

Te Hui o Te Kaunihera ā-Rohe o Heretaunga Hastings District Council Commissioner Hearing

## Kaupapataka

# **Agenda**

Section 357A (1) (G) and (2) RMA - Objection to Decision, 613 Puketapu Road (Tuck Childrens' Trust) (RMA20240415)

Te Rā Hui:

Meeting date:

Monday, 11 August 2025

Te Wā:

Time:

9.00am

**Council Chamber** 

Te Wāhi:

**Ground Floor** 

Venue:

**Civic Administration Building** 

**Lyndon Road East** 

Hastings

Те Ноарā:

**Democracy and Governance Services** 

Contact:

P: 06 871 5000 | E: democracy@hdc.govt.nz

Te Āpiha Matua:

Responsible

**Group Manager: Planning & Regulatory Services - John** 

O'Shaughnessy

Officer:



Monday, 11 August 2025

Te Hui o Te Kaunihera ā-Rohe o Heretaunga

**Hastings District Council: Commissioner Hearing** 

## Kaupapataka

## **Agenda**

Te Komihana Whakahoahoa:

Heamana

**Hearing Commissioner:** 

Commissioner Kitt Littlejohn

Apiha Matua:

Group Manager: Planning & Regulatory Services – John

Officer Responsible:

O'Shaughnessy

Mahere Maarama:

Reporting Planner:

Environmental Planner (Consents) - Kelly Smith

Te Rōpū Manapori me te

Kāwanatanga:

Democracy & Governance

Caitlyn Dine

Services:



### Te Rārangi Take

## **Order of Business**

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

Objection to Decision on resource consent, 613 Puketapu Road (Tuck Childrens' Trust) (RMA20240415)

DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS TWO SEPARATE

DOCUMENTS

**Document 1** The covering administrative report

Pg 1

#### Attachments:

1 Attachment 1 - RMA20240415 - 357 Objection Report 613 Puketapu Road Final - Planners report RMA20240415#0036

Pg 3



Te Hui o Te Kaunihera ā-Rohe o Heretaunga

**Hastings District Council: Commissioner Hearing** 

## Te Rārangi Take

# Report to Commissioner Hearing

Nā:

From: Caitlyn Dine, Democracy & Governance Advisor

Te Take: Objection to Decision on resource consent, 613 Puketapu Road

Subject: (Tuck Childrens' Trust) (RMA20240415)

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

- 1.1 This is a covering report relating to a Objection to Decision on resource consent, 613 Puketapu Road (Tuck Childrens' Trust) (RMA20240415).
- 1.2 The planner's report is attached to this covering report and contains the details regarding the objection and the planner's recommendations.
- 1.3 The other attachments included as part of the agenda documentation for this hearing are contained in a separate attachment document and are listed below.

#### **2.0** Recommendations - Ngā Tūtohunga

The report titled Objection to Decision on resource consent, 613 Puketapu Road (Tuck Childrens' Trust) (RMA20240415) contained in the planner's report be received.

#### **Attachments:**

1	RMA20240415 - 357 Objection Report 613	RMA20240415#0036	
	Puketapu Road Final - Planners report		
2	RMA20240415 - Legal Memo	RMA20240415#0034	Document 2
3	RMA20240415 Description of Proposal and	RMA20240415#0005	Document 2
	Assessment of Environmental Effects		
4	RMA20240415 - Land Vision HPL Report	RMA20240415#0033	Document 2

5	RMA20240415 - Supporting Information Precedent	RMA20240415#0032	Document 2
	Effects		
6	RMA20240415 Development Plans	RMA20240415#0004	Document 2
7	RMA20240415 - Report - Plains Zone Lifestyle	RMA20240415#0010	Document 2
	Subdivision No amalgamation PPZ SLD25		
8	RMA20240415 - Decision on the resource consent	RMA20240415#0037	Document 2
	application		
9	RMA20240415 - Notice Of Objection	RMA20240415#0038	Document 2

## REPORT ON OBJECTION TO A NON-NOTIFIED DECISION – SECTION 357A OF THE RESOURCE MANAGEMENT ACT 1991 (RMA)

REPORT TO: Kitt Littlejohn - INDEPENDENT COMMISSIONER

**HEARING DATE:** August 2025

FROM: KELLY SMITH

**ENVIRONMENTAL PLANNER - CONSENTS** 

SUBJECT: SECTION 357A(1)(G) AND (2) RMA - OBJECTION TO

DECISION ON RESOURCE CONSENT RMA20240415, 613 PUKETAPU ROAD, PUKETAPU (TUCK CHILDRENS

TRUST)

#### 1.0 REPORTING PLANNER

- 1.1 I, Kelly Smith, am employed by the Hastings District Council as an Environmental Planner Consents. I have held the position for over 4 years.
- 1.2 I was the processing planner for the application subject to this objection. I am therefore familiar with the application and its background.
- 1.3 I have read the Code of Conduct for Expert Witnesses as outlined in Environment Court's Consolidated Practice Note (2023). I agree to comply with it as if this hearing were before the Environment Court.
- 1.4 I record that in preparing this report, I have been assisted by the Council's lawyer who has identified relevant caselaw references which are relevant to the issues raised. She has also prepared a memorandum on some issues that raise specifically legal issues and this is attached as Attachment 2 and relied on.

#### 2.0 APPLICATION

#### **Attachments**

2.1 The attachments to this report are as follows.

Attachment 2 Legal Memo (HDC Ref RMA20240415#0034)

Attachment 3	Applicant's assessment of effects on the environment (HDC Reference: RMA20240415#0005)		
Attachment 4	Supporting Information Landvision Report (HDC Ref:RMA20240415#0033)		
Attachment 5	Supporting Information – Applicants Precedent Effect Assessment (HDC Ref RMA20240415#0032)		
Attachment 6	The proposed development plans (HDC Reference: RMA20240415#0004)		
Attachment 7	Planning report (Notification and substantive assessment) (HDC Reference: RMA20240415#0010)		
Attachment 8	Attachment 8 Decision on the resource consent application (HDC Reference: RMA20240415#0013)		
Attachment 9	Applicant's notice of objection (HDC Reference: RMA20240415#0038)		

#### 2.2 The Application

- 2.2.1 The Tuck Children's Trust made an application to subdivide 613 Puketapu Road, Puketapu for the purpose of creating a 5000m<sup>2</sup> Lifestyle site in the Plains Production zone on 27<sup>th</sup> November 2024. The applicant's Assessment of Effects on the Environment (**AEE**) and supporting information is included as **Attachment 3 5** of this report.
- 2.2.2 The proposal does not include amalgamation of the balance with any adjoining site, resulting in the creation of one new site within the Plains Production zone.
- 2.2.3 The proposed scheme plan is included as **Attachment 6**.

#### 2.3 Reasons for consent

- 2.3.1 The subject site is zoned "Plains Production" under the Operative Hastings District Plan (the **District Plan**).
- 2.3.2 The proposal requires consent as a subdivision of land.
- 2.3.3 The proposal was assessed as a Non-Complying Activity under Rule SLD25. The specific rules at issue are set out at Section 3.2.2 3.2.4 of the Planning Report (**Attachment 7**).

2.3.4 No other matters required resource consent from the Hastings District Council in relation to the subdivision. I note that a resource consent for commercial activities exceeding the permitted thresholds for the Plains Production zone has been received on the 21<sup>st</sup> May 2025 and is currently being processed.

#### 2.4 **Decision**

A non-notified decision to refuse consent was issued under delegated authority on 22nd May 2025 (Attachment 8). The decision follows analysis in the planning report and sets out the detailed reasons for the decision to decline consent. In summary, it records that while the proposal is considered to have no more than minor effects on the environment, it is contrary to important objectives and policies in the District Plan. It was also considered that the proposal lacked any differentiating qualities that warranted making an exception to the expectations set out in the District Plan, and that the grant of consent would set an adverse precedent and undermine the Plan's integrity.

#### 3.0 OBJECTION

- 3.1.1 The Applicant lodged a notice of Objection, which was received by Council on 23<sup>rd</sup> May 2025 (**Attachment 9**)
- 3.1.2 The reasons for the objection are set out below:
  - (1) The proposal meets the gateway test in section 104D of the Act. The adverse effects of the proposed subdivision on the environment will be minor (see paragraphs 6.1-6.7 above).
  - (2) When considering the application, a decision-maker is required to 'have regard to' any relevant provisions of a national policy statement, regional policy statement or district plan. The requirement to 'have regard to' does not mean 'must give effect to'. The decision-maker must give genuine thought and attention to the provisions of relevant planning documents, but those provisions are not necessarily determinative of the application.
  - (3) While the plan provisions do not favour the grant of consent, there are qualities in the proposal to distinguish it from the generality of

- non-complying applications for consent to create a lifestyle Lot in the Plains Production Zone.
- (4) The proposal and the circumstances of the Applicant are sufficiently unique that the proposal does not directly challenge the integrity of the District Plan, and granting consent will not undermine confidence in the consistent administration of the Plan. Those circumstances are:
  - (i) As a result of damage from Cyclone Gabrielle, the site is dominated by raw soils, rather than LUC3 soils depicted on LUC Capability Maps.
  - (ii) The site is an orphaned site without any physical connection to any other Plains Production zoned land. It is bounded by Puketapu Road to the north, a large and deep Council drain to the east, and public cycle paths located adjacent to the southern and western boundaries.
  - (iii) The proposed Lifestyle site is on the western side of Puketapu Road and abuts an area of rural Lifestyle development (all within the Plains Production zone), with site sizes ranging from 0.4ha to 3.043 ha.
  - (iv) The circumstances of the applicant are exceptional. The property the Tucks owned in the Dartmoor Valley (also Plains Production zoned land) was inundated during Cyclone Gabrielle (floodwaters reached partway up the roof) and has been deemed to be Category 3. The Tucks accepted a buy-out offer for that land and in doing so, relinquished their development right at the Dartmoor Property. They have lived in the Puketapu community for over 30 years and wish to remain there.
  - (v) No other property owners in the Dartmoor Valley who have accepted buy-out offers intend to subdivide in order to relocate

- within the same community. They have either purchased land on which to relocate, or own land on which they can rebuild.
- (vi) All of these circumstances, taken together, mean that the proposal is not readily capable of replication. There is little risk that other, similar applications will follow.
- (vii) The Council has done no assessment to support its assertion that there is a risk of the council receiving further, similar applications from other cyclone-affected landowners to subdivide land which is:
  - (a) Itself cyclone-affected;
  - (b) Located on the fringes of an area of rural lifestyle development which has been allowed to occur within the Plains Production zone; and
  - (c) Physically disconnected from other Plains Production zone land.
- (5) While there is a water permit for the site enabling irrigation of 7.05 hectares of process crops, that permit will expire in 2028. The volume of water which will be granted when a replacement consent is sought is the maximum annual water use in the 10 year period prior to May 2020¹ which, for this water permit was 14,764m3/year in the 2012/2013 season. That volume of water is insufficient to grow pasture, process crops, apples, peaches and kiwifruit across 7.05 hectares. 14,764m3/year will provide water sufficient water to grow approximately 3 hectares of process crops (the consented activity) at less than 90%ile certainty.
- (6) Post Cyclone Gabrielle the site has no irrigation infrastructure available meaning further capital expenditure would be required to implement any irrigated land use.
- (7) The proposed subdivision does not fragment a large and geographically cohesive area of highly productive land.
- (8) The area proposed to be subdivided is only a small part (0.5ha) of an undersized site which is unlikely to be economically viable for at least 30 years due to the dominance of raw soils on the site and insufficiency of water. The subdivision will not result in a significant

- loss of productive capacity of highly productive land in the district, individually or cumulatively.
- (9) In Plan Change 6 Hastings District Council included rules enabling displaced Category 3 landowners to subdivide Rural Zoned land to create a residential Lifestyle lot, provided that land was not defined as highly productive land for the purposes of the National Policy Statement for Highly Productive Land. In Puketapu, the only such land is in the medium to steep hill country and not easily accessible or is owned by landowners with no wish to subdivide. The Tuck family believes there is no viable option other than the current proposal if they wish to remain in the Puketapu community.
- 3.1.3 With the exception of the further information in relation to irrigation and future water take volumes, all other matters were considered as part of the planning report and decision and therefore my report primarily directs the reader to the relevant part of the report and decision that addresses each ground and makes further comment where appropriate.

#### 4.0 STATUTORY CONTEXT

#### 4.1 Section 357A - Right of Objection

4.1.1 Section 357A(1)(g) RMA sets out the rights of objection for consent holders and states the following:

357A Right of objection to consent authority against certain decisions or requirements.

- (1) There is a right of objection to a consent authority, —
- (g) in respect of the consent authority's decision on an application or review described in subsections (2) to (5), for an applicant or consent holder, if the application or review was not notified.
- 4.1.2 Section 357A(2) states that section 357A(1)(g) will apply to an application for resource consent made under section 88 of the RMA in the following circumstances:
- (2) Subsection (1)(f) and (g) apply to an application made under section 88 for a resource consent. However, they do not apply if the consent authority refuses to grant the resource consent under sections 104B and 104C. They do apply if an officer of the consent authority exercising delegated authority under section 34A refuses to grant the resource consent under sections 104B and 104C.

4.1.3 The application was non-notified and was declined consent under section 104B of the RMA (which relates to determination of applications for discretionary or non-complying applications) by an officer exercising delegated authority. Therefore, the applicant has a right of objection under s357A(1)(g) in respect of Council's decision.

#### 4.2 Section 357C – Procedure for Hearing Objections

- 4.2.1 Section 357C sets out the procedures for making and hearing objections under 357A and 357B. In the case of an objection under section 357A the Council must consider the objection within 20 working days.
- 4.2.2 If the objection has not been resolved, the Council must give at least 5 working days written notice to the objector of the date, time and place for a hearing of the objection.

#### 4.3 Section 357D – Decision on Objections

4.3.1 Section 357D sets out possible decisions that can be made in relation to an objection under section 375A and the procedural requirements for making a decision.

#### 357D Decision on objections made under sections 357 to 357B

- (1) The person or body to which an objection is made under sections 357 to 357B may—
- (a) dismiss the objection; or
- (b) uphold the objection in whole or in part; or
- (c) ....
- (2) The person or body to which the objection is made must, within 15 working days after making its decision on the objection, give to the objector, and to every person whom the person or body considers appropriate, notice in writing of its decision on the objection and the reasons for it.
- 4.3.2 Pursuant to section 358 of the RMA, any person who has made an objection under section 357A may appeal to the Environment Court against the decision on the objection.

#### 5.0 CONSIDERATION OF THE OBJECTION

As noted above, the issues raised in the objection were generally considered as part of the planning report, and I adopt the reasoning in

- that report in full. I also make the following additional comments in response to specific issues raised in the objection.
- 5.1 Objection Ground 1 That the proposal meets the gateway test in section 104D of the Act as effects on the environment will be no more than minor
- 5.1.1 Section 4 (Notification Assessment) and 6 (Assessment of Effects) of the Planning Report had concluded that the effects of the proposal on the environment will be no more than minor.
- 5.1.2 Accordingly, this matter is not in contention. However, satisfying the gateway test under section 104D(1)(a) does not guarantee the grant of consent. There are numerous examples of applications in the Hastings District having been determined to have no more than minor effects on the environment, but having been declined based on their inconsistency with important objectives and policies of the Hastings District Plan see Endsleigh Cottages Ltd ([2020] NZEnvC 64 (Endsleigh)); Stone ([2019] NZEnvC 175); McHardy ([2011] NZEnvC 339); McKenna ((2009) 15 ELRNZ 41(HC)).
- 5.2 Objection Ground 2 The objection contends that relevant planning documents must be considered, but not strictly followed, as the requirement to *have regard to* does not mean the decision-maker must *give* effect to them.
- 5.2.1 I understand this ground of objection to relate to the assessment of the application against the objectives and policies of the District Plan and the NPS-HPL. I address the NPS-HPL first.
- 5.2.2 While it is correct that section 104(1)(b) requires a decision-maker to "have regard to" relevant provisions of national policy statements, regional policy statements, and district plans, my understanding is that this does not imply that a decision-maker has unfettered discretion as to the weight to be afforded those instruments. The extent to which a provision influences the decision is dependent on its wording, the degree of specificity or direction it provides, and its alignment with higher-order instruments.
- 5.2.3 Where a policy statement uses prescriptive language—such as "avoid," "require," or "limit"—the courts have held such language is directive and may carry decisive weight in the planning assessment. In Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd [2014] NZSC 38, the Supreme Court found that policies

- using the term "avoid" must be interpreted according to their plain meaning, unless the context clearly indicates otherwise. This case confirmed that decision-makers are not free to override clear and directive policies by undertaking an "overall broad judgment" unless the relevant plan framework allows for it.
- 5.2.4 That approach was recently emphasised by the Supreme Court in Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency [2024] NZSC 26, where the Supreme Court held at [169]:

[The High Court judge] erred in his application of the duties to have regard/particular regard to relevant objectives and policies. Again, those duties do not invest consent authorities with a broad discretion to "give genuine attention and thought" to directive policies, only to then refuse to apply them. That would contradict what we have already described as the consistently strong "avoid" language employed from top to bottom in the RMA hierarchy of objectives and policies. It would also be to waste the significant resources invested by public and private stakeholders in the processes by which those objectives and policies are settled.

- 5.2.5 The NPS-HPL establishes a clear objective to prioritise land-based primary production on highly productive land for both current and future generations. This objective is supported by directive policies, which are particularly relevant to this application:
  - Policy 6: The rezoning and development of highly productive land as rural lifestyle is avoided, except as provided in this National Policy Statement.
  - **Policy 7**: The subdivision of highly productive land is avoided, except as provided in this National Policy Statement.
  - **Policy 8**: Highly productive land is protected from inappropriate use and development.
- 5.2.6 The language used in these policies is directive and prescriptive. In accordance with established case law, such language should be interpreted based on its plain and ordinary meaning.
- 5.2.7 As outlined in Section 8.2.2 of the Planning Report, my assessment was that the proposal does not meet the exemptions set out in Clause 3.8 of the NPS-HPL. Specifically, the creation of a lifestyle site does not maintain or enhance the overall productive capacity of the land.

- 5.2.8 Furthermore, as discussed in Section 8.2.3, although it is acknowledged that the site has been affected by silt deposition from Cyclone Gabrielle, my assessment is that the applicant has not provided sufficient evidence to demonstrate that the constraints are permanent or long-term as required by Clause 3.10. Further, the application did not include an assessment of alternative land management approaches or consideration of the site's potential for future productive use, i.e. more intensive indoor primary production or greenhouse activities permitted by 3.9(2)(aa) and which do not rely on the underlying soil resource.
- 5.2.9 My opinion was, and remains, that the tests in clause 3.8 and 3.10 are not satisfied, and the NPS-HPL requires that the subdivision must be avoided. I am not aware of any competing objectives and policies that might need to be reconciled with this requirement. My understanding is that there is no discretion to balance other factors against that conclusion.
- 5.2.10 In addition, section 75(3) of the RMA requires district plans to "give effect to" national policy statements and regional policy statements. This reinforces the intention that lower-order documents must implement the direction of higher-order instruments, rather than simply consider them. In this case, while the National Policy Statement for Highly Productive Land (NPS-HPL) and the National Policy Statement on Urban Development (NPS-UD) have been introduced after the current District Plan was notified, the Operative District Plan is considered too broadly give effect to their intent through its strong policy framework for limiting urban expansion and protecting the versatile soil resource.
- 5.2.11 The Plains Strategic Management Area and Plains Production Zone together form a detailed and integrated policy framework that gives effect to the Rural Policy Statement. The relevant objectives and policies use directive language including terms such as "require," "restrict," "limit," and "prevent" indicating a strong planning directive focused on retaining the productive capacity and open rural character of the Plains environment. These are not aspirational or enabling provisions. As outlined in section 8.5.2 of the Planning Report, the proposal is in direct conflict with Objective PSMO1 and Policies PSMP1, PSMP2, and PSMP5, as well as Objective PPO1 and Policies PP1, PPP6, and PPP11. Specifically, the proposal represents a form of

- development that does not retain or enhance productive potential, is not driven by productive purposes, and promotes the encroachment of urban activities into the District's versatile land resource.
- 5.2.12 In light of *King Salmon*, and affirmed by the Supreme Court in the *Royal Forest and Bird Protection Society* decision referred to above, my understanding is that such directive provisions must be applied according to their plain meaning. While section 104 allows for discretion, particularly under section 104B when assessing noncomplying activities, that discretion is informed and constrained by the strength of the relevant planning framework.
- 5.2.13 I therefore disagree with the suggestion that decision-makers are free to apply a discretionary weight to District Plan provisions in order to reach an overall position. Where the District Plan has been competently prepared and the relevant objectives, policies and rules are coherent with a directive policy framework— as it is in this case in my view it is appropriate for those provisions to carry very strong weight in the outcome of a consent application, especially where a proposal is inconsistent with the anticipated outcomes of the zone.
- 5.3 **Objection Ground 3 The proposal has distinguishing features that** set it apart from typical non-complying lifestyle subdivision.
- 5.4 Objection Ground 4 The proposal and the circumstances of the Applicant are sufficiently unique that the proposal does not directly challenge the integrity of the District Plan, and granting consent will not undermine confidence in the consistent administration of the Plan.
- 5.4.1 The following addresses Objection Grounds 3 and 4. The question of whether the proposal would likely create an adverse precedent is discussed in Section 9.3 of the Planning Report. I adopt that section for the purpose of this report.
- 5.4.2 I note that consideration of whether an adverse precedent will be created only arises if the Commissioner concludes that the proposal is inconsistent with the relevant objectives and policies of the District Plan. If the Commissioner considers the proposal accords with the Plan, then the concern about creation of a precedent does not arise. As discussed in section 8.5 of the planning report, and expanded on in section 5.2 above, I am of the view that the proposal is contrary to

- important provisions of the District Plan, and therefore the grant of consent in circumstances where a precedent would be created is of significant concern.
- 5.4.3 In summary, the original planning report found that there are no unusual or exceptional qualities that would differentiate the proposal from other potential applications, meaning an adverse precedent may be created. While the matters raised in point 4(i) (vii) of the objection have been addressed, I have provided a summary and further information where appropriate below.
- 5.4.4 In regard to point 4(i), it was acknowledged in Section 9.3 (pp. 40–41) of the planning report that the site has been affected by Cyclone Gabrielle, resulting in changes to the soil profile when compared to pre-cyclone conditions. However, such cyclone-induced alterations are not unique to this site. The Hawke's Bay Regional Council's *Cyclone Gabrielle Sediment Deposition Report* (April 2024, p. 10) identifies that approximately 14,985 hectares of LUC 1–3 land were affected by silt deposition, including 5,087 hectares of LUC Class 3 land. While varying levels of remediation and clean-up have occurred across the district, it is reasonable to conclude that other sites have experienced similar changes to their soil profiles.
- 5.4.5 The planning report then considered whether soil quality was a defining factor in determining whether a site qualifies as "versatile land." The Hastings District Plan defines Versatile Land as:

#### "Versatile Land"

In relation to the Heretaunga Plains sub-region, means contiguous flat to undulating terrain within the Heretaunga Plains Sub-region that acts collectively to support regional (and nationally) significant primary production and associated secondary services on the Heretaunga Plains, based around:

- a) An exceptionally high proportion of versatile Class 1-3 soils (comprising almost 90%); or
- b) Class 7 soils that are internationally recognised as having very high value for viticultural production (comprising almost 7%);
- c) Its proximity to a cluster of national and international processing industries and associated qualified labour force; and
- d) Its proximity to the Port of Napier and other strategic transport networks providing efficient transport of produce."

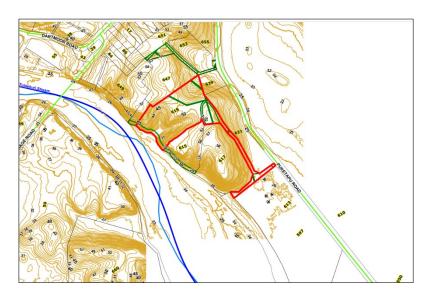
5.4.6 In Endsleigh Cottages Ltd v Hastings District Council [2020] NZEnvC 64, the Environment Court held at [50] and [52]:

The four listed factors are not criteria which must be satisfied for land to fall within the definition. They are elements which inform the preceding words. We interpret clause (a) in the definition to be referring to the subregion and the collective soils of the sub-region. Interpreting that clause as requiring that 90% of each and every land parcel contain class 1-3 soils would lead to difficulties of application and interpretation of the Plan and would make vulnerable to site specific analysis (as has occurred here) the Plan's protective approach to soils of the sub-region.

- 5.4.7 It is my opinion, as concluded in the planning report, that although the site's soils have been affected by cyclone-related silt deposition, the land continues to exhibit the essential characteristics of versatile and productive land. In line with the Environment Court's interpretation, site-specific soil classification particularly when considered in isolation should not be used to justify a departure from the policy framework intended to safeguard the District's versatile land resource.
- 5.4.8 In relation to Point 4(ii), and as addressed in Section 9.3 of the Planning Report, it is noted that the District's versatile and productive soil resource is commonly located adjacent to river systems and often bordered or intersected by features such as stopbanks, roads, and drains. These are common characteristics within the Plains environment. The presence of the drain along the south-eastern boundary of the subject site is therefore not considered unique or exceptional.
- 5.4.9 Accordingly, it is my opinion that the presence of these features does not result in any physical isolation of the site from adjoining land that would prevent its productive use. For context, the subject site forms part of a larger contiguous area of approximately 33.8 hectares extending to Springfield Road, with a further 76.7 hectares of Plains Production zoned land located immediately south of Springfield Road. This demonstrates that the site sits within a broader, cohesive productive landscape and does not represent an isolated or marginal block, as suggested in the objection grounds.

- 5.4.10 In relation to Point 4(iii), the objection appears to suggest that the presence of lifestyle development adjoining the subject site is a unique circumstance that can be relied upon to justify further encroachment of urban-style activities into the Plains Production Zone. However, this rationale is not supported by the planning framework and is an example of why precedent is of concern.
- 5.4.11 Specifically, I note that the Regional Resource Management Plan and the Heretaunga Plains Urban Development Strategy (HPUDS) place strong emphasis on the protection of versatile soils and the establishment of clear urban–rural boundaries. As discussed in section 8.3 and 8.5 of the planning report, the proposal directly represents the type of lifestyle development the Regional Policy Statement (OBJ UD1 and OBJ UD4) and District Plan (PSMO1; PSMP5; PPP6) seek to prevent.
- 5.4.12 With regard to the sites to the west of the subject property referred to in the objection, section 9.3 of the Planning Report notes that while these properties are zoned Plains Production, they exhibit different physical characteristics, in particular topography and are more akin to general rural or rural residential land. These differences were recognised in the planning assessments that supported the original subdivisions and are illustrated in Figure 1 below.

#### 5.4.13 Figure 1 - Council GIS 1 Metre Contour Map



- 5.4.14 In relation to Point 4(iv), the objection does not raise a specific resource management issue but instead presents a personal statement. Council's legal counsel has prepared a summary of caselaw, attached as **Attachment 2**, which indicates that the personal circumstances of an applicant are not a relevant matter under the RMA. While the applicant's circumstances including their long-standing connection to the Puketapu community, the loss of their home during Cyclone Gabrielle, and the relinquishment of residential rights on their Dartmoor Road property are acknowledged with sympathy, my understanding is they cannot be taken into account, particularly where to do so would undermine the broader policy intent and outcomes sought for the District as a whole.
- 5.4.15 In relation to point 4(v), the objection point appears to confine the consideration of precedent effects solely to properties located within the Dartmoor Valley. I do not consider this to be a reasonable or appropriate approach, given that cyclone-related displacement and participation in the voluntary buy-out scheme is widespread. At the time of writing, 104 rural and rural lifestyle properties across the District are subject to a voluntary buy-out agreement.
- 5.4.16 Given the extent of cyclone related effects, I consider it likely that similar applications could arise from other areas of the District. For example, substantial areas of the Pakowhai and Brookfields localities were significantly impacted and have been classified as Category 3. Landowners in these areas who may be in circumstances comparable to those of the applicant may also wish to remain within their communities. However, due to the predominance of Plains Production zoning in those areas, opportunities for relocation are limited. It is therefore reasonable to anticipate that other displaced landowners in similar situations could bring forward comparable proposals.
- 5.4.17 In relation to objection point 4(vi), and as discussed in sections 5.4.1 to 5.4.16 above, I do not consider that either the proposal itself or the applicant's circumstances—so far as they are relevant to the assessment—are sufficiently unique to avoid replication in future applications.

- 5.4.18 In relation to objection ground (vii) these matters have been addressed above.
- 5.5 **jection Ground 5 Availability of water to support primary** production based on potential future allocation under TANK rules.
- 5.5.1 I understand this objection ground relates to the assessment of the application against the National Policy Statement for Highly Productive Land (NPS-HPL), particularly in regard to access to water for productive land use. I note that under the NPS-HPL (Clause 3.10), any biophysical constraint must be permanent or not able to be resolved within the next 30 years through improvements or resource reallocation within the catchment.
- 5.5.2 While the objection correctly notes that the site's existing water permit allows irrigation of 7.05 hectares of process crops, and that reallocation under the Hawkes Bay Regional Councils Plan Change 9 provisions for the management of land and waterways in the Tūtaekurī, Ahuriri, Ngaruroro and Karamū catchments (TANK) may be limited to the historic maximum annual volume of 14,764 m³/year (based on the 2012/2013 season), the applicant's assessment has been limited to high water-use production types. In my opinion, the application has not adequately considered alternative, lower water-use land-based production options.
- 5.5.3 For example, no evaluation has been provided regarding more water-efficient land uses, such as:
  - Viticulture (grapes),
  - Greenhouse or hydroponic systems. (e.g. berries)
- 5.5.4 These land uses are generally well established in the District and are suited to the regional climate. Based on irrigation data from the irrigation reasonable use database, a viticulture activity could feasibly operate within the estimated allocation of 14,764 m³/year, particularly with the use of efficient irrigation infrastructure. For example, the reasonable use volume for 7 hectares of grapes is estimated at approximately 13,090 m³/year based on the 90% ile Annual Volume (source mycatchment.info, based on crop type HBGrapes 2M1Row for 7ha of land at 613 Puketapu Road)

- 5.5.5 While the objection states that the available volume is insufficient to support conventional crops such as pasture, process vegetables, or pipfruit, in my opinion this does not equate to the site being incapable of productive use. Rather, it suggests that alternative land uses requiring less water may be more suitable under the existing constraints. Accordingly, I do not consider that the additional information that the applicant has provided is sufficient evidence to demonstrate that the water constraint is permanent or unresolvable within a 30-year timeframe, as required under the NPS-HPL.
- 5.6 Objection Ground 6 Post Cyclone Gabrielle the site has no irrigation infrastructure available meaning further capital expenditure would be required to implement any irrigated land use.
- 5.6.1 In relation to objection grounds 6, I note that the NPS-HPL does not require that land be currently irrigated or in production to qualify as highly productive; rather, it seeks to protect land based on its potential to support land-based primary production now and in the future.
- 5.6.2 The need to invest in infrastructure, such as irrigation systems, is a normal and anticipated part of establishing productive land use. As such, the absence of existing infrastructure does not in my opinion justify a departure from the policy direction set out in the NPS-HPL, particularly Policies 1 and 6, which direct councils to protect the availability of highly productive land for primary production for now and future generations.
- 5.6.3 Accordingly, this factor in my opinion does not support an argument that the site is unsuitable for retention as productive land or that an exception to the relevant policy framework is warranted.
- 5.7 Objection Ground 7 The proposed subdivision does not fragment a large and geographically cohesive are of Highly Productive Land.
- 5.7.1 The matter of fragmentation is addressed in Section 8.2.3 (p.22) of the Planning Report. It was concluded that the subject site forms part of a broader, geographically contiguous area of land zoned Plains Production. While the proposed lifestyle site is relatively small in area, I consider the potential for fragmentation should be assessed in terms of its cumulative effects and precedent risk rather than in isolation.
- 5.7.2 Under Clause 3.10(b)(ii) of the National Policy Statement for Highly Productive Land, decision-makers must have regard to whether the subdivision would result in the fragmentation of highly productive land.

- Fragmentation is not limited to the size of a single site being subdivided but includes the broader consequences for the integrity, availability, and efficient use of the wider productive land resource.
- 5.7.3 In this context, allowing the creation of a lifestyle site within a cohesive and versatile land block may give rise to similar applications, particularly in areas affected by post-cyclone land use disruption. This could cumulatively undermine the integrity and long-term viability of the highly productive land resource, contrary to the outcomes sought under the NPS-HPL.
- 5.7.4 Accordingly, while the individual allotment may appear minor in isolation, its contribution to a broader pattern of encroachment and subdivision presents a significant risk to the strategic intent of protecting highly productive land from ad hoc fragmentation.
- 5.8 Objection Ground 8 That the subdivision only affects a small area on an undersize site that is unlikely to be economically viable for at least 30 years due to the dominance of raw soils, insufficiency of water and accordingly the proposal does not result in a significant loss of productive capacity individually or cumulatively.
- 5.8.1 As outlined in Section 8.2 of the Planning Report, I do not consider that the applicant has provided sufficient evidence to demonstrate that the site is incapable of supporting productive use—either as a standalone unit or in conjunction with adjoining Plains Production zoned land, through amalgamation or lease arrangements.
- 5.8.2 I note that the NPS-HPL explicitly states that landholding size alone is not determinative of productive potential. I consider that the subject site is of a size and location that could feasibly support viticulture as has been previously grown on the adjoining 6.5ha site or more intensive horticultural activities such as hydroponic production, with established examples of operations at 100 Evenden Road (Hastings), 31 Richmond Road (Clive), and 45 Richmond Road (Hastings).
- 5.8.3 Water scarcity is not a constraint unique to this site but reflects a broader, region-wide issue. As outlined in Sections 5.5.1 to 5.5.5, more water-efficient land uses—such as viticulture or hydroponic systems—may be viable within the projected allocation limits set by the TANK Plan framework. I note that these land uses are consistent with the intent of the NPS-HPL, which seeks to safeguard the availability of highly productive land for primary production, including the consideration of a diverse range of alternative and innovative production methods.

- 5.8.4 While it is acknowledged that this particular proposal may not result in a significant loss of productive capacity in isolation, the broader concern lies in the cumulative effect of similar applications. Approval of this subdivision could contribute to the ongoing fragmentation of highly productive land and the gradual erosion of the District's versatile soil resource. Such outcomes are inconsistent with the objectives and policies of the NPS-HPL, which require territorial authorities to avoid inappropriate subdivision, use, and development that compromises the long-term availability of highly productive land. As discussed above, similar outcomes are sought for the Plains Production resource through objectives and policies of the District Plan.
- 5.9 Objection Ground 9 In Plan Change 6 Hastings District Council included rules enabling displaced Category 3 landowners to subdivide Rural Zoned land to create a residential Lifestyle lot, provided that land was not defined as highly productive land for the purposes of the National Policy Statement for Highly Productive Land. In Puketapu, the only such land is in the medium to steep hill country and not easily accessible, or is owned by landowners with no wish to subdivide. The Tuck family believes there is no viable option other than the current proposal if they wish to remain in the Puketapu community.
- 5.9.1 The objection point does not raise any specific resource management issue, but appears as a personal statement regarding the circumstances of the applicant. As previously stated, while I am sympathetic to the applicants' circumstances following Cyclone Gabrielle, my understanding is personal circumstances cannot be used to justify a planning outcome that would undermine the outcomes sought for the District.
- 5.9.2 I also note that Plan Change 6 deliberately excluded application to Plains Production Zoned land and sites containing highly productive land. The legal memorandum attached as **Attachment 2** discusses this further. I therefore do not consider reference to that plan change to be a relevant consideration in deciding whether to approve this consent application.
- 5.9.3 I further note that, as an alternative to the proposed subdivision, the applicant could potentially establish a supplementary dwelling within curtilage of the main residential building on the site. This approach would support the intended outcome of enabling intergenerational living within the community similar to what occurred on the Dartmoor

Road site, while avoiding the permanent fragmentation of the versatile land resource.

#### 6.0 Conclusion

- 6.1.1 For the reasons discussed above and in the original officer's report and decision, I remain of the view that the proposed activity is contrary to the relevant provisions of the Hastings District Plan. The application has not sufficiently demonstrated that the proposal is unique or unusual in a way that would avoid it becoming an adverse precedent for similar lifestyle development in the Plains Production Zone.
- 6.1.2 The application will therefore undermine the integrity of the District Plan and again my recommendation is that consent should be declined.

**Kelly Smith** 

ENVIRONMENTAL PLANNER – CONSENTS HASTINGS DISTRICT COUNCIL

Approved for release to independent commissioner by:

**Caleb Sutton** 

**ENVIRONMENTAL CONSENTS MANAGER** 

**HASTINGS DISTRICT COUNCIL**