunihera ā-Rohe o Heretaunga

Hastings District Council: Hearings Committee Meeting

Item 2

Te Rārangi Take

Report to Hearings Committee

Nā:
From: **Christine Hilton, Democracy and Governance Advisor**

Te Take:
Subject: **Plan Change 6 - Category 3 Landowner Subdivision Provisions**

1.0 Purpose and summary - *Te Kaupapa Me Te Whakarāpopototanga*

- 1.1 This is a covering report relating to the Proposed Hastings District Plan hearing – Plan Change 6 – Category 3 Landowner Subdivision Provisions.
- 1.2 The agenda documents and submissions can be viewed on the Council’s website.
- 1.3 The recommendations are included in the relevant sections of the agenda documents and are not summarised in this covering report.

2.0 Recommendations - *Ngā Tūtohunga*

That the covering report titled Plan Change 6 - Category 3 Landowner Subdivision Provisions, the hearings report and associated attachments, dated 5 June 2024, be received.

Attachments:

1	s42A Report - Plan Change 6 Final	ENV-17-5-24-50	
2	Tracked Changes for Hearing Final	ENV-17-5-24-42	Document 2
3	Map of Eskdale Category 3 Land	ENV-17-5-24-44	Document 2
4	Map of Tangoio Category 3 Land	ENV-17-5-24-45	Document 2
5	Map of Pakowhai Category 3 Land	ENV-17-5-24-46	Document 2
6	Map of Rissington Category 3 Land	ENV-17-5-24-47	Document 2
7	Map of Aropaoanui Category 3 Land	ENV-17-5-24-48	Document 2
8	Map of Dartmoor Category 3 Land	ENV-17-5-24-49	Document 2
9	Section 32AA Report - PC6	ENV-17-5-24-43	Document 2

Submissions 1-27 listed below are on the Council website rather than being included in this document (so no attachment number is shown)

Submission 1, Daniel Pepper	ENV-17-5-24-8
Submission 2, Katherine Basher	ENV-17-5-24-9
Submission 3, Bex Smiley	ENV-17-5-24-10
Submission 4, Rachelle Basher	ENV-17-5-24-11
Submission 5, Andrew O'Connor	ENV-17-5-24-12
Submission 6, Malcolm Redmond	ENV-17-5-24-13
Submission 7, Andrew Torrens	ENV-17-5-24-14
Submission 8, Jill Hankin	ENV-17-5-24-15
Submission 9, Brian Hankin	ENV-17-5-24-16
Submission 10, Jaclyn Hankin	ENV-17-5-24-17
Submission 11, Hongwei Zhang	ENV-17-5-24-18
Submission 12, Troy & Tracy Duncan	ENV-17-5-24-19
Submission 13, HDC Policy Team	ENV-17-5-24-20
Submission 14, Melissa Burne	ENV-17-5-24-21
Submission 15, Ian Cadwallader	ENV-17-5-24-22
Submission 16, HB Regional Council	ENV-17-5-24-23
Submission 17, Napier City Council	ENV-17-5-24-24
Submission 18, Andrew Taylor	ENV-17-5-24-25
Submission 19, Williams Family Trust	ENV-17-5-24-26
Submission 20, Sue Averill	ENV-17-5-24-27
Submission 21, Angela McFlynn	ENV-17-5-24-28
Submission 22, Bernadette Hamlin	ENV-17-5-24-29
Submission 23, Gillian Wilson	ENV-17-5-24-30
Submission 24, Proarch Consultants on Behalf of A & J Maurenbrecher	ENV-17-5-24-31
Submission 25, Te Kuini	ENV-17-5-24-32
Submission 26, Adrian Namana	ENV-17-5-24-33
Submission 27, Clare O'Connor-Bryant	ENV-17-5-24-36

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

Plan Change 6: Category 3 Landowner Subdivision Provisions

Section 42A Report

Contents

1. Introduction
 - 1.1. Purpose of the report
 - 1.2. Statement of experience
 - 1.3. Preparation of the report
 - 1.4. Code of conduct
 - 1.5. Conflict of interest
 - 1.6. Scope of Report and Hearing
2. Overview of Plan Change 6 as notified
3. Statutory Considerations
4. Submissions
 - 4.1. Original Submissions
 - 4.2. Structure of Submissions Analysis

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

1 INTRODUCTION

1.1 Purpose of the report

- 1.1.1 This report is prepared in accordance with section 42A of the Resource Management Act 1991 (RMA).
- 1.1.2 It considers and assesses the submissions that have been received in relation to proposed Plan Change 6 (PC6) to the Partially Operative Hastings District Plan 2020, against the relevant provisions of the RMA. It concludes by recommending whether each submission should be accepted, accepted in part, or rejected. Where submissions are recommended to be accepted or accepted in part, the report also recommends the amendments to be made to the Operative District Plan provisions.
- 1.1.3 The report should be read alongside the tracked changes version of the Sections of the Operative Plan which shows the recommended amendments resulting from the assessment of submissions in **Attachment 2**. It should also be read with the Section 32 Report supporting PC6 which contains useful background information and the rationale for the notified provisions.

1.2 Statement of Experience

- 1.2.1 The Section 42A Report has been prepared by Rowan Wallis who is the Environmental Planning – Policy Manager at Hastings District Council. Rowan has over 40 years' experience in planning and resource management within New Zealand and has worked both in the private and public sectors. Rowan holds a Bachelor of Arts (Geography major) and a Bachelor of Regional Planning from Massey University.

Role in Plan Change 6:

Rowan has been responsible for the engagement and consultation undertaken, the summary, analyses and consideration of submissions.

1.3 Code of conduct

- 1.3.1 The reporting officer confirms that he has read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and has complied with it when preparing this report. The evidence stated in the analysis of the submissions is within the areas of expertise of the reporting officer, other than when it is expressly stated that reliance is on the advice of another person.
- 1.3.2 The data, information, facts and assumptions that have been considered in forming the writers' opinions are set out within the submissions analysis. Where opinions have been given, the reasons for those opinions are stated. The writers of this report have not omitted to consider material facts known that might alter or detract from the opinions expressed.
- 1.3.3 The reporting officer has been authorised to give this evidence on the Council's behalf in relation to PC6.

1.4 Conflict of Interest

- 1.4.1 It is confirmed that the officer who prepared this report has no real or perceived conflicts of interest.

1.5 Preparation of the Report

Page 2

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- 1.5.1 In preparing this report the role of the reporting officer has been to review, provide analysis of, and make recommendations on the submissions received in relation to the contents of PC6.
- 1.5.2 Where changes or amendments to the District Plan are recommended, these have been assessed in accordance with section 32AA of the RMA and an evaluation provided within the specific issue or topic report, at a level of detail corresponding to the scale and significance of the recommended change.
- 1.6 **Scope of report and hearing**
- 1.6.1 The hearing addresses the following parts of the operative plan:
- Section 30.1 Subdivision and Land Development
 - Section 33.1 Definitions
- 1.6.2 PC6 creates new subdivision provisions that apply to the Rural Zone and the Rural Residential Zone.
- 1.6.3 The new subdivision provisions apply to the Category 3 properties in Aropaoanui, Tangoio, Eskdale, Whirinaki, Dartmoor Road, Puketapu and Rissington. Maps of the Category 3 identified properties are attached in **Attachments 3-8**.

2 OVERVIEW OF PC6 AS NOTIFIED

- 2.1 PC6 is a direct response to assist property owners displaced by the flooding from Cyclone Gabrielle to find permanent housing. It is a bespoke plan change which directly assists those Category 3 landowners who have a signed voluntary buy-out agreement to find a replacement site within their community of interest.
- 2.2 In the months following Cyclone Gabrielle, affected property owners identified that there were not a lot of housing options that would allow them to remain in the community from which they had been displaced. Many of these property owners had small rural blocks or lifestyle units which they wished to replicate while remaining in the community. Council investigated how it might assist in meeting these aims and ensuring that they had a safe living environment to which to relocate. Creating an easier pathway through the subdivision lifestyle process was identified as the best method of assisting.
- 2.3 There are a number of reasons why PC6 is limited to those who have reached an agreement under the Category 3 buy out process. The first is that the plan change is being progressed under the Severe Weather Emergency Legislation (Resource Management Streamlined Planning Process) Order 2023, which is strictly confined in scope (as discussed below). The second reason is a desire to avoid undermining the general approach taken within the Hastings District Plan which is to limit lifestyle subdivision in Rural areas, in order to meet higher order District, Regional and National planning objectives. In order to appropriately limit the lifestyle subdivision opportunity, a number of criteria have been applied to PC6. These include;
- There must be an unconditional buy out policy agreement for a property purchase or relocation offer which includes the permanent removal of the ability to use category 3 land for residential purposes. This is necessary to ensure the Plan Change is within the scope of the SPP Order and ensures there is no net increase in residential uses in the

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- Rural area (because only where residential rights have been relinquished can they be reestablished elsewhere);
- A statement by the category 3 landowner must be provided which confirms that the new lot is intended for use by the landowner for permanent housing. This is necessary to meet the requirement of the SPP Order that the plan change be directed at providing permanent housing for people displaced by a severe weather event, rather than a wider pool of potential residents.
- 2.4 PC6 will ease the pathway through the subdivision process for creating a lifestyle site by removing the need to comply with the minimum site size standards for Lifestyle Sites in Table 30.1.6B of the District Plan. These requirements include a minimum 20 ha balance being required on a Rural zoned site and a minimum and maximum site size for the new lot. In addition there is a limitation that a lifestyle site may only be created once every three years. These rules need not be adhered to for category 3 landowners applying under the new rules proposed by PC6.
- 2.8 The overall purpose and objectives of PC6 are:
- To provide a pathway for Category 3 landowners who have signed a voluntary buy out agreement to relocate to a new site within their community
 - To enable displaced landowners to move back into permanent housing as quickly as possible.
- 2.9 The provisions introduced through PC 6 only apply to the Rural and Rural Residential zones within the district and not to land in the Plains Production zone. The District Plan actively discourages lifestyle subdivision in the Plains Production zone with the only provision for such subdivision being where non – complying sized lots are to be amalgamated with an adjoining site and no additional sites will be created. The Plains Production zone comprises almost entirely of Class 1-3 soils and therefore is classified as highly productive land and must be managed in accordance with the National Policy Statement for Highly Productive Land (NPS-HPL). Clause 3.8 of the NPS-HPL states that territorial authorities must avoid the subdivision of highly productive land except in very limited circumstances, which are highly unlikely to apply to lifestyle subdivision. Clause 3.8(4) requires territorial authorities to include objectives, policies and rules in their district plans which give effect to the requirements of cl 3.8. A new rule to allow for controlled activity lifestyle subdivision on highly productive land would be contrary to that national direction.
- Clause 3.8
- 2.10 PC6 as notified proposes amendments to the subdivision section (30.1) of the district plan that:
- Inserts a new objective and accompanying policies that enable the creation of lifestyle sites within the Rural or Rural Lifestyle Zones for a permanent housing outcome where Category 3 landowners have surrendered the ability to reside on their property.
 - Provides a rule framework that is enabling of the creation of sites that may not otherwise be enabled under the rule framework to allow displaced landowners to remain within their community of interest.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- Introduce performance standards to ensure that the provisions only apply to the Category 3 landowners who have been through the buy out process and that the sites are within their community of interest.

3. STATUTORY CONSIDERATIONS

3.1 In assessing the submissions on PC6, this report has been prepared in accordance with the RMA which requires consideration to be given to a number of matters. There are also additional matters that are required to be considered under the SPP Order. The These relevant matters include:

- Part 2, Purpose and Principles;
- Section 31, The functions of Territorial Authorities under the Act
- Section 32 (as modified by the SPP Order), Consideration of alternatives, benefits and costs;
- Section 74, Matters to be considered by territorial authorities
- Section 75, Contents of District Plans

3.2 As set out in the original section 32 evaluation report for PC6, there are higher order planning documents that provide direction and guidance on the content of the Plan Change, principally the National Policy Statement on Highly Productive Land (NPS-HPL) and the Hawkes Bay Regional Policy Statement (RPS).

3.3. An evaluation report (under section 32AA of the Act) has been prepared to assess the appropriateness of the recommended changes arising from the revised approach to PC6 outlined above including any consequential changes required to implement this approach to the provisions of the Hastings District Plan. This report is included in **Attachment 9**.

National Policy Statement – Highly Productive Land 2022

3.3 The NPS-HPL came into force in October 2022. The NPS-HPL is closely related to the NPS-UD which encourages intensification within existing urban boundaries. The NPS-HPL provides national direction on how land identified as highly productive should be managed and protected. This has direct relevance for a number of the property owners displaced by the floods, particularly the Pakowhai and Dartmoor / Puketapu Category 3 landowners as a large proportion of the land within their community of interest is classified as highly productive land and zoned Plains Production. As discussed above, one of the policies in the NPS-HPL is to avoid subdivision of highly productive land except in very limited circumstances and in the context of PC 6 it is unlikely that any of those circumstances would be met.

Regional Policy Statement

3.4 The RPS includes objectives and policies which territorial authorities are required to consider and give effect to during preparation of any plan change for development of land within the Region. PC6 responds to the outcome of a natural hazard issue and the RPS recognises the susceptibility of the region to flooding and other natural hazards and the potential for these to adversely impact on people's safety, property, and economic livelihood. The RPS identifies that natural hazards are a regionally significant issue that must be recognised in the consideration of the sustainable development of resources.

Page 5

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

PC6 is providing for the sustainable development of resources by providing an avenue for landowners on Category 3 affected land who are agreeing to relinquish a residential right on land affected by natural hazards to have greater certainty that they can move to a lifestyle site free from the flood hazard. This gives effect to the Regional Policy Statement.

4. SUBMISSIONS

4.1 Original Submissions

- 4.1.1 PC6 was promulgated under the Severe Weather Emergency Recovery (Resource Management – Streamlined Planning Process) Order 2023 (**SPP Order**). This means that it does not follow the normal plan change process set out under the first schedule of the Resource Management Act. In terms of the submission process the SPP Order does not provide an opportunity for further submissions on the original submissions received.
- 4.1.2 PC6 was notified on 24 February 2024 and submissions closed on 22 March 2024. A total of 27 submissions were received for PC6.
- 4.1.3 Of these submissions there were two submitters who did not fully complete their submission form. Submission 11, (Hongwei Zhang), was an online submission but the submitter did not fully complete the form. Contact was made but no addition to the submission was made. The other incomplete submission 26 (Adrian Namana), was a paper submission and contact was again made, but no additional information was forthcoming.
- 4.1.4 A list of all submitters on PC6 can be found on the Council website.

4.2 Structure of the Submissions Analysis

- 4.2.1 Due to the nature of the issues raised in submissions, this Section 42A report has been broken down into topics rather than addressing by means of submitters.
- 4.2.2 The topics included in this report are as follows:
 - Issue 1- Plan Change in its entirety (Support or Opposition)
 - Issue 2- Scope of Plan Change
 - Issue 3- Objectives and Policies
 - Issue 4- Performance standards
 - Issue 5- Assessment criteria
 - Issue 6 – Definitions – the community of interest radius

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

ISSUE 1: PLAN CHANGE IN ITS ENTIRETY (GENERAL OPPOSITION AND GENERAL CONCERNS)

1. SUBMISSION POINTS

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Recommendation
001.1	Daniel Pepper	All	Support with specific amendments	Supports the proposed provisions with the exception of one of the performance standards	Accept in part - See outcome from Issue ??
003.1	Bex Smiley	All	Support	Support the plan change and seek that Council approve it	Accept
005.1	Andrew O'Connor	All	Support with specific amendments	Supports the proposed provisions and seeks that they be applied to Category2P	Accept in part- See outcome from Issue ??
006.1	Malcolm Redmond	All	Support with specific amendments	Supports the plan but want to be able to subdivide 1.5 ha	Accept in part
007.1	Andrew Torrens	All	Support with specific amendments	Supports the Plan Change with the exception of the range of community of interest	Accept in part -See outcome from Issue ??
008.1	Jill Hankin	All	Support with specific amendments	Supports the Plan Change with the exception of the range of community of interest	Accept in part -See outcome from Issue ??
009.1	Brian Hankin	All	Support with specific amendments	Supports the Plan Change with the exception of the range of community of interest	Accept in part- See outcome from Issue ??
010.1	Jaclyn Hankin	All	Support with specific amendments	Supports the Plan Change with the exception of the range of community of interest	Accept in part -See outcome from Issue ??
014.1	Melissa Burn	All	Not stated	Do not rush through a plan change at this stage as further consultation with the community is required	Reject
015.1	Ian Cadwallader	All	Oppose	Most suitable land for Dartmoor Valley is on northern side and is zoned Plains	Reject
016.1	Hawke's Bay Regional Council	All	Support with specific amendments	Retain the general intent and purpose of PC6. Make adjustments to performance standards	Accept in part -See outcome from Issue ??
017.1	Napier City Council	All	Support with specific amendments	Supports the provisions with the addition of changes to the definition of community of interest.	Accept in part -See outcome from Issue ??
019.1	Williams Family Trust	All	Support with specific amendments	Generally supportive of the plan change with changes to performance standards and assessment criteria.	Accept in part -See outcome from Issues ??
023.1	Gillian Wilson	All	Support	Support in full	Accept
024.1	A& J Maurenbrecher	All	Oppose	Withdraw or decline unless amendments sought are made	Reject
025.1	Te Kuini	All	Oppose	Oppose the subdividing of land to help with the housing crisis – How will this help the people of Kahungunu?	Reject

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

--	--	--	--	--	--

ANALYSIS

- 1.1 The submissions from Bex Smiley (003.1) and Gillian Wilson (023.1) were fully supportive of the provisions in Plan Change 6 and they have sought that the plan change be approved.
- 1.2 Three submitters, Ian Cadwallader (015.1), A& J Maurenbrecher (024.1) and Te Kuini (025.1) oppose the Plan Change, with Mr Cadwallader and Mr & Mrs Maurenbrecher asking for amendments to be made to overcome their concerns. These matters are considered in Issues X and X.
- 1.3 The submissions of Daniel Pepper (001.1), Andrew O'Connor (005.1), Andrew Torrens (007.1), Jill Hankin (008.1), Brian Hankin (009.1), Jaclyn Hankin (010.1), Hawke's Bay Regional Council (016.1), Napier City Council (017.1) and Williams Family Trust (019.1), all supported the plan change with amendments sought to specific provisions of the plan change.
- 1.4 It is evident from these submissions that there is a strong level of support for the outcome sought by the plan change which is to assist Category 3 landowners who have entered into a voluntary buy-out agreement to find a replacement site within their community to provide a permanent new home.
- 1.5 The submission of Malcolm Redmond (006.1) supports the changes proposed by Plan Change 6 but seeks a decision that confirms that it will be possible to subdivide his land to enable a family that has been affected by their land being identified as Category 3. PC 6 does make general provision for this to occur but there are a number of qualifying criteria to be met before confirmation could be given in relation to this specific enquiry. As an example, the family would have had to have signed a voluntary buyout agreement and their affected property would have to be within the community of interest radius. It would therefore be premature to confirm that the subdivision would be possible.
- 1.6 The submission of Melissa Burne (014.1) seeks that the Plan Change be delayed until after the new stop bank is instated as this may result in the review of the land categories at Pakowhai. The submitter states that the further consultation is required with the community as many (at the time of submitting) were yet to receive insurance payouts and cannot make decisions.
While it is understood that it is difficult to make decisions when awaiting insurance outcomes there are also a significant number of other Category 3 landowners who have reached agreement and have signed voluntary buy out agreements with the Council. As of 15 May 2024, 69% of owners had received an offer, accepted an offer, or settled. It is therefore appropriate that there is a mechanism in place to assist them with moving forward from this process. One of the main aims behind Plan Change 6 is to assist Category 3 landowners into permanent housing as quickly as possible. The time in which an application can be made under the proposed provisions runs from the date of the agreement (subject to consideration of submissions seeking a later date) so owners who have not yet entered a buy-out agreement are not prejudiced.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- 1.7 For the remaining submitters whose support is qualified by the amendment of the provisions, these will be assessed under other issue headings.

2. RECOMMENDATIONS

- 2.1 That submissions points **003.1 (Bex Smiley) and 023.1 (Gillian Wilson)** expressing support for Plan Change 6 and seeking that the plan change be adopted, **be accepted**.

2.1.1 Reasons

- a. That the plan change provides a pathway for Category 3 landowners to find permanent housing within their community.
- b. That the plan change will provide for the sustainable management of natural and physical resources by enabling displaced landowners to provide for their social, economic and cultural wellbeing and most importantly for their health and safety.

- 2.2 That those parts of submission points **015.1 (Ian Cadwallader), 024.1 (A& J Maurenbrecher) and 025.1 (Te Kuini)** opposing the Plan Change **be rejected**, but noting that the amendments suggested are considered under other headings within this report.

2.2.1 Reasons

- a. That not proceeding with the plan will remove a pathway for Category 3 landowners achieving a permanent housing outcome within a faster timeframe.

- 2.3 That the submission point **006.1 (Malcolm Redmond)** seeking that a decision be made allowing the subdivision of an area of his land for Category 3 affected landowners be **accepted in part** in that the proposal is possible in theory, but the necessary criteria and standards would need to be met.

2.3.1 Reason:

That there can be no certainty given to the approval of the subdivision at this point. Any application will be dependent on whether the proposal meets the rules and performance standards associated with Plan Change 6.

- 2.4 That the submissions points **001.1 (Daniel Pepper), 005.1 (Andrew O'Connor), 007.1 (Andrew Torrens), 008.1 (Jill Hankin), 009.1 (Brian Hankin), 010.1 (Jaclyn Hankin), 016.1 (Hawke's Bay Regional Council), 017.1 (Napier City Council), and 019.1 (Williams Family Trust)**, supporting the plan change but seeking amendment to the provisions, **be accepted in part**, in that the amendments sought will be considered under the other Issues in this report.

2.4.1 Reasons;

- a. That the plan change provides a pathway for Category 3 landowners to find permanent housing within their community.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- b. That the plan change will provide for the sustainable management of natural and physical resources by enabling displaced landowners to provide for their social, economic and cultural wellbeing and most importantly for their health and safety.
- 2.5 That submission point **014.1 (Melissa Burne)** seeking that the plan change be delayed to allow further consultation to be undertaken **be rejected**.
- 2.5.1 Reason;
- a. That sufficient consultation was undertaken and there are a significant number of landowners who are actively engaged in the voluntarily buy-out process and it is appropriate that there is some mechanism to assist them with moving forward in an expeditious manner.

ISSUE 2: SCOPE OF PLAN CHANGE

1SUBMISSION POINTS

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Recommendation
005.2	Andrew O'Connor	SLD7A	Support with specific amendments	Seeks that the provisions be applied to Category 2P properties	Reject
015.2	Ian Cadwallader	SLD7A	Support with specific amendments	Opposes the Plan Change and seeks that the Plains Zone land in the Dartmoor Valley be included.	Reject
016.4	Hawke's Bay Regional Council	Section 30.1 and 33.1	Support with specific amendments	Amend the Plan Change to allow the provisions to apply to landowners in Napier City who may find a site within Hastings District	Accept
017.2	Napier City Council	Section 33.1 Definition of Community of Interest	Support with specific amendments	Amend the definition of Community of Interest to include the subject property being within the Napier City boundary	Accept
027.2	Claire O'Connor-Bryant		Support with amendments	Include land across Napier boundary	Accept in part

ANALYSIS

- 1.1 Submission **005.2 (Andrew O'Connor)** seeks that the provisions of Plan Change 6 are able to be applied to Category 2P properties. Category 2P properties are those where individual; property interventions are needed to manage future severe weather event risk, including in tandem with community level intervention. Plan Change 6 is applied only to Category 3 landowners and is being processed under the Severe Weather Emergency Recovery (Streamlined Planning Process) Order 2023. This order *'applies to a local authority in respect of a planning process to enable development of housing or papakāinga in its region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event'*.

Category 2P properties are not properties where the risk to life cannot be mitigated and as such do not form part of the voluntary buy-out policy. Extending PC6 to encompass non-Category 3 properties would risk taking the plan change outside the scope of the SPP Order which is restricted to enabling development necessary or desirable to provide permanent housing for people displaced by a severe weather event. Category 2P owners do not meet the "displacement" requirement of the Order.

- 1.2 Submission point **015.2 (Ian Cadwallader)** seeks that the Plains Production zoning of land on the northern side of Dartmoor Road from Puketapu Park to the Dartmoor Bridge be included in the area of land for subdivision for flood victims.

Lifestyle subdivision is explicitly provided for within the Rural and Rural Residential Zones in the district plan. The rural residential zones recognise the demand for lifestyle sites and are usually on the periphery of the urban areas of the district for easy access to employment, schools, and services. The wider Rural Zone also provides for more limited

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

opportunity for the creation of lifestyle sites. The Plains Production Zone recognises that area of the district with soil values and topography that are conducive to food production, especially of a more intensive nature. These values and the contribution that they make to the district's economy are well recognised. As such they have long been protected and the lifestyle development within this zone is actively discouraged. The only exception to this is if they result in an existing non-complying block being amalgamated in with an adjoining block. There is a strong policy framework for the Plains Production Zone which protects the land for productive purposes. Enabling lifestyle subdivision within this zone would fail to give effect to those important objectives and policies. See Table 2 of the Section 32 Report prepared for PC6.

- 1.3 The specific land identified in the submission is land use classification LUC3 which means it is highly productive land and subject to the National Policy Statement – Highly Productive Land (NPS-HPL). The district plan policy is reinforced by the policy within the NPS-HPL that requires that territorial authorities avoid the subdivision of highly productive land. District plans must give effect to the objectives and policies of a National Policy Statement and providing a rural lifestyle opportunity within LUC3 would fail to do this. It is for this reason that provisions under Plan Change 6 expressly excluded applying it to Plains Production zoned land. Submission points **016.4 (Hawke's Bay Regional Council)** and **017.2 (Napier City Council)** both seek to allow the provisions of PC6 to be applied where the Category 3 property is within the Napier City boundary. Submission Point **027.2 (Claire O'Connor Bryant)** seeks that the policy should apply across Council boundaries. The intent of the SPP Order is to provide for permanent housing displaced by the severe weather event. The Category 3 land within the Napier City boundary will fall within the same community of interest area as the adjoining land within Hastings District. It is therefore appropriate that if Napier-based Category 3 landowners who have entered into a voluntary buy out agreement find a site within the Hastings District that they should be able to have the provisions applied. The provisions as notified do not limit the Category 3 land to being Hastings-based.
- 1.4 However submission point 027.2 (Claire O'Connor Bryant) is seeking an outcome that is wider than this. She seeks that landowners within the Hastings District boundary are also able to apply these or similar provisions within the Napier boundary. Hastings District Council has no legal authority/jurisdiction to amend the provisions of the Napier District Plan to enable this.

2 RECOMMENDATIONS

- 2.1 That submission point **005.2 (Andrew O'Connor)** seeking that the provisions of plan Change 6 be applied to Category 2P properties, **be rejected**.
- 2.1.1 Reason
- That PC6 is specifically for displaced property owners who have given up their residential right and the category 2P landowners have a pathway for ensuring that any risk to life can be mitigated.
- 2.2 That submission point **015.2 (Ian Cadwallader)** seeking that the subdivision pathway be applied to the Plains Production zone on the northern side of Dartmoor Road **be rejected**.
- 2.2.1 Reason

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

That the National Policy Statement- Highly Productive Land requires the Council to avoid subdivision of highly productive land. Increased provision for lifestyle subdivision in the PPZ would fail to give effect to the objectives and policies of the PPZ.

- 2.3 That submission points **016.4 (Hawke's Bay Regional Council)** and **017.2 (Napier City Council)** seeking that the provisions of the plan change can be applied to Category 3 landowners who have entered into a voluntary buy-out agreement with Napier City Council and have identified as site within Hasting District **be accepted**.
- 2.4 That submission point **027.2 (Claire O'Connor Bryant)** seeking that the Plan Change 6 subdivision provisions should be reciprocal and apply in both Napier City and the Hastings District **be accepted in part** in so far as those category 3 land owners within the Napier City boundary will be able to apply the provisions within the Rural and Rural Residential zones of Hastings District but not vice versa.
- 2.4.1 Reason
 - a. That Hastings District Council has no legal jurisdiction over the Napier District Plan.

ISSUE 3: OBJECTIVES AND POLICIES

1SUBMISSION POINTS

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Recommendation
013.1	Hastings District Council	Objective SLDO7 & Policies SLDP22 and SLDP23	Support with amendment	Include in the explanation to the objective and policies that the provisions are able to be applied under the Kaupapa Māori Pathway	Accept
021.1	Angela McFlynn	Policy SLDP23		Amend the policy to exclude Category 3 landowners in Pakowhai and introduce a new policy to allow landowners in this area to create a lifestyle subdivision outside of their area of interest.	Accepted in part

ANALYSIS

1.1 Submission Point 013.1 (Hastings District Council) seeks to make provision for Category 3 land that is being managed under the Kaupapa Māori Pathway (directly between the Crown and tangata whenua) to be able to apply the provisions under Plan Change 6.

This will ensure that there is the same opportunity where residential rights are being permanently surrendered, no matter whether it is under the voluntary buy -out provisions with Council or under the Kaupapa Māori pathway with the Crown. This will be included in the Explanation to the Objectives and Policies. The wording of the performance standards is considered in Issue 4.

1.2 Submission point 021.1 (Angela McFlynn) states that proposed policy SLDP23 does not provide for the possibility of applying for new sites outside of the defined community of interest area. The wording of policy SLDP23 is *“Limit the ability to undertake Cyclone Gabrielle related lifestyle subdivision to the provision of permanent housing within an affected landowner’s community of interest”* The submitter is of the opinion that the wording of the policy would make any application for a subdivision outside of the community of interest contrary to this policy. In the case of Category 3 landowners in the Pakowhai area the submitter rightly points out that the application of the 5km radius of the community of interest area provides very limited options for the application of the provisions.

1.3 There is a clear intention in PC6 to provide a lifestyle subdivision to allow Category 3 owners to remain within their community. This was a key theme arising from consultation. The intention was to allow for subdivision as a controlled activity within 5 km as this could be safely assumed to be within the same community; and provide a restricted discretionary pathway if the property was more distant and allow an assessment to be made whether, notwithstanding the greater distance, there were factors that meant it could still be regarded as within the community. This is discussed in more detail under Issues 5 and 6.

1.4 As I understand it, the submitter’s concern may be that SLDP23 uses a defined term which includes a distance limit. Strictly applied, this could mean that anything outside

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

that limit would automatically not be considered within the community and therefore the policy would not be met (noting that when assessing a RD activity, relevant objectives and policies are taken into account.

1.5 As discussed below, it is recommended that the area limit for community of interest be expanded, however this does not fully address the submitter's concerns if the distance remains in the definition.

1.6 To address the submitter's concern, the following amendments are recommended:

30.1.7AA(4) The new lot shall be ~~within the identified Community of Interest area~~ **not further than 15 kilometres from the closest boundary of the relevant Category 3 land.**

And delete the definition of "Community of Interest".

1.7 This would mean that the distance trigger is retained as a performance standard, but that in the case of an application for a site further away, a more holistic assessment of whether the new site is actually within the same community can be made. As discussed in Issue 5 below, it is recommended that assessment criterion 27(c) be amended to provide further guidance to applicants and Council as to factors that would be relevant to making an assessment under this category.

RECOMMENDATION

2.1 That the submission point **013.1 (Hastings District Council)** seeking that the explanation to the objectives and policies be amended to clarify that the provisions of Plan Change 6 apply equally to Category 3 landowners who have surrendered their residential rights under the Kaupapa Māori Pathway, **be accepted.**

2.1.1 Reason

a. That this provides a fair and equitable pathway for all Category landowners.

2.2 That the submission point **021.1 (Angela McFlynn)** seeking the amendment of Policy SLDP23 to exclude Pakowhai properties and a new policy to allow those landowners to create a lifestyle subdivision outside of their immediate community of interest, **be accepted in part** in that the definition of community of interest is to be deleted and the performance standard 30.1.7AA(4) amended.

2.2.1 Reason:

a. The wording of the current policy SLDP23 provides the appropriate policy framework for the objectives of Plan Change 6 and is consistent with the enabling legislation.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

ISSUE 4: PERFORMANCE STANDARDS

1SUBMISSION POINTS

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Recommendation
001.2	Daniel Pepper	30.17AA	Support with amendments	Seek that the 4000m2 is amended to align with the displaced area bought out	Accept
002.1	Katherine Basher		Support with amendments	A 5km radius provides no scope from Tangoio. A 10km radius would be better	
004.1	Rachelle Basher	30.1.7AA	Support with amendment	Extend the 5km radius to at least 20km	
007.2	Andrew Torrens	30.1.7AA	Support with specific amendments	Increase the radius or allow for the site to be created anywhere.	
012.2	Troy & Tracey Duncan	30.1.7AA	Support with amendment	The 2 year sunset clause should start at the point the money arrives in the persons bank account.	Accept
013.1	Hastings District Council Policy Team	30.1.7AA	Support with amendments	Amend performance standard 30.1.7AA(1) (a) by including provision for whenua Māori under the Kaupapa Māori pathway. Include a new performance standard of " a maximum of one new lots shall be created per category 3 site being replaced."	Accept
016.4	Hawke's Bay Regional Council	30.1.7AA	Support with specific amendments	Amend the Plan Change to add a sunset clause so that the effects are temporary	Accept
017.3	Napier City Council	30.1.7 AA(2)	Support	Supports the 2 year timeframe for the application to be made.	Accept
018.1	Andrew Taylor Surveying the Bay	30.1.7AA	Support with specific amendments	The sites should be excluded from the 3 year stand down period. The 2 year sunset period should be extended to 5 years	Accept in part
020.2	Sue Averill	30.1.7AA	Support with amendment	The 2 year sunset clause should start at the point the money arrives in the persons bank account.	Accept
021.2	Angela McFlynn	30.1.7AA	Support with amendments	Include a provision in the performance standard to also allow owners of undeveloped sites that are no longer able to be built on to remain within the community to ensure that the plan change is fair and equitable to all affected landowners.	Reject
024.3	A& J Maurenbrecher	30.1.7AA	Oppose or Amend	Extend the sunset clause from 2 years to 5 years and Delete the text in 30.1.7AA4 and replace with "The new lot shall be within the rural residential zoned areas	Reject

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

				and any areas currently identified by the Future Development Strategy (FDS).	
--	--	--	--	------------------------------------------------------------------------------	--

ANALYSIS

1.1 The submission point **001.2 (Daniel Pepper)** seeks to have the land size aligned with the size of the displaced land area. He gives the example that if a property owner was displaced from a 1.29ha lifestyle block, 4000m² would not be sufficient to replace what they have been brought out from. The submitter is mistakenly interpreting the 4000m² performance standard as a maximum site size rather than as a minimum site size. There is no maximum site size attached to the provisions for Plan Change 6. Using the example quoted in the submission there is nothing to prevent a 1.29 ha lifestyle block being established and there is flexibility to create a site of any size over the 4000m² minimum. The minimum site size of 4000m² has been established as this is considered the minimum required to provide for on-site wastewater servicing.

1.2 Submission point **013.1 (Hastings District Council)** seeks that performance standard 30.1.7AA(1) (a) be amended by including provision for whenua Māori under the Kaupapa Māori pathway. This amendment would make it clear that tangata whenua have the same opportunities that are available to the category 3 landowners who are entering into buy-out agreements with Council. Their process is being managed by central government but the end result is the same in that they are surrendering a residential right on their land.

1.3 Submission point **016.4 (Hawke's Bay Regional Council)** seeks to have a sunset clause introduced so that it assists in providing a further incentive for this special subdivision provision to be exercised and it would also assist in signalling that it is a temporary relaxation and is not available to be manipulated by any person. A time period of 5 years is suggested.

Performance standard 30.1.7AA (2) does impose a sunset clause and requires that an application must be made within two years of entering into the agreement. While 5 years is suggested, and submission points **018.1 (Andrew Taylor, Surveying the Bay)** and **024.2 (A & J Maurenbrecher)** also propose this length of time, the purpose of the legislation under which the plan change is being promulgated is to assist with getting displaced landowners into permanent housing as quickly as possible. To allow 5 years would extend this process out and not encourage landowners to maintain momentum in the re-settlement process. The planning consents team who process subdivision applications were of the opinion that a 2 year time period was an appropriate length of time for allowing for the identification of a site and the preparation of an application. Submission point **017.3 (Napier City Council)** supports the 2 year timeframe.

Submission points **012.2 (Troy & Tracey Duncan)** and **020.2 (Sue Averill)** make the point that the two year period should begin once the buy-out money is received in the bank account ie settlement date. This is an appropriate date as the voluntary buy-out manager has advised that there are a number of landowners who have sought a longer settlement for personal reasons, and they may be otherwise disadvantaged under the current terms of the sunset clause. This could also provide an extended period for the subdivision process.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- 1.4 Submission point **018.1 (Andrew Taylor Surveying the Bay)** submits that subdivisions created under Plan Change 6 should not be subject to the 3 years stand down period. Rule SLD7A does provide specifically for this and there is a note attached to state that compliance with Section 30.1.6 (lifestyle site standards) is not required.
- 1.5 Submission point **021.2 (Angela McFlynn)** seeks that provision be made in performance standard 30.1.7AA (1) (a) to also allow owners of undeveloped sites that are no longer able to be built on to remain within the community. The point is made that on the basis of this plan change they are not considered to be 'displaced' and cannot enter into an unconditional buy-out agreement. The submitter states that they are part of the community of landowners and the policy should apply equally to them.

Consideration of this issue must be based upon the empowering legislation, which is limited *"to provid[ing] permanent housing for people displaced by a severe weather event"*. The Buy-Out Policy recognises that there are some instances where vacant land was intended to be developed as a dwelling and an offer can be extended under the Policy in special circumstances. Such applications require evidence that a dwelling was a permitted activity or was consented, and there is evidence of intention to build. There are therefore some circumstances where, even though land was not developed as a dwelling, it might still be entitled to a buy-out and would be captured by the proposed rules. Beyond those situations, it is not considered that owners of undeveloped land are "displaced" as captured by the SPP Order. The submitter acknowledged that these landowners have not been "displaced".

An additional important aspect is that the Plan Change has been advanced on the basis that the buy out extinguishes rights on the Category 3 land so there is a no net gain of residential activity. Where there is no buy-out, residential rights are not extinguished in a legal sense.

- 1.6 Submission point **024.3 (A&J Maurenbrecher)** seeks that the text in 30.1.7AA4 be deleted and replaced with *"The new lot shall be within the rural residential zoned areas and any areas currently identified by the Future Development Strategy (FDS)"*.

Extension of the provisions to apply to the areas currently identified in the FDS would provide no certainty to the Category 3 landowners as the FDS is still in the process of being drafted. If the submitter is meaning to apply it to the current growth strategy (the Heretaunga Plains Urban Growth Strategy) there is still no certainty as rural or rural residential zones are not part of the Strategy.

In addition, it would be inefficient and likely contrary to the National Policy Statement on Urban Development for land identified in the FDS to be developed as lifestyle subdivision. The purpose of an FDS is to set out how a local authority intends to achieve well-functioning urban environments in its existing and future urban areas and to provide sufficient development capacity for 30 years. Enabling such land to be developed for lifestyle subdivision would compromise the availability of land identified as appropriate for urban uses to be sensibly and strategically developed.

2 RECOMMENDATIONS

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- 2.1 That the submission point **001.2 (Daniel Pepper)** seeking to have the land size aligned with the size of the displaced land area **be accepted in part** in that there is no maximum site size applied to the new site.
- 2.1.1 Reason
- a) The reference to 4000m² is as a minimum site size applied to any new site created under the Plan Change 6 provisions. There is no maximum site size applied so any landowner can make the new site any size they wish as long as it meets the 4000m² minimum to allow the on-site servicing requirements to be met.
- 2.2 That submission point **013.1 (Hastings District Council)** seeking that performance standard 30.1.7AA(1) (a) be amended by including provision for whenua Māori under the Kaupapa Māori pathway **be accepted**.
- 2.2.1 Reasons
- a) This will ensure that there is equal opportunity available to any category 3 landowner regardless of the buy-out policy pathway that is followed.
- 2.3 That submission point **016.4 (Hawke's Bay Regional Council)** seeking to have a sunset clause introduced so that it assists in providing a further incentive for this special subdivision provision to be exercised **be accepted in part** in that the sunset clause is already applied to the provisions as notified.
- 2.3.1 Reasons
- a) Performance standard 30.1.7AA (2) already makes provision for a sunset clause to be applied.
- b) The sunset clause will signal that it is a temporary relaxation of the rules to ensure the sustainable development of the land resource in the Rural and Rural Residential zones.
- 2.4 That submission points **016.5 (Hawkes Bay Regional Council) 018.1 (Andrew Taylor, Surveying the Bay) and 024.2 (A & J Maurenbrecher)** seeking that the extent of the sunset clause be lengthened to 5 years **be rejected**.
- 2.4.1 Reasons
- a) A 5-year period is considered to be contrary to the purpose of the legislation under which the plan change is being promulgated which is to get displaced people back into permanent housing by means of a streamlined planning process.
- b) The 2-year period is a realistic length of time to ensure that momentum of the subdivision process is maintained.
- 2.5 That submission point **017.3 (Napier City Council)** supporting the 2 year time period for the lifestyle subdivision application to be made **be accepted**.
- 2.5.1 Reason

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- a) The 2-year period is a realistic length of time to ensure that momentum of the subdivision process is maintained
- 2.6 That submission points **012.2 (Troy & Tracey Duncan)** and **020.2 (Sue Averill)** seeking that the two-year period should begin once the buy-out money is received in the bank account i.e. settlement date **be accepted**.
- 2.6.1 Reason
- a) Applying the date of signing as the commencement of the sunset period could put those people who need to have a longer settlement date at a disadvantage.
- 2.7 That submission point **018.1 (Andrew Taylor Surveying the Bay)** seeking that subdivisions created under Plan Change 6 not be subject to the 3 years stand down period **be accepted**.
- 2.7.1 Reason
- a) Rule SLD7A as notified under Plan Change 6 provides for exclusion from the 3 year stand down period.
- 2.8 Submission point **021.2 (Angela McFlynn)** seeks that provision be made in performance standard 30.1.7AA (1) (a) to include owners of undeveloped sites that are no longer able to be built on to remain within the community **be rejected**.
- 2.8.1 Reasons
- a) It is not consistent with the empowering legislation of Plan Change 6 which is “to provide permanent housing for people displaced by a severe weather event”.
- b) Plan Change 6 is promulgated around the premise that the buy out extinguishes rights on the Cat 3 land so there is a no net gain for the landowners involved. That would not be achieved where there is no buy-out.
- 2.9 That submission point **024.3 (A&J Maurenbrecher)** seeking that the text in 30.1.7AA4 be deleted and replaced with “*The new lot shall be within the rural residential zoned areas and any areas currently identified by the Future Development Strategy (FDS)*”, **be rejected**.
- 2.9.1 Reasons
- a) The Future Development Strategy is still in the process of being drafted and is not publicly available and will not provide any certainty for Category 3 landowners entering into the buy-out process.
- b) It would be inappropriate to enable lifestyle subdivision on land identified as appropriate for urban development, as this would compromise its ability to be developed efficiently for urban purposes.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

ISSUE 5: ASSESSMENT CRITERIA

1SUBMISSION POINTS

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Recommendation
017.4	Napier City Council	30.1.8	Support	Supports the assessment criteria as the overarching purpose is to enable people to remain in their communities for the purpose of permanent housing.	Accept
019.2	Williams Family Trust	30.1.8	Support with specific amendments	Seeks that Assessment Criteria 27 (c) be amended so that consideration is given to not only remaining in the community but alternatively that can continue to service category 3 land. Include a new assessment criteria (d) <i>Where any site is outside of the community of interest but is owned or occupied by an existing family or whanau member of the displaced category 3 landowner and the category 3 landowner can demonstrate that (i) it is necessary or desirable to provide permanent housing on such proposed site, and (ii) the proposed site can service the requirements of the Category 3 landowners category 3 land.</i>	Accept in part
021.4	Angela McFlynn	30.1.8	Oppose	Delete assessment criteria 27(b) relating to the legal instrument ensuring that the site is being created for permanent housing. Delete assessment criteria 27(c) or amend to remove the reference to defined community of interest.	Accept in part

ANALYSIS

- 1.1 Submission point **019.2 (Williams Family Trust)** seeks that assessment criteria 27 (c) “*Consideration of whether the proposed site can reasonably be considered to be within the “community of interest” of the Category 3 affected property to ensure that the objective of allowing people to remain in their community can be achieved*”, be amended by adding a further matter of assessment which is the ability to be able to continue to service category 3 land. This is clearly a matter that is central to the premise of remaining in their community. The objective is to ensure that the displaced landowners can find a permanent home that is close to the property from which they have been displaced. This becomes even more important when they need to continue to manage the land. Prior to the flood, these sites could have been highly productive landholdings and while the residential right may have been bought out, the need to manage these properties remains and is a legitimate consideration in the assessment matters.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

The second part of submission point 019.2 is the request for inclusion of an additional assessment criteria (d) *Where any site is outside of the community of interest but is owned or occupied by an existing family or whanau member of the displaced category 3 landowner and the category 3 landowner can demonstrate that (i) it is necessary or desirable to provide permanent housing on such proposed site, and (ii) the proposed site can service the requirements of the Category 3 landowners category 3 land.*

It is considered that this suggested assessment criteria is quite open to interpretation of both the distance that could be applied, and also who it could be applied to. It would also not meet one of the principal purposes of the plan change which is to assist the displaced landowners to remain within their community. It is considered that inclusion of a new criteria on whether the new site provides the ability to be able to continue to service the category 3 land, will provide sufficient scope for the family considerations sought.

- 1.2 Submission point **021.4 (Angela McFlynn)** seeks that assessment criteria 27 (b) which considers the type of legal instrument for ensuring that the new lifestyle site that is created is for the purposes of providing for permanent housing for landowners who have a voluntary buy-out agreement. The submitter raises concerns that there is no certainty provided as to the type of legal instrument that might be required in order to obtain consent. There is also concern expressed that if a site is created under the provisions that the landowner will be permanently tied to the property with no ability to rent or sell if circumstances were to change.

The assessment criteria 27 (b) relates to a resource consent where performance standard 30.1.7AA (1) (b) has not been complied with. This performance standard requires 'a statement by the Category 3 landowner which confirms the new lot is intended for use by the landowner for permanent housing'. If this statement is not supplied the activity would then be classified as a non-complying activity as the standard must be met in order to be a controlled or restricted discretionary activity under the newly introduced rules. As the statement is mandatory, there is acknowledged to be no need for this assessment criteria. There is no intention that the standard locks any landowner into staying on the site for a particular length of time, but the requirement for the written statement as part of the standard is necessary to ensure the subdivision right is appropriately limited, as required by the SPP Order and to meet the proposed objective and policies. The deletion of the assessment criteria 27(b) does not undermine that intention.

The second aspect of the submission point 021.4 relates to assessment criteria 27 (c) where the submitter is of the opinion that where a site sits outside the defined community of interest this will lead to significant uncertainty for potential applicants. The submission seeks that the policy be deleted or amended to remove reference to the defined community of interest. One of the aims of the Plan Change was to enable landowners to remain in their community. The community of interest is defined as the 5km radius to identify an area that could readily be classed and agreed as being within the community of the Category 3 site. The controlled activity status reflects that for most areas regardless of what type of community it was at a radius of 5km you would still be considered to be within your community. In some areas (such as a remote rural area) a distance well beyond that mark would still be considered community.

These are the matters for discretion. It is accepted that providing some of the criteria that may be considered are the different circumstances of place, such as isolation, school catchments etc are appropriate to be included in assessment criteria 27(c).

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

2 RECOMMENDATIONS

2.1 That submission point **017.4 (Napier City Council)** supporting the assessment criteria in Section 30.1.8 (27) **be accepted**.

2.1.1 Reasons

a) That the criteria directly relate to the legislation under which the plan change is promulgated which aims to provide for the permanent housing of displaced category 3 landowners.

2.2 That submission point **019.2 (Williams Family Trust)** seeking amendments to assessment criteria 27 (c) to include reference to servicing the category 3 land and an additional criterion (d) to consider applying the provisions to family property outside of the community of interest area **be accepted in part** in that the need for additional criteria (d) is rejected.

2.2.1 Reasons

a) That the ability to manage/service category 3 land is relevant to the consideration of whether the new site allows the owner to remain in their community.

b) The consideration of the ability to service the site could include the consideration of family support.

2.3 That submission point **021.4 (Angela McFlynn)** seeking that assessment criteria 27(b) be deleted as it does not provide any certainty for landowners and 27(c) be deleted or amended to provide clear guidance on what will be considered to be an appropriate location **be accepted in part** in that guidance will be given in the assessment criteria.

2.3.1 Reasons

a) The failure to supply a statement by the Category 3 landowner that confirms the new lots is intended for use by the landowner for permanent housing will make any application non-complying. This negates the need for assessment criteria.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

ISSUE 6: DEFINITION – COMMUNITY OF INTEREST

1SUBMISSION POINTS

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Recommendation
002.1	Katherine Basher		Support with amendments	A 5km radius provides no scope from Tangoio. A 10km radius would be better	Accept
004.1	Rachelle Basher	Section 33.1	Support with amendment	Extend the 5km radius to at least 20km	Reject
005.2	Andrew O'Connor	Section 33.1	Support with amendment	Increase the radius or allow for the site to be created anywhere	Accept
007.2	Andrew Torrens	Section 33.1	Support with specific amendments	. Increase the range defining the community of interest to no further than 15km	Accept
008.2	Jill Hankin	Section 33.1	Support with specific amendments	Increase the range defining the community of interest to no further than 15km	Accept
009.2	Brian Hankin	Section 33.1	Support with specific amendments	Increase the range defining the community of interest to no further than 15km	Accept
010.2	Jaclyn Hankin	Section 33.1	Support with specific amendments	Increase the range defining the community of interest to no further than 15km	Accept
012.2	Troy & Tracey Duncan	Section 33.1	Support with amendment	The provisions should be extended across the whole district and not confined to 5km	Reject
017.5	Napier City Council	Section 33.1	Support with amendment	Add a note to the definition of community of interest so that it is clear that the displaced property may be in Napier City.	Refer to Issue 2
018.3	Andrew Taylor – Surveying the Bay	Section 33.1	Support with amendment	The 5km radius is too limiting and should be increased to 15km	Accept
019.3	Williams Family Trust	Section 33.1	Support with amendment	Seeks that the definition of community of interest is extended to 8km	Accept
020.2	Sue Averill	Section 33.1	Support with amendment	There should be no limit on the radius.	Reject
022.1	Bernadette Hamlin	Section 33.1	Support with amendment	The 5km radius is too restrictive and should be extended.	Accept
024.4	A& J Maurenbrecher	Section 33.1	Support with amendment	Delete current definition and replace with " <i>Community of interest means an area not further than 20km from the closest boundary of the relevant Category 3 land.</i> "	Reject
027.2	Claire O'Connor Bryant	Section 33.1	Support with amendment	Any radius needs to be from the edge of the category 3 area and the landowners boundary and needs to be representative of the community so a 10km radius would be more accurate.	Accept in part

ANALYSIS

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- 1.1 Submission points **002.1 (Katherine Basher)** **004.1(Rachelle Basher)** , **005.2 (Andrew O'Connor)**, **007.2 (Andrew Torrens)**, **008.2 (Jill Hankin)**, **009.2 (Brian Hankin)**, **010.2 (Jacklyn Hankin)** **012.2 (Troy & Tracey Duncan)**, **018.3 (Andrew Taylor)**, **019.3 (Williams Family Trust)**, **020.2 (Sue Averill)**, **022.1 (Bernadette Hamlin)** **024.4 (A& J Maurenbrecher)** and **027.2 (Claire O'Connor-Bryant)** all seek that the definition of 'community of interest' be amended by altering the radius from 5km to various distances ranging from 8km through to 20km. Three of the submitters 005.2, 012.2 and 020.2, suggest that there should be no limit at all imposed on what constitutes community of interest and this would negate the need for the definition.

This issue has received the highest number of submissions on the Plan Change. The concept of community of interest is not something that is readily quantifiable. The Local Government Commission describes communities of interest as a three-dimensional concept.

- Perceptual – a sense of belonging to a clearly defined area of locality
- Functional- the ability to meet with reasonable economy the community's requirements for comprehensive physical and human services.
- Political – the ability of the elected body to represent the interests and reconcile the conflicts of all its members.

This sense of belonging could be reinforced or influenced by a variety of things such as distinctive physical and topographical features, similarities in economic or social activities, distinct local histories, similar demographics etc. Shared facilities such as schools, recreational and cultural facilities can also contribute to a community of interest.

What this demonstrates is that there are many influencing factors and in different parts of the district there could be a completely different set of characteristics which contribute to that community of interest.

While a 5km radius has been identified as an appropriate measure it is intended as a trigger for closer consideration. This distance could safely be assumed to be within the community and therefore warrants consideration as a controlled activity. It is recognized that a wider area might also constitute the community, but that would require more case-by-case analysis, which is why a Restricted Discretionary non notified activity status is identified. A 5 km radius is considered by some submitters to be an arbitrary and insufficient distance. As a result, further consideration has been given to some of the functional aspects of what makes up community and therefore what the "trigger" should be between the Controlled and Restricted Discretionary Non-Notified statuses.

Schools are often a focus of the community and in the Puketapu/ Dartmoor and Esk areas they are very much the hub of the community. The catchments of these schools would extend well beyond the 5km radius. On further consideration of the particular category 3 land areas a distance of 15km may be a more appropriate figure as people in these communities would routinely travel this distance to school or community events. Locations such as Tangoio and Aropaoanui are limited by the physical features of these areas and a wider radius will give these landowners more options for finding a suitable site.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

As a controlled activity it is necessary to judge whether the radius applied will be appropriate in all circumstances. While a radius beyond 15 km might be appropriate in some circumstances, it may equally not be, and the resource consent pathway proposed (RDNN) is the appropriate process to follow, to give this due consideration.

- 1.2 The second part of submission points **002.1 (Katherine Basher)**, and **027.2 (Claire O'Connor-Bryant)** relates to the point at which the distance is measured. The submitters seek that the radius needs to be applied from the edge of the Category 3 land and not the site. This proposal would be problematic, in terms of providing certainty to the property owner on the point at which the measurement would be made. The extent of the identified category 3 land is extensive and the point of measurement could be many and varied. Using the boundary of the subject property provides a much greater degree of certainty for both the applicant and Council in processing the subdivision application.

2 RECOMMENDATIONS

- 2.1 That submission points **002.1 (Katherine Basher)**, **005.2 (Andrew O'Connor)**, **007.2 (Andrew Torrens)**, **008.2 (Jill Hankin)**, **009.2 (Brian Hankin)**, **010.2 (Jacklyn Hankin)**, **018.3 (Andrew Taylor)**, **019.3 (Williams Family Trust)**, **022.1 (Bernadette Hamlin)** and **027.2 (Claire O'Connor-Bryant)** seeking that the definition of 'community of interest' be amended by altering the radius from 5km to various distances ranging from 8km through to 15km, **be accepted in that a distance of 15km is adopted.**

2.1.1 Reasons;

- a. That in consideration of the particular features and community services of the category 3 land areas a 15km radius is a more appropriate area for the community of interest.
- b. Given the distances required to overcome some of the topographical limitations of some areas the 15km distance is appropriate to properly provide options for the landowners.

- 2.2 That submission points **004.1(Rachelle Basher)**, and **024.4 (A& J Maurenbrecher)** seeking that the distance for the community of interest be extended to a 20km radius **be rejected**

2.2.1 Reasons;

- a. That beyond the 15km distance there is less certainty on whether a site will be within what can be considered the community of interest and the restricted discretionary activity consent pathway is the appropriate process to consider this.

- 2.3 That submission points **012.2 (Troy & Tracey Duncan)**, and **020.2 (Sue Averill)**, seeking that there should not be a limit on the area of the community of interest **be rejected.**

2.3.1 Reasons;

- a. That one of the main aims of the plan change is to respond to displaced landowners requests to assist them to remain within their communities.

Section 42A Report for Plan Change 6: Category 3 Landowner Subdivision Provisions

- b. That beyond the 15km distance there is less certainty on whether a site will be within what can be considered the community of interest and the restricted discretionary activity consent pathway is the appropriate process to consider this.
- 2.4 That submission points **002.1 (Katherine Basher)**, and **027.2 (Claire O'Connor-Bryant)** seeking that the radius be applied from the edge of the Category 3 land and not the site **be rejected**.
- 2.4.1 Reasons;
- a. The measurement of the community of interest radius from the property that is the subject of the buy-out give a much greater degree of certainty to all parties involved the subdivision application process.