

Wednesday, 5 June 2024

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

Kaupapataka

Attachment Document

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**

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TE KAUNIHERA Ā-ROHE O HERETAUNGA

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Proposed Plan Change 6 – Category 3 Landowner Subdivision Provisions

Chapter 30.1 Subdivision and Land Development

Insert new Objective and Policies

OBJECTIVE SLDO7 *To enable limited lifestyle subdivision for Cyclone Gabrielle affected landowners to provide a permanent housing option where the ability to undertake residential activity has been permanently surrendered.*

POLICY SLDP22 Allow the creation of residential lifestyle lots in the Rural and Rural Residential Zones to replace residential uses no longer available to landowners as a result of Cyclone Gabrielle and the classification of land by Hawke's Bay Regional Council as Category 3.

POLICY SLDP23 Limit the ability to undertake Cyclone-Gabrielle related lifestyle subdivision to the provision of permanent housing within an affected landowner's community of interest.

Explanation

Cyclone Gabrielle resulted in significant damage to many properties in the Hastings District. The Hawke's Bay Regional Council subsequently carried out a classification process which saw some land identified as Category 3, meaning "Future severe weather event risk cannot be sufficiently mitigated. In some cases some current land uses may remain acceptable, while for others there is an intolerable risk of injury or death".

The Council adopted a Category 3 Voluntary Buy-Out Policy which has an overarching objective of removal of risk-to-life associated with people living on Category 3 land. As part of a voluntary buy-out agreement, landowners either sell their land or agree to no longer carry out residential activity on Category 3 land. The Voluntary Buy-Out Policy does not apply to whenua Māori which has been classified as Category 3, and this is being dealt with through a Kaupapa Māori Pathway as between the Crown and tanqata whenua.

The special lifestyle subdivision option is specifically to provide an opportunity for those landowners whose residential property rights have been removed as a result of accepting a Voluntary Buy-Out offer or an

equivalent arrangement under the Kaupapa Māori Pathway to remain living close to the property from which they have been displaced, within their community, to support and enable their recovery process.

The provisions will ensure that the scale of development is appropriately limited to achieving that outcome.

Note: The Category 3 property may be within Napier City, however the new lot being created must be within the Hastings District boundary.

Section 30.1.5 Rules

Insert new rule SLD7A

SLD7A	<u>Subdivision of lifestyle sites in Rural and Rural Residential Zones to replace Category 3 residential uses</u>	C
	<u>Subdivisions to create lifestyle lots in the Rural Zone and Rural Residential Zone which comply with all relevant Subdivision Site and General Site Performance Standards and Terms specified in 30.1.7.</u>	
	<u>Note, compliance with 30.1.6 is not required.</u>	

Insert new Rule SLD16A

SLD16A	<u>Subdivision of lifestyle sites in Rural and Rural Residential Zones to replace Category 3 residential uses not meeting General Site standards and terms in 30.1.7</u>	RDNN
	<u>Subdivisions to create lifestyle lots in the Rural Zone and Rural Residential Zone which comply with 30.1.7.AA(1), (2), (3) and (5) but do not comply with 30.1.7.AA(4) or one or more General Site Performance Standards and Terms in 30.1.7 not specifically listed.</u>	

Section 30.1.7 General Site Performance Standards and Terms

Insert new performance standard 30.1.7AA

**30.1.7AA SUBDIVISION OF RESIDENTIAL LIFESTYLE LOTS FOR DISPLACED
CATEGORY 3 LANDOWNERS**

1. Any application under this rule shall be accompanied by:
 - (a) an unconditional agreement with the Council under the Category 3 Voluntary Buy-Out Policy for a property purchase or relocation offer, or an equivalent agreement for whenua Māori under the Kaupapa Māori Pathway, which includes the permanent removal of the ability to use the Category 3 land for residential purposes; and
 - (b) a statement by the Category 3 landowner which confirms the new lot is intended for use by the landowner for permanent housing.
2. An application under this rule must be made within 2 years of settlement entering of the Agreement above.
3. The new lot shall not be located within an identified natural hazard area or on Category 3 Land, Coastal Environment / ONL/Wahi Taonga
4. The new lot shall be ~~within the identified Community of Interest area of the site that is being replaced~~ not further than 15km from the closest boundary of the relevant Category 3 land.
5. The new lot shall be a minimum of 4000m².
- ~~6. A maximum of one new lot shall be created per Category 3 site being replaced.~~

Section 30.1.8 Assessment Criteria

Insert new Assessment Criteria 27.

27. Category 3 Replacement Lifestyle Subdivision

In addition to the General Assessment Criteria in 30.1.8.1, Council will have regard to the following matters for any subdivision associated with the creation of lifestyle lots as replacement for sites affected by the Category 3 buy- out process.

- a. Whether the proposed subdivision achieves the purpose of enabling the development of housing in the Hastings district that is necessary or desirable to provide permanent housing for people displaced by Cyclone Gabrielle.

b. The proposed legal instrument for ensuring that the creation of the lifestyle lot is for permanent housing for displaced Category 3 landowners:

i.

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 taking into account such matters as:

- school catchments
- physical characteristics of the community.
- Whether the new site provides the ability to be able to service the category 3 land..

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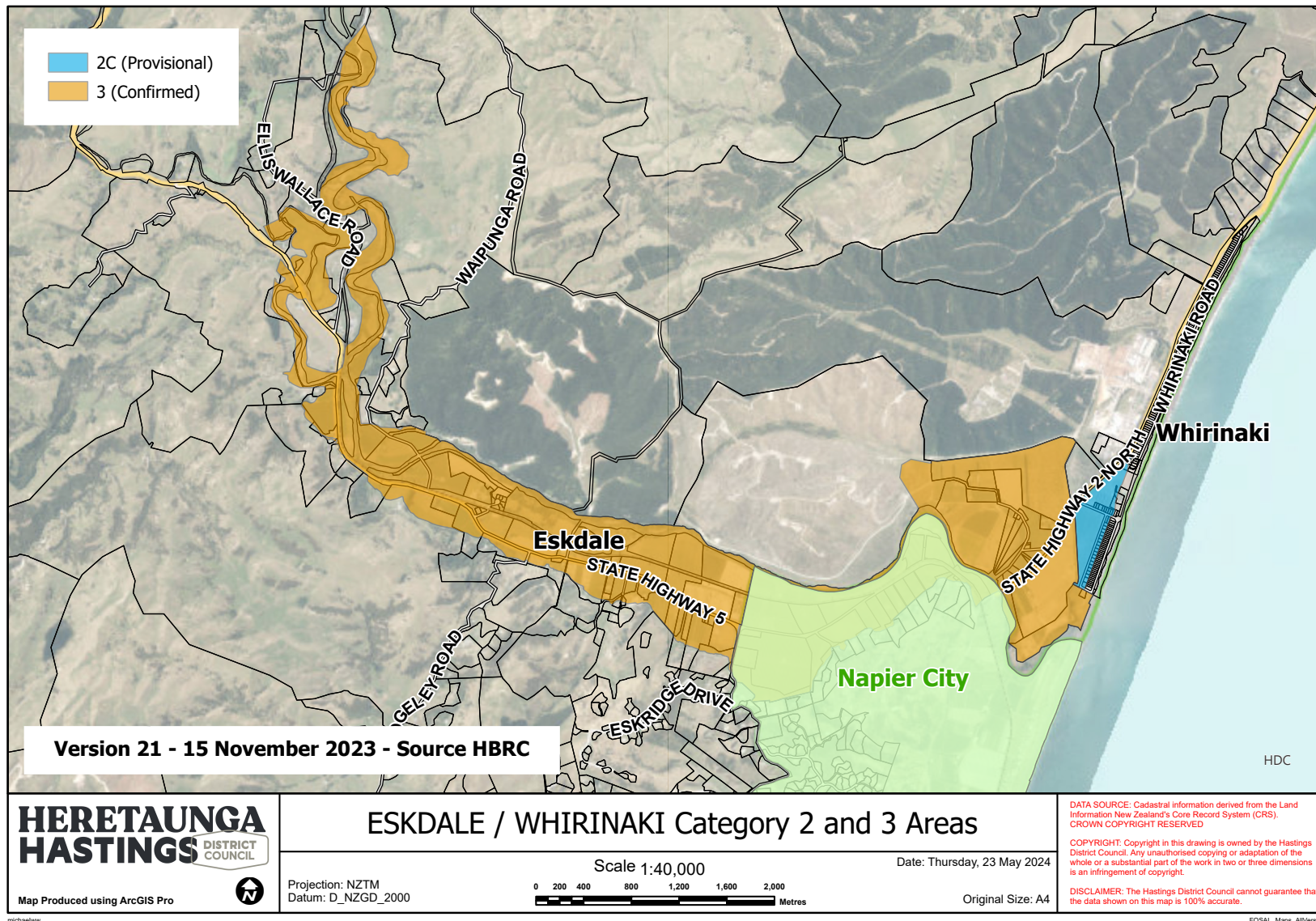
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Chapter 33.1 Definitions

Insert new definitions

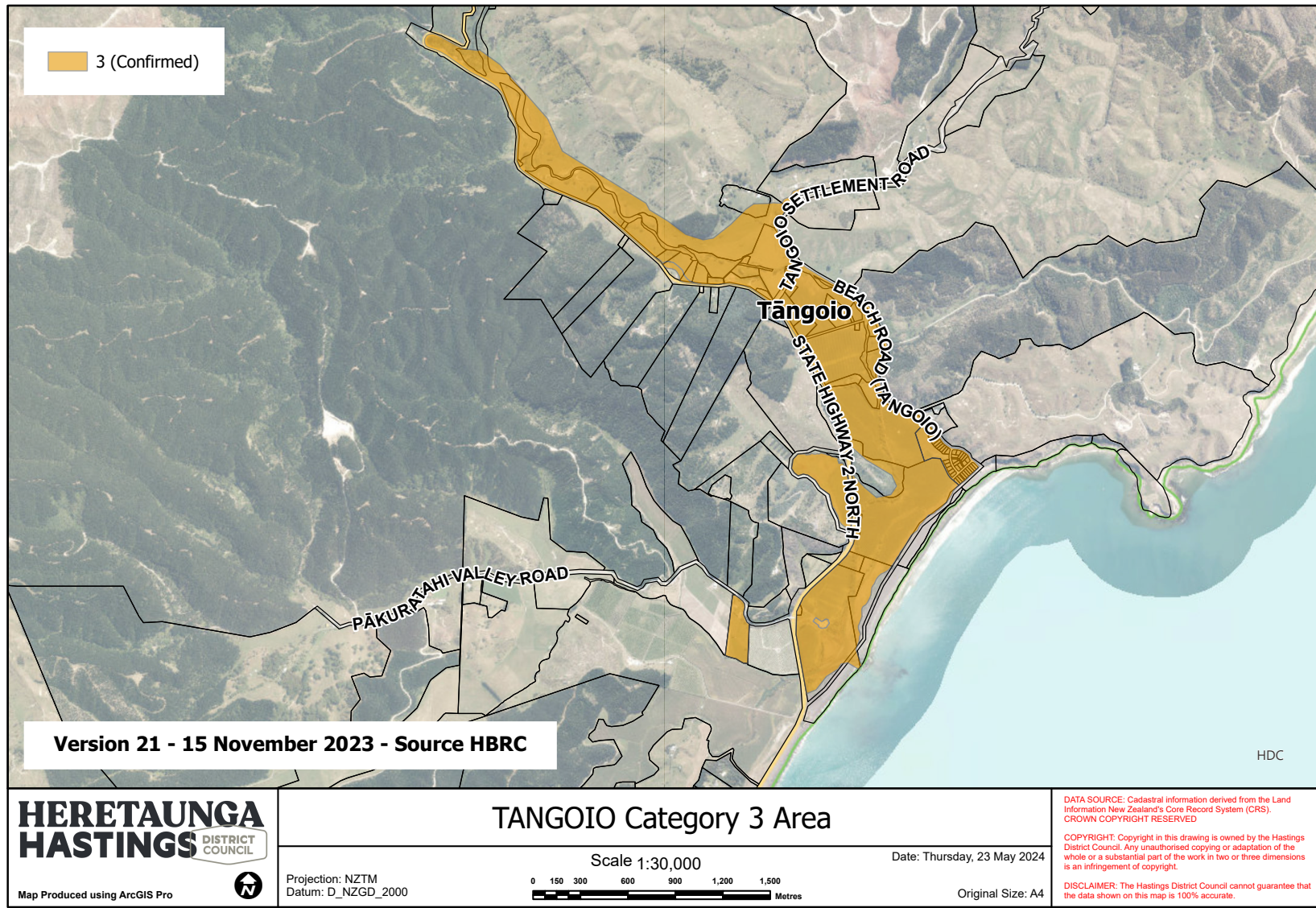
Community of Interest means an area not further than 5 kilometres from the closest boundary of the relevant Category 3 land.

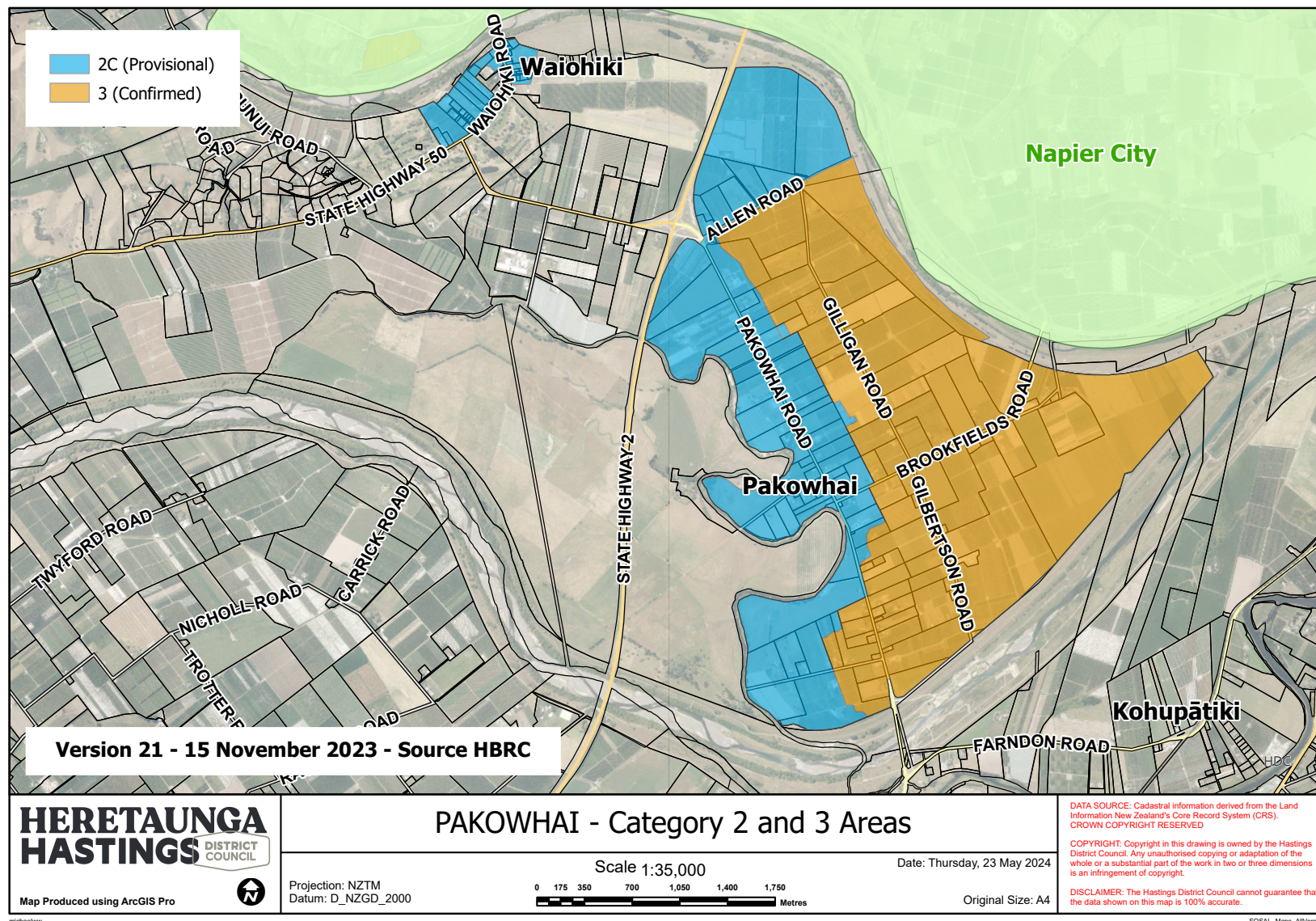
Category 3 Land means land which has been identified by and confirmed as Category 3 land by Hawke's Bay Regional Council (being land affected by Cyclone Gabrielle).



Item 2

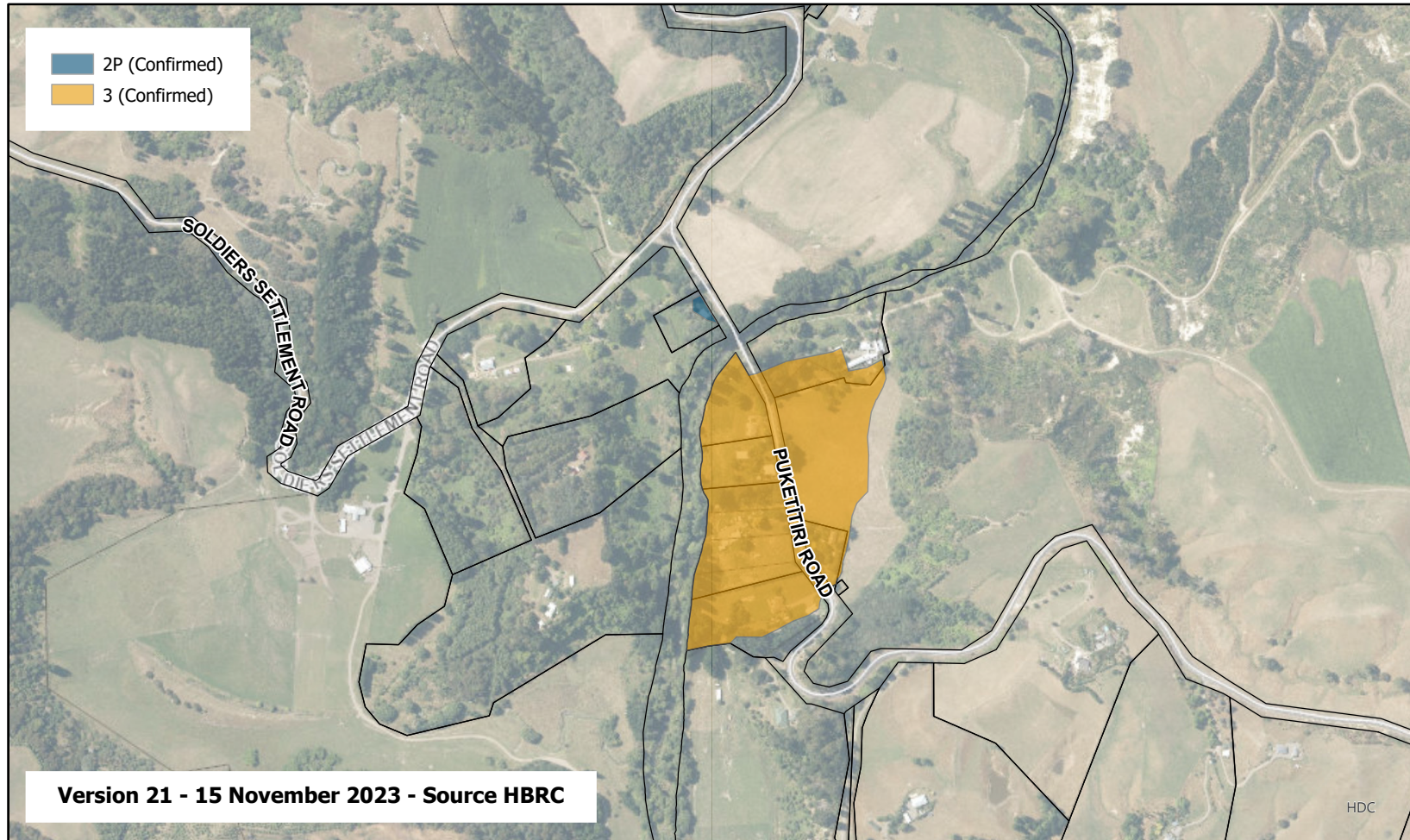
Attachment 3





Item 2

Attachment 5



Version 21 - 15 November 2023 - Source HBRC

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 HASTINGS** DISTRICT COUNCIL

RISSINGTON Category 2 and 3 Areas

DATA SOURCE: Cadastral information derived from the Land Information New Zealand's Core Record System (CRS).
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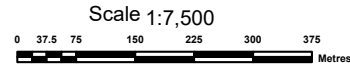
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Map Produced using ArcGIS Pro



Projection: NZTM
 Datum: D_NZGD_2000

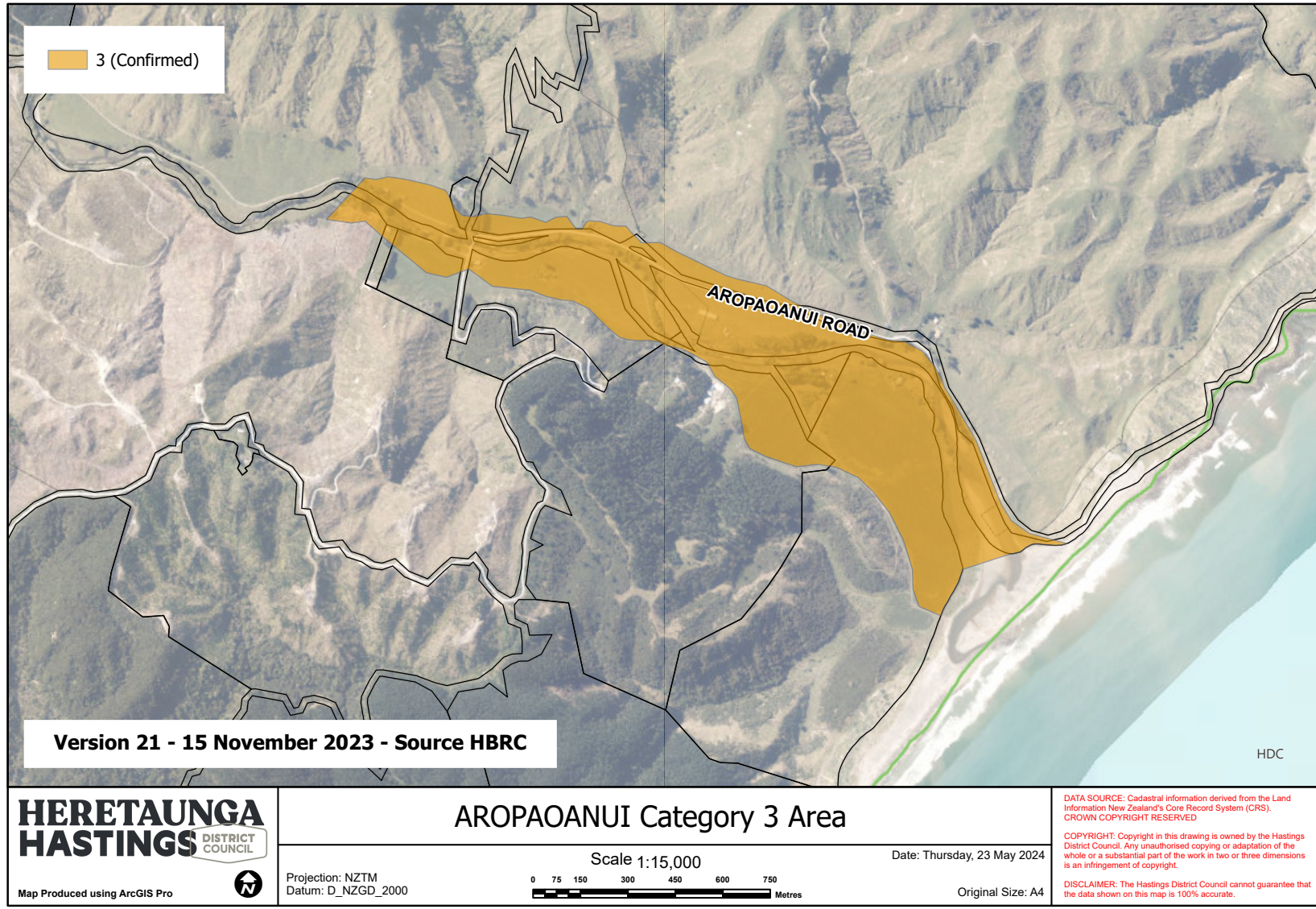


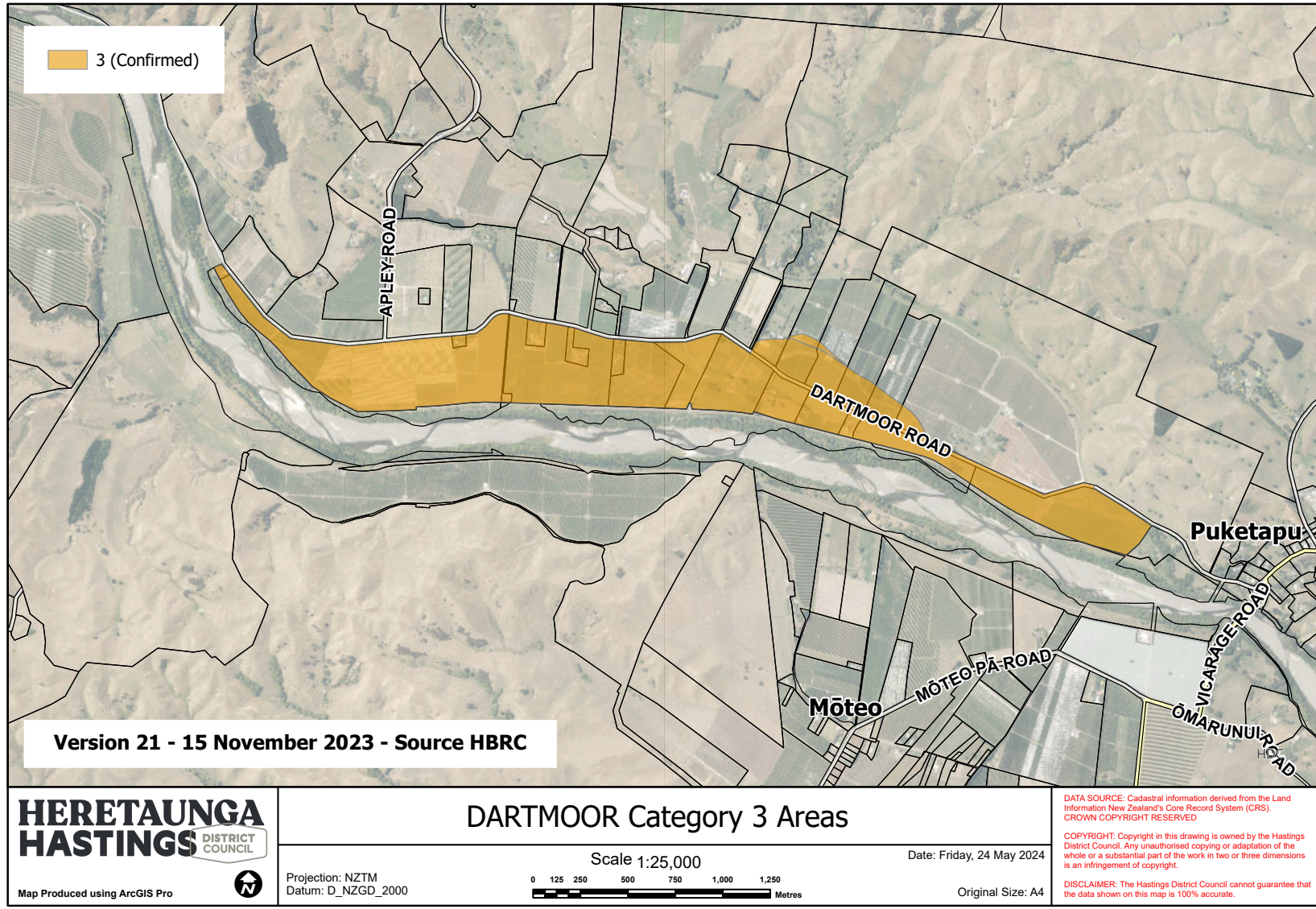
Date: Thursday, 23 May 2024

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Hastings Partially Operative District Plan

Proposed Plan Change 6: Category 3 Landowner Subdivision Provisions

Section 32AA Further Evaluation Report

22 May 2024

Item 2

Attachment 9

1. Introduction

1.1 Purpose of this Report

- 1.1.1 This report presents a further evaluation of proposed plan change 6 (PC6) to the Partially Operative Hastings District Plan (District Plan), in accordance with Section 32AA of the Resource Management Act 1991 (RMA) following the consideration of submissions and preparation of the section 42A hearings report.
- 1.1.2 This further evaluation report is required for the recommended changes that have been proposed to performance standards and definitions of Plan Change 6 as a result of the consideration and analysis of submissions and preparation of the Section 42A hearings report.
- 1.1.3 This report is focused on the changes from the notified version, so should be read in conjunction with the original section 32 report, particularly Section 3 – Statutory Basis for Address the Proposed Amendments to the District Plan, Section 4 – Background and Section
- 1.1.4 The overall purpose and objectives of PC6 as outlined in the Order in Council remain:
- to enable the development of housing or papakāinga necessary or desirable to provide permanent housing for people displaced by a severe weather event.
 - It also aims to assist the category 3 landowners who have entered onto a voluntary buy-out agreement to remain in the community from which they have been displaced.
- 1.1.5 PC6 as notified, proposed changes to the Subdivision Section (30.1) of the district plan to;
- i) Establish objectives and policies for the displaced Category 3 property owners that are clearly linked to the aims of the Severe Weather Emergency Recovery (Resource Management - Streamlined Planning Process) Order in Council 2023.
 - ii) Allow Category 3 landowners to subdivide a lifestyle site in the Rural or Rural Residential zones that may not meet the performance standards for lifestyle lots.
 - iii) Introduce a new set of performance standards for the category 3 landowners who are subdividing a new site to ensure that they meet the criteria.
- 1.1.6 As a result of the receipt of submissions and further and better information now available, amendments to PC6 as notified are now recommended. These are considered in further detail below but include a revision of the radius that will apply in determining the community of interest for the controlled activity status and also a new performance standard that clarifies that only one new lot shall be created for the category 3 site that is being replaced. These changes are considered to meet the Council's obligations under the Severe Weather Emergency Recovery (Resource Management - Streamlined Planning Process) Order in Council 2023 while more closely matching the displaced landowners' aspirations for achieving permanent replacement housing.

2. Section 32AA Evaluation Requirements

- 2.1 Clause 10 of Schedule 1 of the RMA, requires that in making decisions on provisions and matters raised in submissions the decision must include a further evaluation of the proposed plan (including any proposed variation to a proposed plan) in accordance with section 32AA, and may include:
- i. Matters relating to any consequential alterations necessary to the proposed plan arising from the submissions; and
 - ii. Any other matter relevant to the proposed plan arising from the submissions.

- 2.2 Further evaluations under Section 32AA must include a record of any further work that has been done, and the reasons why the proposed changes are the most appropriate methods. As for the Section 32 evaluation, the further evaluation aims to communicate the thinking behind the proposal to the community from the decision-makers. The evaluation also provides a record for future reference of the process, including the methods, and any technical studies.
- 2.3 The further evaluation report under Section 32AA is required for changes that have been made or are proposed for the proposal since the original s32 Report. As the officer is recommending changes to PC6, a s32AA evaluation report has been prepared. The report:
- (b) must be undertaken in accordance with section 32(1) to (4); and
 - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
 - (d) must—
 - (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or
 - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- 2.4 It is important to acknowledge that the changes evaluated here are not the approved proposal. Rather, they are officers' recommendations as to what the final PC6 should be, based on review of all submissions received. This report is provided to assist the Commissioners and submitters understand the s 32 basis for the recommended changes.
- 2.5 As stated a further evaluation under Section 32AA, must cover the matters set down in Section 32 (1) to (4). However Plan Change 6 is being processed under the Severe Weather Emergency Recovery(Resource Management – Streamlined Planning Process) Order 2023 (SPP Order) and this order removes some of the Evaluation Report requirements under Section 32 of the Act. In particular there is no requirement to assess the efficiency and effectiveness of the provisions in achieving the objectives or identify and assessing the benefits and costs and the risk of acting or not acting.
- For the examination of the objectives of the proposal under Section 32(1)(a) "objectives" means "the purpose of enabling the development of housing or papakainga in the relevant authority's region or district that is necessary to provide permanent housing for people displaced by a severe weather event." (see SPP Order, cl 6(5)). This influences the extent of the Section 32AA Report.
- 2.7 As a further evaluation only those objectives, policies and methods that are recommended to be altered as a result of the consideration of submissions will be subject to this evaluation. The original section 32 evaluation (dated Feb 2024) will remain valid for all other content.
- 2.8 As part of the consideration of submissions there are no amendments recommended to the notified objectives and policies with the exception of the explanation to the Objectives and policies. As this is a matter of clarification it does not require any further evaluation under Section 32.

3. Appropriateness of Proposed Plan Change 6 in Achieving the Purpose of the RMA

3.1 Is the Proposal the Most Appropriate Way to Achieve the Purpose of the RMA?

As outlined in section 2 of this report, the first part of this evaluation is whether the objectives of the proposal are the most appropriate way to achieve the purpose of the Resource Management Act. The objectives of the proposal are:

Enabling the development of housing or papakāinga in the relevant local authority's region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event

The assessments in section 3 to 6 of this original Section 32 report, demonstrate the following:

1. The proposal will assist in providing a further option for displaced land owners who wish to remain in the community from which they have been displaced.
2. The proposal will provide greater certainty for land owners on what options are available to them when they are considering the voluntary buy out arrangements on their property.
3. The proposal will provide a further option to those landowners who may wish to relocate their existing home to a new site within their community that is safe from the flood hazard.
4. The proposal amends the Proposed Plan in a way that will ensure the sustainable management of the Rural and Rural Residential zones by ensuring that the plan change is limited only to those whose homes were directly affected by the Category 3 classification, while providing for the health and safety of the community.
5. The results of the stakeholder engagement process during preparation of proposed Plan Change 6 suggests general overall acceptance and a level of support for the proposal and this is confirmed by the high level of support in principle for the plan change.

The purpose of the Resource Management Act is to promote the sustainable management of natural and physical resources. This is the premise of Plan Change 6. It is not sustainable to promote residential activity within those areas of the district that have been identified as Category 3. The plan change will provide a further option for those landowners involved in the voluntary buy out process and allow them to provide for their permanent housing needs. The plan change applies within the community of interest of those affected properties thereby maintaining the social, economic, and cultural wellbeing of those communities.

The changes to the radius of the community of interest that are proposed as a result of submissions will assist in ensuring that the social, economic and cultural wellbeing of the displaced landowners are properly met by recognising that there are a number of factors that define a community of interest area. Increasing the distance radius under the performance standard will allow displaced landowners to maintain their wellbeing by properly identifying the community of interest area.

Similarly the introduction of a new performance standard that places a maximum of one new lot to be created per Category 3 site being replaced, promotes the sustainable management of the resources of the Rural and Rural Residential Zones as there are controls over the number of lifestyle sites within the Rural zones and the intention is that the provisions provide a subdivision right to replace the right that has been bought out from the Category 3 property.

The proposed changes to the performance standards are supported by the evaluation in the Section 32 Report that the provisions of Plan Change 6 are the most appropriate way to achieve the purpose of the RMA.

3.2 Are the Provisions the Most Appropriate Way to Achieve the objectives of the Proposal?

The following evaluation examines whether the provisions in the proposal are the most appropriate way in which to achieve the objectives of the proposal as set down in the SPP Order.

Case law on s32 has interpreted 'most appropriate' to mean "suitable, but not necessarily superior"¹. Therefore, the most appropriate option does not need to be the most optimal or best option but must demonstrate that it will meet the objectives in an efficient and effective way.

The Order in Council provides for a reduction in the extent of the evaluation of the provisions proposed under plan change 6 due to the urgent need to provide permanent housing for people displaced by Cyclone Gabrielle. The evaluation must provide a level of detail that is appropriate to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation proposal. The focus of this evaluation is on the reasonably practicable options for achieving the objectives and the reasons for deciding on the provisions that are recommended to be amended as a result of the submissions received.

This evaluation will assess the following aspects of the Plan Change:

- The provision of a performance standard establishing a maximum of one new lot being able to be created per category 3 site being replaced.
- An increase of the distance radius for community of interest from 5km to 15km

The assessment is at a level of detail that corresponds to the scale and significance of the effects anticipated from implementation of the proposal and having regard to the urgent need to provide permanent housing for people displaced by Cyclone Gabrielle (see SPP Order, cl 6(3), amending s 32(1)(c) RMA).

For the avoidance of doubt, no assessment has been undertaken under s 32AA for the following changes as they are considered to be minor and/or for the purposes of clarifying the notified text, rather than substantively changing the intent of the plan change as already assessed:

- Addition to Explanation to SLDP23, and amendment to 30.1.7AA(1)(a) to clarify that the subdivision pathway also applies if Category 3 land is bought through the Kaupapa Māori Pathway;
- Addition of a note to clarify that the Category 3 property may be within the Napier City Council area, but the replacement site must be within Hastings;
- Change of the start date for the sunset period from date of entering agreement to date of settlement;
- Deletion of assessment criteria referring to the legal instrument to tie the new housing to the Category 3 landowner;

- Addition of matters that may be relevant to assessing whether a site is within the “community of interest”, to provide some guidance on relevant matters;
- Deletion of definition of “community of interest” and relocating the distance requirement to standard 30.1.7AA(4). Note the extent of the distance is a more substantive change and is assessed below.

3.2.1 Subdivision Entitlement for Category 3 Buy -out.

Options are:

1. **Do Nothing** – this option leaves the provisions as they were notified. The intention is for there to be a pathway for a new site to replace the residential right that has been bought out but this option could also create confusion as there is a lack of clarity around this;
2. **Introduce a new performance standard to establish a maximum of one new lot to be created per category 3 site being replaced.** – this option involves clarifying that the intention is for a one for one subdivision entitlement;

3.2.2 Identifying community of interest for Category 3 affected land owners

Options are:

1. **Do Nothing** – this option would keep the performance standard at 5km as notified, meaning a site further than 5 km away from the Category 3 site would require Restricted Discretionary consent;
2. **Amend to a greater distance of 15km**– this option involves establishing a greater distance than the 5km to achieve a wider community of interest area that is appropriate across a number of the Category 3 identified areas. A site further than 15 km away from the Category 3 site would require Restricted Discretionary consent.
3. **Have no limit at all**- This option would do away with the concept of community of interest as part of the plan change.

1. Evaluation of Options

Table 1: Issue: Subdivision Entitlement for Category 3 Landowners :

	OPTION 1: STATUS QUO Retain the provisions of PC6 as notified	OPTION 2: Introduce a new performance standard to establish a maximum of one new lot to be created per category 3 site being replaced.
Option Analysis for Achieving the Objectives:	<p>This option may not make it sufficiently clear that the intention of the plan change is to provide an opportunity for landowners to relocate within their community of interest on a site replacement basis.</p> <p>The concern with the status quo is that there could be situations where some sites could have more than one dwelling, for instance through the supplementary dwelling entitlement, and that there may be an assumption that more than one site could be created in replacement for the two dwellings.</p> <p>The Provisions of Plan Change 6 will apply in the most part to Rural Zone as the majority of Category 3 land and its surrounds are in this zone. The major exception being Pakowhai.</p> <p>The objectives and policies of the Rural zone give clear direction about protection of the productive nature of the land and placing limits on the scale</p>	<p>This option involves introducing a new performance standard to clarify that the plan change is premised on a site replacement basis, where a subdivision pathway is provided as replacement for the residential right on a property being brought out.</p> <p>The introduction of the performance standard will be effective in maintaining the integrity of the following objective and policies of the Rural Zone.</p> <p>Policy RZP1 – Encourage the retention of larger land parcels within the Rural Zone</p> <p>Policy RZP2 – Limit the scale and intensity of residential activity in the Rural Zone to safeguard the life</p>

	OPTION 1: STATUS QUO Retain the provisions of PC6 as notified .	OPTION 2: Introduce a new performance standard to establish a maximum of one new lot to be created per category 3 site being replaced.
	and intensity of residential activity in the zone. Retention of the provisions as notified would not be effective in implementing the objectives of the Rural zone.	supporting capacity of the land and soil resource. The rural land resource is an important contributor to the economy of the district and the above objectives and policies recognise that fact. It is important to note that this option does not prevent the ability to establish a supplementary dwelling. This options is considered to implement the relevant objectives of the Rural zone as well as the objective and policies of Plan Change 6 and that stated by the SPP Order.

Table 2: Issue: Identifying community of interest for Category 3 affected land owners:

	OPTION 1: STATUS QUO Retain the provisions of PC6 as notified which is a 5km distance for the community of interest.	OPTION 2: Amend distance of community of interest to 15km.	OPTION 3: Have no limit to the community of interest.
Option Analysis for Achieving the Objectives:	<p>The issue is around the need to establish what area falls within a community of interest. This is to meet one of the main purposes of the plan change which is to assist displaced category 3 landowners to remain within their community. The 5km radius that was applied to the provisions at notification has been the principal point of submissions received on Plan Change 6.</p> <p>The 5km distance is something of an arbitrary measure however there were no submissions that this distance would take submitters outside of their community of interest area.</p> <p>The main point of submission was that people’s community of interest was much wider and that they would still feel that they were within their community at a distance beyond 5km.</p> <p>This option while being efficient in ensuring that the area would fall within the community of interest area, is not effective in meeting displaced landowners own expectations and needs around a community of interest area.</p>	<p>This option involves expanding the distance to 15km to represent the community of interest. It is also recommended to introduce a new performance standard that would help to better define what contributes to the concept of community and establishing a radius/distance that would encompass the characteristics of community. This would apply if an application was made for a site beyond 15 km from the Category 3 site.</p> <p>The concept of community encompasses a sense of belonging and having matters/issues in common.</p> <p>Community facilities can form the hub of the community and schools, halls etc are examples of this. Investigating the category 3 areas the catchments for these types of facilities would extend far beyond the 5 km mark.</p> <p>Distances put forward by means of submission ranged from 8-20km.</p> <p>Part of the consideration should also factor in the distance that displaced landowners would likely be willing to travel to manage their category 3 land. A 10-15minute drive at 80kph would</p>	<p>Option 3 would allow for the displaced landowner to find a replacement site anywhere within the rural or rural residential zones within the district.</p> <p>While this option may allow the displaced landowner to find a permanent home more quickly, it does not meet one of the principal purposes of the plan change which was to assist the displaced landowners to remain within their community. Each of those communities does not have the capacity to provide for the lifestyle sites within the current rule framework and the purpose of the plan change is to remove some of those restrictions so that more capacity is available. There would be capacity district wide and the exemptions from the rules under the plan change would not be required.</p> <p>Being within the community is also important for those landowners who need to continue to manage/service their land for productive purposes.</p> <p>Not imposing a requirement that the new site be within a community of interest will not achieve the outcome sought and may result in unanticipated effects</p>

	OPTION 1: STATUS QUO Retain the provisions of PC6 as notified which is a 5km distance for the community of interest.	OPTION 2: Amend distance of community of interest to 15km.	OPTION 3: Have no limit to the community of interest.
		take you to around the 15km mark that is suggested in this Option . It is acknowledged that any figure could be considered somewhat arbitrary however Option 2 would provide a standard that could be considered both efficient and effective in meeting the objectives and purpose of the Plan Change, particularly Policy SLDP23.	associated with new lifestyle subdivision which has no connection to the Category 3 areas.