



CENTRAL HAWKE'S BAY

DISTRICT COUNCIL

CENTRAL HAWKE'S BAY DISTRICT COUNCIL

NOTIFICATION REPORT PURSUANT TO SECTIONS 95A TO 95F OF THE RESOURCE MANAGEMENT ACT 1991 (RMA)

10 April 2024

RC Number:	RM230016
Applicants:	SR & BJ Williams Charitable Trust Board c/- Brown Webb Richardson Ltd
Location:	42 Okura Road, Elsthorpe
Legal Description:	Lot 2 DP 481291 (RT 674477)
Valuation Number:	1092032200A
Proposal:	Eleven lot fee simple rural subdivision (8 Rural Lifestyle Lots)
Date Application lodged (s88):	23 February 2023
Operative District Plan Zone:	Rural Zone Township Zone Coastal Margin Area
Proposed District Plan Zone and Notations:	General Rural Zone Large Lot Residential Zone Archaeological Sites (NZAA ID: V23/71, V23/72, V23/86, V23/87, V23/88, V23/89, V23/90, V23/92) Tsunami Hazard (Near Source Inundation Extent) Coastal Environment
Land Use Capability Classification (LUC):	LUC 3, LUC 6 and LUC 7 ¹
Activity Status:	Discretionary Activity – Operative District Plan Discretionary Activity – Proposed District Plan (Appeals Version)

¹ <https://gis.hbrc.govt.nz/LocalMapsViewer/?map=1ed9a3dd18344862b42373c31ba8e3d6>

**NOTIFICATION REPORT PURSUANT TO SECTIONS 95A TO 95F
OF THE RESOURCE MANAGEMENT ACT 1991**

1.0 INTRODUCTION

Central Hawke's Bay District Council (Council) has received a subdivision consent application (resource consent) under section 88 of the Resource Management Act 1991 (RMA). The application involves an 11-lot subdivision of land, comprising of eight rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with the adjoining property at 38 Okura Road (legally described as Lot 1 DP 25627). The proposal is described in further detail below.

The purpose of this report is to provide a recommendation to the Council in relation to the notification of this resource consent application under the relevant statutory framework set out in sections 95A to 95F of the RMA.

The structure of this report is as follows:

- Section 2 – Details of the application and a description of the proposal.
- Section 3 – Relevant consent history.
- Section 4 – A site description.
- Section 5 – The relevant statutory framework.
- Section 6 – An assessment of environmental effects.
- Section 7 – Recommendation.

In accordance with section 42A(1A) of the RMA, this report does not repeat information included in the application under section 88(2) and Schedule 4, except where doing so is considered by the author to add value to the assessment of the application. I am familiar with the proposal, and the surrounding environment, and undertook site visits on 13 February 2023 and 11 March 2024.

2.0 APPLICATION DOCUMENTS AND FURTHER INFORMATION

The application was lodged with the Council on 24 February 2023. It was originally for a 13-lot subdivision comprising 10 rural lifestyle allotments, two balance allotments and a separate lot to be amalgamated with the adjoining property at 38 Okura Road (legally described as Lot 1 DP 25627) (original application). The original application documents included an Assessment of Environmental Effects (AEE) and a suite of technical reports.

Upon receipt of original application, the Council engaged Stantec to complete a peer review of the technical reports received in relation to geotechnical engineering, transportation and infrastructure (stormwater, wastewater and water supply) matters. This peer review involved a series of exchanges between the Council's processing planner, Mrs Kim Anstey, and the applicant's consultant planner, Mr Phil McKay.

The application was then amended by the applicant on 15 August 2023. An updated AEE¹ was lodged, setting out at Section 1.1 a summary of amendments to the application. I do not repeat those reasons in full but include the following explanation:

“The reason for revising the application and reducing the number of lifestyle lots sought from 10 to 8, is to enable better avoidance and mitigation of potential slope instability effects in response to Cyclone Gabrielle and the potential for more significant weather events with climate change. In this regard the previously proposed lifestyle sites Lots 2 and 5 have been removed to provide certainty that potential land instability effects are appropriately mitigated. These amendments also respond to Stantec’s initial peer review on behalf of Council, of the Applicant’s geotechnical assessment”.

The Council made a request for further information under section 92(1) of the RMA on 18 September 2023. A response to this request was received on 21 December 2023.

2.1 Application Processing

The following is a list of reports received with the original and amended application, including those received at the request of further information and as revised through the peer review process. The list includes all information that has been relied on in assessing the application. For brevity, it does not include those documents submitted in relation to the original application where they have been superseded (whether in the amended application or through section 92 requests).

Table 1: Application Documents

	Report	Author	Dated
Original Application 23 February 2023			
Appendices			
C1	Archaeological Assessment of Effects	Heritage Services Hawke’s Bay	Undated
C2	Archaeological Authority	Heritage New Zealand Pouhere Taonga, File Ref: 2023/218	11 November 2022
C3	Cultural Impact Assessment (Requested to be kept Confidential)	Kairakau Lands Trust	29 September 2022
C4	Cultural Impact Assessment	Ngā Karanga Hapū o Kairakau	5 September 2023
F	Traffic Impact Assessment	East Coast Consulting Ltd	2 December 2022
	Report	Author	Dated
Revised Application 14 August 2023			
	Subdivision Consent Application and Assessment of Effects on the Environment.	Mitchell Daysh	15 August 2023
Appendices			
A1	Scheme Plan 4698-30, Sheets 1 and 2	Surveying the Bay	August 2023

¹ Mitchell Daysh, Document Title: Subdivision Consent Application and Assessment of Effects on the Environment (Revised August 2023), dated 15 August 2023.

A2	Staging Plan 4698-31, Sheets 1 to 6	Surveying the Bay	August 2023
D1	Landscape, Natural Character and Visual Effects Assessment	Wayfinder	August 2023
D2	Landscape & Visual Assessment Graphical Attachment	Wayfinder	August 2023
E	Geotechnical Assessment Report, Project: 10-Lot Subdivision, Mangakuri Beach, Revision R19385B-04	RDCL Limited	7 August 2023
E1	Geotechnical Report Review, Revision R19385B-04	RDCL Limited	7 August 2023
F2	Traffic – Letter in response to traffic peer review	East Coast Consulting Ltd	11 August 2023
G1	Land Development Report, Mangakuri Station subdivision, Subdivision of Lot 2 DP 481291, Project No: J5864, Rev C	Strata Group Consulting Engineers	11 August 2023
G2	Engineering Plans, Project No: J5864, Revision C	Strata Group Consulting Engineers	11 August 2023
G3	3 Waters review Response, Job Number: 5864	Strata Group Consulting Engineers	15 August 2023
H	Cut Fill Plan, Job Number: 5864, Sheet C150, Revision 3	Strata Group Consulting Engineers	15 August 2023
	Report	Author	Dated
Section 92 Response – 21 December 2023			
	Response to s92 Request– RM230016 – Subdivision Consent, SR & BJ Williams Charitable Trust Board, Williams Road, Mangakuri	Mitchell Daysh	21 December 2023
	Email from Phil McKay on Proposed Conditions to Limit Fragmentation	Mitchell Daysh	7 February 2024
Appendices			
D3	Addendum to Landscape, Natural Character & Visual Effects Rural Amenity Assessment	Wayfinder	22 September 2022
D4	Mangakuri Titles Subject to Proposed Covenant	Excerpt from GRIP	10 October 2023
E2	Geotechnical Assessment Report, Revision R19385B-05	RDCL Limited	21 December 2023
F3	Traffic – Letter in response to Section 92 Request	East Coast Consulting Ltd	29 September 2023
G4	3-Waters – Letter in response to traffic peer review	Strata Group Consulting Engineers	21 September 2023

2.0 THE PROPOSAL

The proposal is described in further detail in the Applicant's revised AEE dated 15 August 2023. However, the primary components of the proposal are summarised below.

2.1 PROPOSED SUBDIVISION PLAN AND STAGING

The proposal involves an 11-lot subdivision of land comprising of eight rural lifestyle allotments (Lots 1, 3, 4, 6 to 10²), two balance allotments (Lots 11 and 12) and a separate lot (Lot 13) to be amalgamated with the adjoining property at 38 Okura Road (legally described as Lot 1 DP 25627). The Table 2 below identifies the proposed lot number, calculated area, and the purpose of, and intended access to, the proposed allotment³. An excerpt of the proposed scheme plan is included in Figure 1 below.

Lot No #	Area	Purpose	Access
Lot 1	9,307 m ²	Rural lifestyle	Okura Rd access
Lot 3	4,636 m ²	Rural lifestyle	Williams Rd northern access
Lot 4	4,844 m ²	Rural lifestyle	Williams Rd northern access
Lot 6	6,757 m ²	Rural lifestyle	Williams Rd southern access
Lot 7	5,551 m ²	Rural lifestyle	Williams Rd southern access
Lot 8	6,518 m ²	Rural lifestyle	Williams Rd southern access
Lot 9	8,265 m ²	Rural lifestyle	Williams Rd southern access
Lot 10	8,123 m ²	Rural lifestyle	Williams Rd southern access
Lot 11	53.906 ha	Coastal balance	Williams Rd northern access and Okura Rd (existing farm) and southern access
Lot 12	52.535 ha	Inland balance	Williams Rd southern access
Lot 13	585 m ²	To be amalgamated with Lot 1 DP25627 for boundary adjustment	Lot 1 DP 25627 has existing access from Okura Rd

Table 2: Lot Number, Area, Purpose and Access Provision

The specific access arrangements are shown in the Engineering Plans included in Appendix G2 to revised application. The proposed allotments, with the exception of Lot 13⁴, are to be accessed via three separate access ways, referred to by the applicant as follows:

Reference Name	Access Provision
Williams Road southern access	Five lifestyle lots (Lots 6, 7, 8, 9 and 10) and the Coastal and Inland balance Lots (Lots 11 and 12);
Williams Road northern access	Two lifestyle lots (Lots 3 and 4) and the existing farm (Lot 11). 4 trees within legal road are proposed to be removed to establish clear sightlines from this access
Okura Road access	One lifestyle lot (Lot 1) and the existing farm (Lot 11)

Table 3: Proposed Access Arrangements

The applicant seeks that the subdivision be staged to provide some flexibility in the management of construction earthworks and sediment mitigation. The staging sequence is shown in Appendix A2 of the amended application (and an excerpt is included in Figure 2 below) and described further below:

² These lots are referred to in this decision as rural lifestyle lots. Further, it is noted that the revised application involved the removal of Lots 2 or 5 and there is therefore no reference to these Lot numbers on the scheme plan or within the application.

³ Table 1, Applicant's AEE, pg 2.

⁴ Which is to be amalgamated with 38 Okura Road (Lot 1 DP 25627) which has existing access to Okura Road.

- Stage 1: Lots 9, 10, 12 & 13 (the amalgamation of Lot 13 with Lot 1 DP 25627 is proposed to occur as part of stage 1)
- Stage 2: Lots 6 – 8
- Stage 3: Lots 3, & 4
- Stage 4: Lots 1 & 11

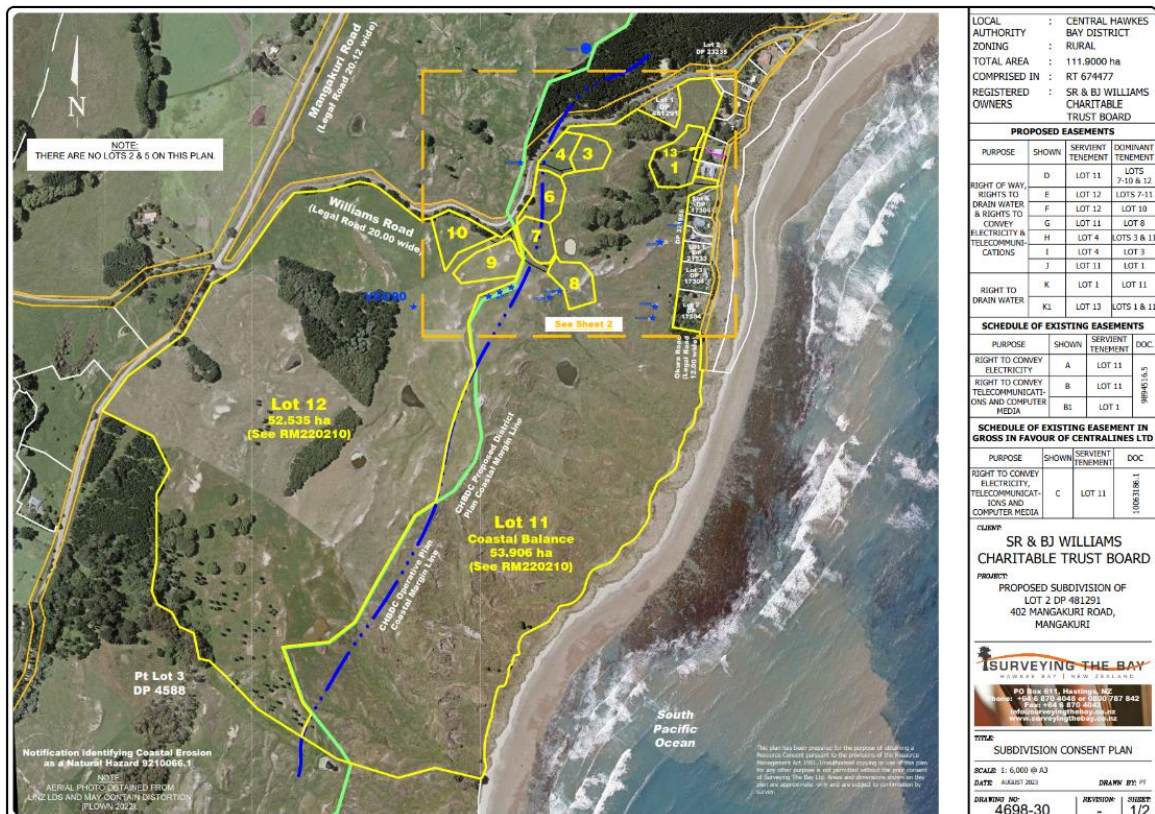


Figure 1: Proposed Subdivision Scheme Plan (Appendix A1 of the Application)

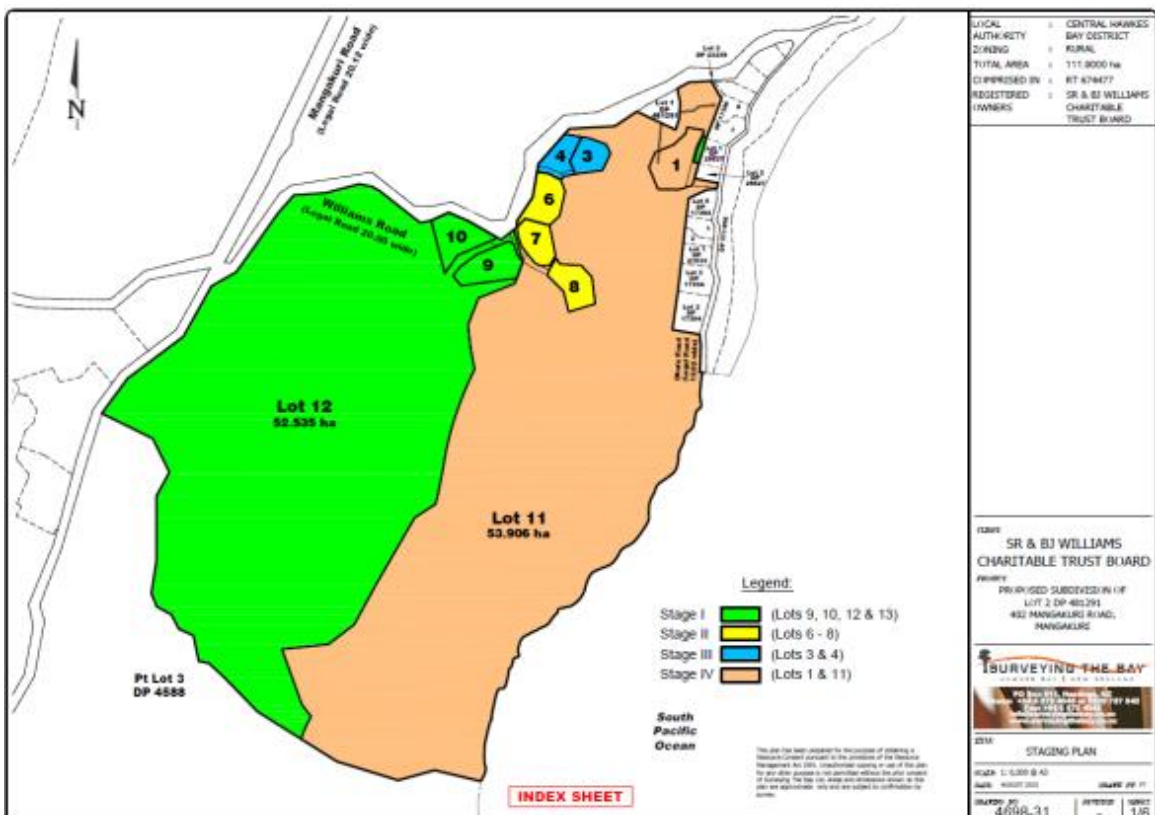


Figure 2: Subdivision Staging Plan (Appendix A2 of the Application)

The application describes a ‘landscape-led’ approach with each lifestyle lot having three ‘zones’⁵ as part of the intended landscape mitigation and coastal natural character enhancement. These zones are shown in Appendix A1 (and an excerpt of which is included in Figure 3 below) and is referred to as:

- An **identified Building Platform** to be formed as part of the subdivision (zone coloured orange at Figure 3);
- A **Privately Managed Landscape** (zone coloured beige) immediately surrounding the building platform, being an area used by the future owner for the establishment of a garden, lawn area, small sheds and water tanks, but no additional habitable buildings (such as a secondary dwelling) or significant earthworks as recommended by the CIA;
- A staged **Landscape Enhancement Zone** (coloured mid-green) being the remainder of the lot area and used only for the establishment of approved coastal native revegetation.

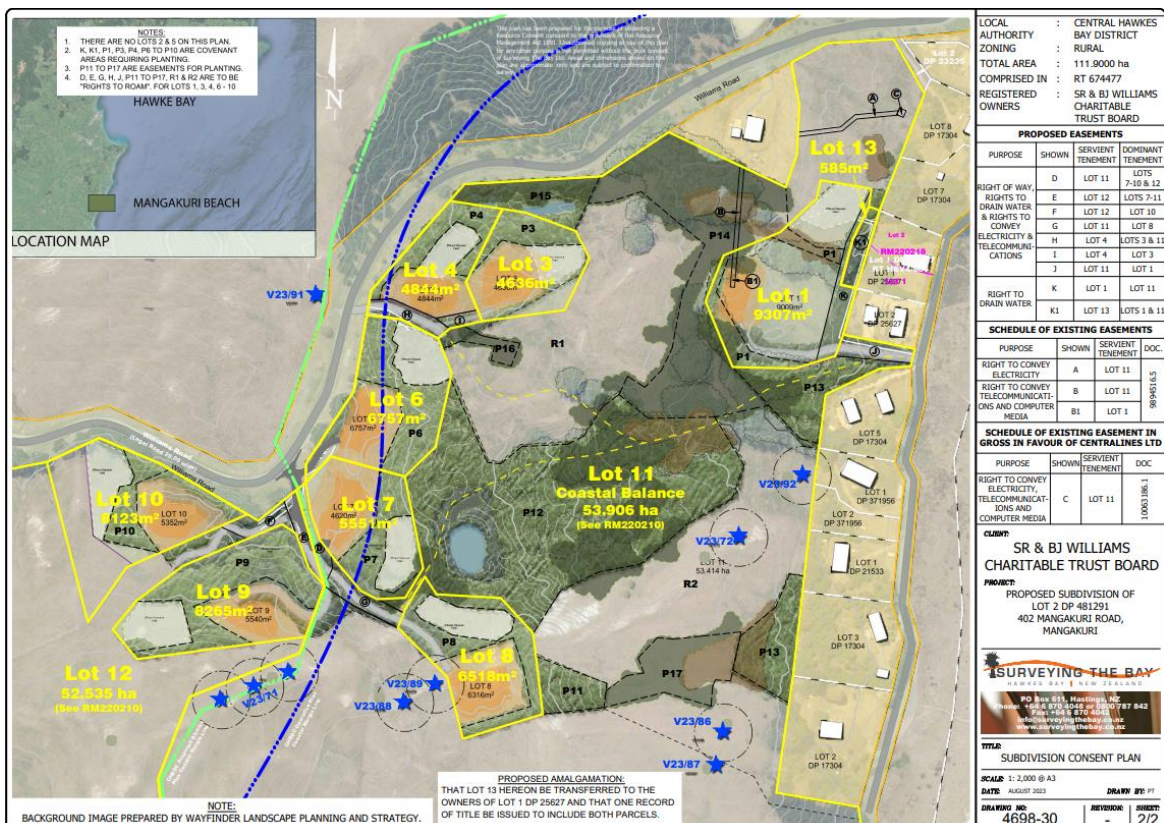


Figure 3: Proposed Subdivision Scheme Plan with identified ‘zones’ for landscape mitigation and coastal natural character enhancement (Excerpt from Appendix A1)

The proposal included a series of easements to facilitate access and rights to convey services (including telecommunications and electricity). In addition, all lots within the subdivision are intended to have ‘rights to roam’ to enable access to proposed walking tracks over the coastal balance lot (Lot 11). These are shown indicatively as the dashed yellow lines in Figure 3 above and are intended to connect the access for each to Okura Road and the beach beyond.

Lot 11 also features staged vegetation enhancement to establish native coastal vegetation and hillside stability plantings behind the existing beach settlement as explained in the Wayfinder Assessment (see Appendix D1). A comparatively smaller area of planting/revegetation is proposed around the access to Lot 12, the remainder of the lot is to be used for pastoral activities.

The application states that pastoral farming and potentially forestry activities are proposed on the

⁵ Being identified areas within the site as opposed to District Plan Zones.

balance lots (Lots 11 and 12). I understand that these activities are stated as the 'intended use' in accordance with the PDP permitted activities in the Rural Zone, as opposed to activities proposed concurrently with this subdivision application. The applicant has subsequently clarified that no land use consents are sought as part of this consent application⁶.

2.2 BUILDING PLATFORMS

Proposed Lots 1, 3, 4, 6, 7, 8, 9, & 10

With respect to Lots 1, 3, 4, 6, 7, 8, 9, & 10, the identified building platforms in Figure 3 above reflect the recommended and assessed building platforms by the applicant's consulting geotechnical engineers RCDL in the Geotechnical Report included in Appendix E of the revised application. The application explains that the *"overall objective for this application is for the vehicle access, building platform earthworks and stormwater related matters to be addressed and resolved as part of the subdivision"*⁷.

The application adopts⁸ the recommendations stated below from the RDCL Geotechnical Report (Appendix E). By this, I understand the applicant to mean that it will complete all earthworks associated with the construction of vehicle access and building platform and complete all stormwater infrastructure prior to seeking certification under section 224 of the RMA. The registered proprietors of each newly created lot will then be obliged to comply with any enduring requirement of the adopted conditions, including being in accordance with the recommendations contained within the Geotechnical Report for foundation design, an outcome secured by a consent notice. The conditions proposed by the applicant are repeated for completeness. These would be secured by consent notice.

Conditions Proposed by the applicant:

- *Lots 3 to 11 building platforms should be lowered (excavated) to form a level building platform and to reduce the risk of further land instability.*
- *Lot 1 should not be subjected to excavation at the toe of the slope due to risk of land stability.*
- *Lot 1 may be subjected to fill with geotechnical consideration.*
- *Where land falls below the building platform:*
 - *Building setback of 5 m is recommended inside the break in slope (slope crest) for all building platforms formed on cut where ground slopes away exceeding 20 degrees; and/or*
- *Where land rises above the building platform:*
 - *Building setback of 5m from the toe of slope is recommended where ground rises above the building platform (Lots 1).*
- *Building Platforms should be formed entirely within Natural ground (Cut). Engineered Fill should be designated for minor structures and landscaping only unless modified and certified acceptable.*
 - *All materials excavated from this site in preparation for being used as engineered fill should be tested to confirm the presence of expansive clay soils in accordance with NZS3604:2011.*
 - *Expansive clay soils can only be reused if modified.*
- *All cut slopes should be formed at 1V:1.5H and fills at 1V:2H.*

⁶ Applicant's AEE, pg 14.

⁷ Applicant's AEE, pg 14

⁸ Applicant's AEE, pg 25-26 states: *"The Applicant adopts these recommendations which can be applied as s224 conditions in regard to the engineering design and earthworks, while those recommendations relating to future building design, location and servicing will need to be applied as consent notice conditions"*.

- *Subsoil drains should be installed where seepage occurs relative to the building footprint or fill placement and in particular on the eastern side of the building platform and where appropriate for road access where seepage is observed.*
- *Cut-off drains to be installed above building platforms and road cuts.*
- *Due to the expansive nature of soils, strict control on planting is required. We recommend all cut and fill slopes and stormwater and effluent discharge areas to be planted with small shrubs and shallow rooting plants.*
- *Large tree species may not be planted within a horizontal distance equivalent to the mature tree height of any pertinent structure (house, road, stormwater, drainage).*
- *Stormwater Pond to be assessed and designed by competent engineers considering embankment suitability and slope stability”.*

Proposed balance Lots 11 and 12

No building platforms are identified for Lots 11 and 12. The application states that these lots have the ability to be developed in accordance with the permitted activity provisions of the ODP and PDP. However, the applicant has proposed consent notices⁹ for these lots stating that no dwelling shall be established unless any application for building consent is accompanied by:

- *a geotechnical report from a suitably qualified engineer verifying the appropriateness of the proposed building platform and associated access way for a residential dwelling; and*
- *an archaeological report from a suitably qualified archaeologist verifying that the proposed building platform and associated access will not modify or destroy any known archaeological sites”.*

2.3 PROPOSED EARTHWORKS

The applicant proposes to undertake earthworks associated with the construction of vehicle access, building platforms and the provision of drainage infrastructure prior to section 224 certification. The extent of these works are outlined in Appendix G1 and G2 of the revised application.

The preliminary volume estimates¹⁰ include the following:²⁸

- Topsoil stripping (generalised at a depth of 300 mm) – 6,150 m³.
- Cut from topsoil strip to subgrade (platforms and access) – 8,200 m³.
- Cohesive/approved fill required from subgrade level – 7,380 m³.
- Imported granular fill for access formations – 1,520 m³.
- Cut to waste – 820 m³.
- Total proposed earthworks volumes - 24,070m³.

The general location of earthworks to be undertaken within the site is included in Appendix G2 and H to the revised application. An excerpt of the ‘Cut and Fill Plan Overview’ from Appendix H is included below in Figure 4. Although not shown on these plans, the applicant has explained¹¹ that discrete stockpiles will be left on each of the building platforms for landscaping purposes and it is anticipated that excess cut waste material will be disposed of within the wider Mangakuri Station, being the adjoining site owned by the applicant.

An Erosion, Sediment Control Plan (ESCP) is proposed to be prepared and implemented to mitigate potential adverse effects from erosion and sediment-laden water. The ESCP will be developed in

⁹ Applicant’s AEE pg 17

¹⁰ Final volumes will be confirmed through detailed design.

¹¹ Applicant’s AEE, pg 28

accordance with the *Hawke's Bay Regional Council Guidelines for Erosion and Sediment Controls* (2009) and shall be submitted to the Council for certification. This is proposed to be required by a condition of consent.

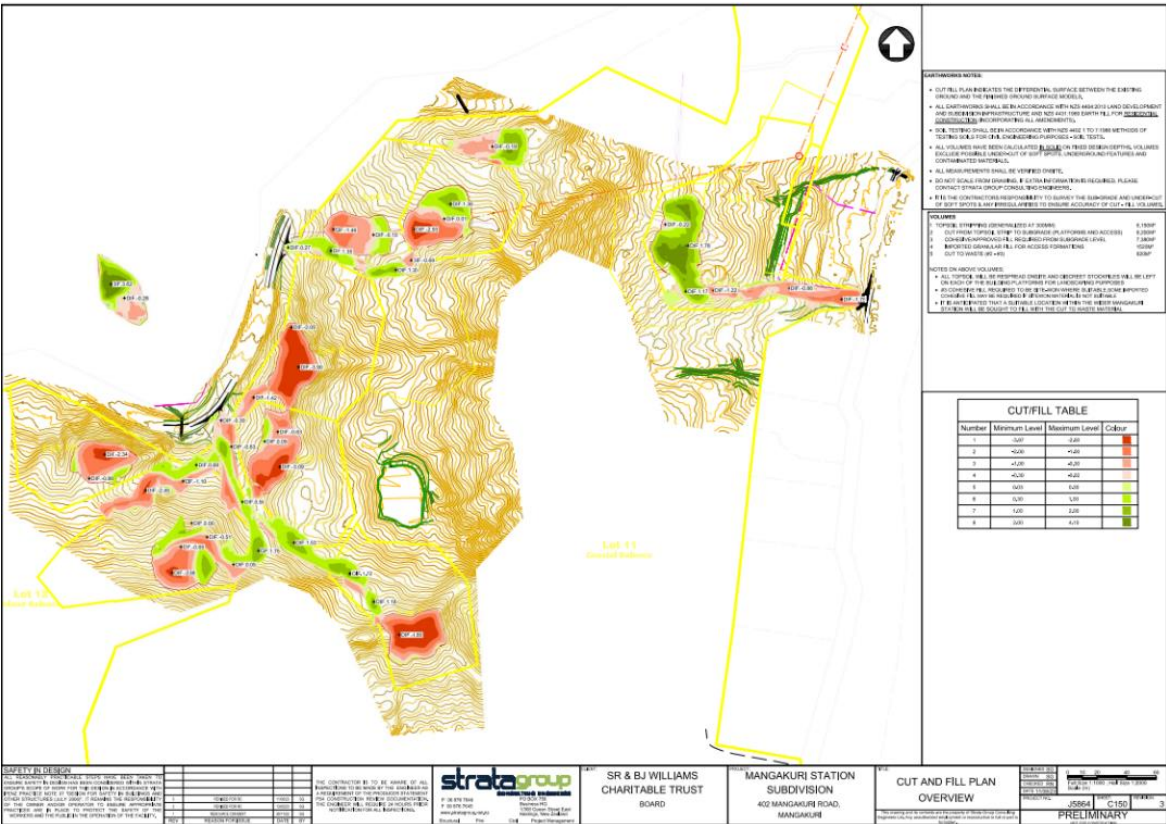


Figure 4: Cut and Fill Plan Overview (Appendix H)

2.4 SERVICING AND INFRASTRUCTURE

The manner in which the proposed allotments are to be serviced is set out in the AEE (Section 3.7 and Appendix G1 and G2). A brief summary is provided below.

Water Supply (including for firefighting purposes)

Water supply is to be provided via individual rainwater tanks established at the time of building development for each lot. All on-site water tank systems will be fitted with a 100 mm diameter firefighting coupling for firefighting purposes. The applicant offers consent conditions that requirements are imposed vis consent notices to this effect.

The applicant also proposes consent notices requiring compliance with SNZ PAS 4509:2008 Firefighting Water Supplies Code of Practice. The applicant indicates that this could be achieved through the provision of individual water supply tanks for each residential dwelling; however, shared provision for water supply for fire-fighting purposes may be explored at detailed design stage. In either scenario, the applicant offers a consent condition to ensure compliance with SNZ PAS 4509:2008 is achieved on an ongoing basis.

Wastewater

The Landscaping Concept Plan and Infrastructure Assessment submitted with the application include provision for on-site wastewater systems near each building platform on Lots 1, 3, 4, 6, 7, 8, 9, & 10. However, the provision of an on-site wastewater system will remain the responsibility for any landowner of the lots and the time of any future development.

Stormwater

The applicant explains that the stormwater design is to achieve neutrality, and not increase stormwater flow rates to any of the properties that adjoin the eastern boundary. With reference to the post-development catchment plan below, the applicant has confirmed that the following measures are proposed¹²:

- The redirection of run-off from proposed Lots 6, 7 and 8 building platforms – conveying this to the west for Lots 6 and 7 and south for Lot 8;
- Modification of the existing pond so a portion of the pond volume is utilised for stormwater detention and to restrict flow rates in Catchment B;
- Construction of a dry stormwater detention pond to restrict flow rates in Catchment C;
- Construction of a dry stormwater detention pond (dry pond B) to restrict flow rates from Catchment A; and
- Significant landscaped areas will increase evapotranspiration as well as improve slope stability and biodiversity (as is proposed in the Wayfinder Landscape Concept Plan).

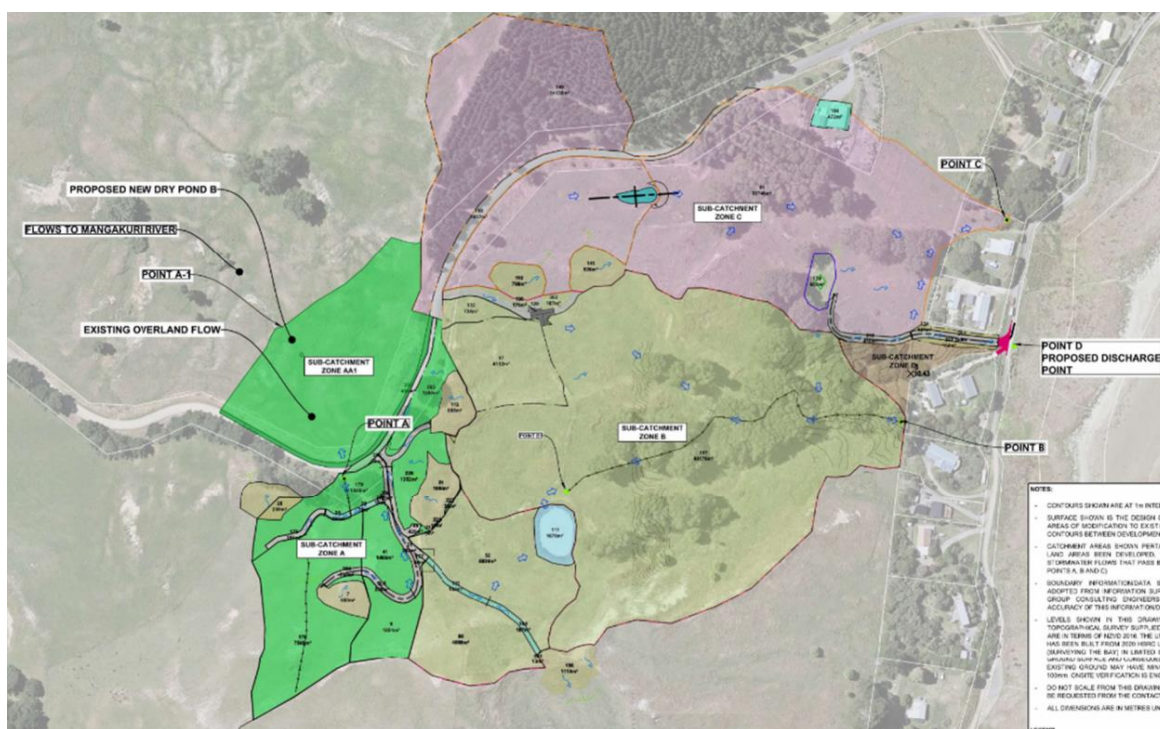


Figure 5: Post Development Catchment Plan (Stormwater) - excerpt from Appendix G2

On-site stormwater detention is also proposed for each lot (via stormwater tanks), enforced via a consent notice registered against each title. Further detention will be provided via improvements to the existing pond and include the construction of two new dry ponds within Lot 11. Bubble-up trenches are proposed for each rural lifestyle lot to disperse the stormwater flow over a wider area. These are proposed to be installed in a level line across the slopes, below the toe of any engineered fill, as shown on Sheet C210 (Appendix G2). The applicant proposes a consent notice that achieves the following:

“All water tank discharges from all 8 Lots within the subdivision shall be via bubble up trenches, and any other stormwater discharge from the building platforms shall be installed in a manner that does not result in any scouring or erosion at or downstream of the discharge point”.

On-site storage (stormwater tanks) are proposed for each of the 8 rural lifestyle lots in a manner which provides additional detention capacity in accordance with the requirements of 'A' or 'B', as set out in Table 4 below.

¹² Application Documents, Appendix G3, pg 13.

A. Top 700mm of one 25,000 litre tank, or top 350mm of two 25,000 litre tanks to be available for detention at all times

B. Top 500mm of two 25,000 litre tanks to be available for detention at all times

The table below demonstrates the proposed detention on each platform recommended to be enforced through a consent notice.

LOT	WATER TANK VOLUME REQUIRED FOR DETENTION (L)	DETENTION CONDITION REQUIRED	APPLICABLE TIME OF CONCENTRATION (VOL. REQ. = INFLOW-OUTFLOW x T.O.C) IN MINUTES	TARGET RESTRICTED OUTFLOW FROM TANK (L)
1	7800	A	10	0.87
3	11000	B	30	0.74
4	11000	B	30	0.74
6	7800	A	10	0.87
7	7800	A	10	0.87
8	7800	A	20	0.87
9	7800	A	30	0.87
10	7800	A	10	0.87

Table 4: Requirements of Proposed Stormwater Conditions

Electricity and Telecommunications

At Section 3.9 of the revised AEE,¹³ the application proposes that:

- In-ground ducts to electrical cables and telecommunication connections will be installed within the access corridors during construction to service future development.
- The applicant is determining whether to 'underground' the existing overhead lines which cross proposed Lots 3 and 4 or re-route the overhead alignment.
- Underground telecommunications cables pass through proposed Lots 3, 4, 11 and 1 which will require relocation away from identified building platform areas.
- The broadband repeater station (owned by Gecko broadband) is located at the proposed Lot 8 building platform, and the applicant intends to relocate the repeater station, as well as exploring options to provide hard-wired internet to all platforms.

The applicant proposes that a plan be prepared as part of the detailed design stage identifying all utility services within the development.

¹³ Applicant's AEE, pg 27

2.5 PROPOSED DESIGN CONTROL CONDITIONS FOR EACH LOT

The applicant proposes a number of design controls to be developed and applied to each lot via a consent notice condition, and that these must incorporate the following¹⁴:

- Buildings or structures may only be constructed within the identified Building Platform zone, with the exception of garden sheds or garden pergolas up to a maximum combined footprint of 16m², and in-ground swimming or spa pools up to a maximum footprint of 40m² which may be in the privately managed landscape area. No buildings or pools may be constructed in the Landscape Enhancement zone.
- The combined footprint of all buildings on any one lot must not exceed 250m².
- The maximum height of any building on Lots 3 – 9 inclusive shall be single storey and no greater than 6.5m in height. The maximum height of any building on other lots shall be 7.5m.
- Building cladding is to be timber or coloured steel/aluminium, or greywacke stone.
- No retaining walls are to be constructed on any lot that are greater in height than 900mm, and there must be at least 2.0m separation between any two retaining walls.
- All buildings, roofs, structures and retaining walls are to be finished in dark, earthy tones and have a reflectivity value of no more than 25%.
- All glass, including windows and fences, must incorporate a dark tint.
- All water tanks are to be positioned such that they are located behind any buildings when seen from the reserve area adjacent to the intersection of Okura and Williams Roads. Water tanks are to be coloured dark grey or black only.
- No commercial activities or buildings, including commercial or industrial sheds, are to be constructed on the site.
- No fences are to be constructed between lots. Fences are only permitted at the boundary between the residential lots and the retained farmland, or incorporated into the building design to provide screening or privacy within the Building Platform zone.

A Landscape Management Plan is to be prepared for the development, and must include the following:

- A plant species list comprising of New Zealand native plants that are appropriate to a Central Hawke's Bay coastal environment.
- A planting plan for the whole property demonstrating planting areas, species mixes, plant spacing, and specifying minimum planting size. The planting plan is to be consistent with the Landscape Concept Plan submitted as part of the application.
- A maintenance and management plan for all planting, including pest plant and animal control.
- Practical guidance for future landowners on how to successfully maintain each Landscape Enhancement zone across the site, either individually or collectively.
- Landscape detailing plans, including fences, signage and accessway designs.
- Any other information considered necessary to achieve a high quality landscape outcome.
- All building platforms are to be constructed.
- All planting within all Landscape Enhancement zones is to be undertaken by the applicant and the title owner.

The registered proprietors of the lots are to be obliged to complete the Landscape Management Plan by way of a consent notice condition proposed by the applicant.

¹⁴ Applicant's AEE, pg's 51-52

2.6 PROPOSED CONDITION TO LIMIT FRAGMENTATION

The application acknowledges that¹⁵:

“[T]he subdivision will result in a greater number of lifestyles sites being created from a single land title than anticipated by the PDP, therefore to mitigate potential inconsistency with RLR-P3 and GRUZ-P8 a condition is offered restricting subdivision from 3 separate Mangakuri Station records of title for a period of six years, as well as the same restriction being applied to balance Lot 11 by way of consent notice”.

To address this concern, the conditions proposed by the applicant,¹⁶ are set out below:

- A. That a Consent Notice pursuant to Section 221 of the Resource Management Act 1991 shall be issued by Council and registered against the certificate of title to be issued for Lot 11. The notice shall be registered at the consent-holder’s expense and shall read as follows:

That no lifestyle site can be subdivided from this site under Rule SUB-R5(1) of the Proposed Central Hawke’s Bay District Plan within a period of 6 (six) years from the date that this record of title is issued.

- B. That pursuant to section 108(2)(d) of the Resource Management Act 1991 the following land covenant in gross shall be registered on the Records of Title for Pt Lot 1 and Lot 2 DP 4588 (RT HB K2/396), Lot 1 & 2 DP 25804 and Lot 3 DP 481291 (RT 675091), and Lot 2 DP 582622 and Pt Lot 3 DP 4588 (RT 1090915) at the applicant’s expense, and shall be demonstrated to have been imposed, prior to the issue of RMA s224(c) certification:

That no lifestyle site can be subdivided from this site under Rule SUB-R5(1) of the Proposed Central Hawke’s Bay District Plan for a period of at least 6 (six) years from the date this land covenant is registered on this record of title.

The Records of Title to which the land covenant conditions referred to above relates are shown in the image below (shown yellow).

Subdivision for lifestyle sites in the Coastal Environment require resource consent as a Discretionary Activity under Rule SUB-R5(10) and not Rule SUB-R5(1). I note for clarity that I have considered this condition for the purpose intended, to limit further fragmentation through subdivision for a time-bound period (6-years), regardless of which specific clause in Rule SUB-R5 applies.

¹⁵ Section 92 Response letter 21 December 2023, pg 16-17.

¹⁶ Proposed conditions modified via email from Phil McKay to Ryan O’Leary, 7 February 2024.

3.0 RESOURCE CONSENT HISTORY

RM180095A

The applicant notes that the area of land subject to this subdivision application is substantially the same land included in the existing subdivision consent (RM180095A) variation granted on 1 March 2021. This decision was granted on a non-notified basis and is, at the date of this report, the subject of an application for Judicial Review in the High Court.

In the application, the applicant has stated that it *“intends to implement the subdivision in this application and upon the granting of this consent on satisfactory terms, the existing subdivision consent RM180095A that is the subject of the Judicial Review proceedings will be surrendered”*¹⁷.

RM220218

An application for subdivision was lodged on 22 December 2022 to subdivide 38 Okura Road, legally described as Lot 1 DP 25627, into two new lots. This neighbouring site, under the same trust ownership as the subject site, includes an existing dwelling located within the Okura Road settlement and shares a rear boundary with the subject site.

The layout of this subdivision included approximately 580m² of land to the rear of 38 Okura Road, within proposed Lot 2 of this application (RM220210). The application explained that this neighbouring land was included in the two lot subdivision of 38 Okura Road as it was *“likely that ownership and control of this land will be important to prospective purchasers – in particular in respect of vegetation which could shade any future dwellings on Lots 1 and 2”* It was also requested that a no build consent notice be applied to the rear portion of the two new lots created to reduce the potential for reverse sensitivity effects between the rural and residential activities, and ensure a natural environment landscape is maintained.

Consent to application RM220218 was granted on 24 May 2023 on the basis that this subject application (RM220210) would be completed first, to ensure the survey plan and issuing of titles is correctly sequenced.

As RM220218 has already been granted and part of the subject site overlaps with the land subject to that consent, it is assumed that the current application will be given effect to before RM220218, as RM220218 has a condition enabling a boundary adjustment with the land that overlaps.

While there is overlap on the land involved, each subdivision application submitted to Council is required to be assessed on its own.

RM 220210

On 29 February 2024, the Council granted a two-lot fee simple subdivision of the site to create two new lots, each to accommodate a new residential dwelling. The approved subdivision scheme plan and layout of boundaries is shown in Figure 1 below. Consented Lot 1 will be 54.174ha and Lot 2 will be 57.726ha. The decision was issued under delegated authority to an independent commissioner.

¹⁷ Applicant's AEE, pg 17.



Figure 7: Excerpt from the Approved Subdivision Scheme plan RM220210

Key components of the two-lot subdivision consent are briefly summarised below:

- Each lot has a nominated building platforms for residential dwellings.
- Vehicle access is provided via the existing farm access from Williams Road which is to be upgraded to a 10m wide shared right of way for Lots 1 and 2.
- Infrastructure servicing is proposed via on-site systems for wastewater and stormwater with water supply obtained from rainwater tanks.
- Any tank overflows and additional surface run-off from the building platforms is to be directed and dispersed via bubble up trenches positioned away from the eastern hill faces. Any excess stormwater from the building platforms and accessways is to be directed¹⁸ away from the eastern hill face to drain to the west via an existing 375mm culvert under Williams Road to Mangakuri Station (Lot 3 DP 481291), beyond the site boundaries, where a dry detention pond with restricted outflow is to be constructed. The discharge of stormwater to the adjacent Mangakuri Station will be secured via easement over Lot 3 DP 481291 in favour of proposed Lots 1 and 2.

The location of the building platforms, access ways and effluent disposal fields have been nominated and are shown in *Figure 8* below. Earthworks proposed and the location of building platforms have been informed by geotechnical assessments completed by RDCL Limited

I understand that this current application (RM230016) is an alternative to the RM220210¹⁹.



Figure 8: Excerpt from RDCL Geotechnical Report showing vehicle access, building platforms (green zones), 5m setback zone (red shaded) with approximate effluent disposal field locations overlaid (red circles).

¹⁹ The Form 9 included in the AEE (pg 2) described 220210 as being a separate application.

4.0 SITE DESCRIPTION AND SURROUNDING ENVIRONMENT

At the date of this report, the site is owned by the applicant and is legally described as Lot 2 DP 481291. It contains a total area of approximately 111.9ha and is comprised in Record of Title 674477. The site does not contain any existing dwellings and forms part of the applicant's pastoral grazing land known as 'Mangakuri Station'.

The general topography of the site is rolling to steep hill country ranging in elevation from 120m in the west to 20-30m on the eastern, ocean frontage. The south-eastern boundary has direct beach access with the remaining boundaries to the north-west fronting Williams and Mangakuri Roads. The north-eastern boundary of the site is adjacent to the Mangakuri Beach settlement on Okura Road. This settlement, which was historically part of the Mangakuri Station, consists of around 25 dwellings. It is the next beach settlement south of Kairakau.

The site currently contains several blocks of trees including a cluster of poplars in the north-eastern portion of the site and a mixed tree block in the north-western portion of the site. There are also several stock drinking water ponds spread over the site.

The wider environment consists of rolling hills and coastal farmland. Mangakuri Beach is defined by headlands to the north and south and relatively steeply rising topography behind the beach which separates the coast from the Mangakuri River. The river flows north to meet the coast at Kairakau Beach. The beach settlement of Kairakau is 6.4km to the north and Waipawa is 42km to the west.

The site is not located within any Statutory Acknowledgement Area.

Archaeological Sites

The site contains eight archaeological sites as shown in *Figure 9* below and as described in Table 5. Two of the archaeological sites are recorded and identified on the Proposed District Plan Maps. An additional six sites were identified and lodged with ArchSite as part of an Archaeological Assessment undertaken in support of the current application. All eight archaeological sites are now recorded in the Proposed District Plan – Appeals Version (May 2023) (**PDP**).

Site ID	Description
V23/71	Unable to be located during site survey
V23/72	Comprises 2 pits and 3 terraces descending 60m down a ridge.
V23/86	Midden, exposed by erosion slump
V23/87	Terraces
V23/88	Terraces
V23/89	Terraces
V23/90	Pits, modified by agricultural activities.
V23/92	Midden comprised of shell scatter.

Table 5: Recorded Archeological sites

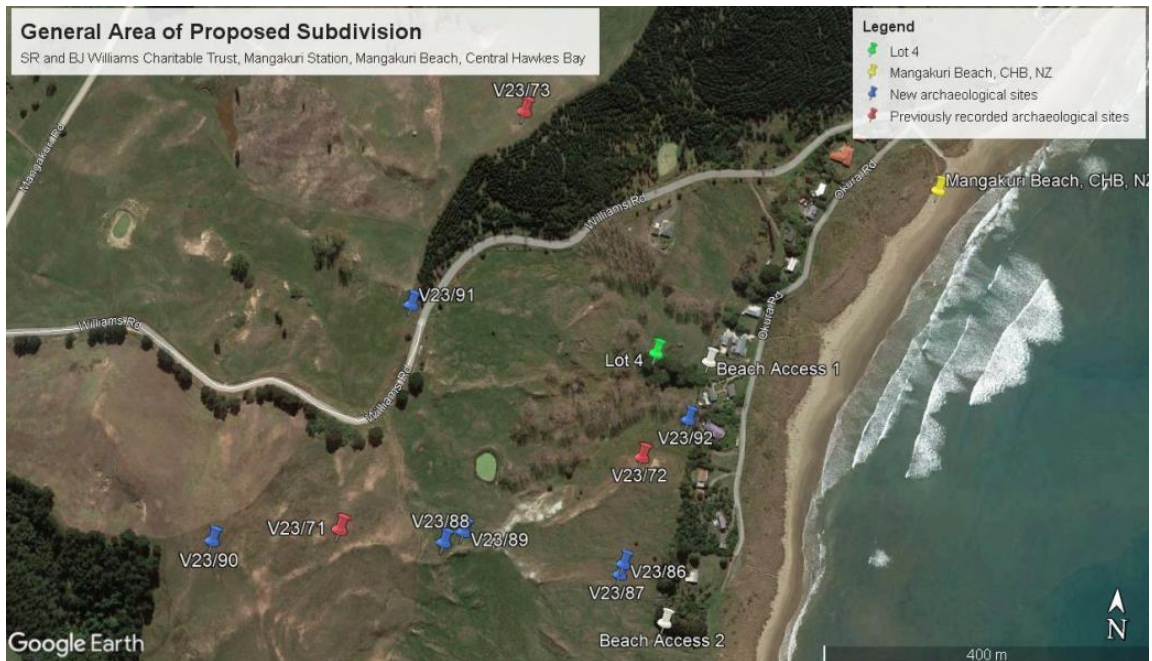


Figure 9: Excerpt from the Archaeological report showing indicative locations of previously recorded and new archaeological sites (Source: Archaeological Assessment of Effects, Heritage Services Hawke's Bay)

Zoning

Under the ODP, most of the subject site is located within the Rural Zone. Where the site meets the Mangakuri Settlement along Okura Road, a small portion of land is located within the Township Zone in the ODP.

Under the PDP Maps most of the subject site is located within the General Rural Zone (GRUZ). Where the site meets the Mangakuri Settlement along Okura Road, the same small portion is within the Large Lot Residential Zone (Coastal) in the PDP (shown as the beige area in Figure 11 below). The site is also within the Coastal Environment overlay.

The GRUZ encompasses the largest proportion of the rural area of the District, and is used primarily for primary production (including intensive primary production). The GRUZ also encompasses the coastal environment of the District, where this falls outside of the Large Lot Residential Zone (Coastal). GRUZ supports a wide variety of land based primary production activities. The District Plan seeks (through Policy GRUZ-P8) to limit residential and rural lifestyle subdivision in the GRUZ, that results in fragmentation of the rural land and/or that restricts the use of rural land for productive purposes.

The Introduction to the General Rural Zone states the following:

Rural-residential dwellers are often attracted to rural areas by the perceived quality of the rural environment, particularly its amenity values. Others choose to live in the country, as this is where their work is located, or because they were previously employed in the rural area. The rural environment is the residential location of necessity for farmers and other land users. Therefore, adequate rural living opportunities are required to support sustainable rural communities.

However, cumulative pressures and demands for rural living can generate tensions between those who opt for a rural lifestyle for open space, privacy, peace, and quiet, and

scenic values, and those who rely on the productive capability of the rural land resource. Rural living can result in reverse sensitivity conflicts, as residents with higher expectations of amenity move into a rural environment, where previously, noise, dust and stock movements were generally considered a usual aspect of the rural environment.

If increasing density of rural subdivision is allowed in close proximity to existing intensive primary production activities, it can undermine the viability of such activities should complaints about heavy traffic or objectionable noise, dust or odour arise.

Increasing density of subdivision can also intensify pressure on the range of infrastructure servicing (roads and reticulated services), and conflicts with infrastructure services for intensive primary production activities (e.g. if rural roads are expected to be of a higher quality).

In response to this issue, and the reverse sensitivity issues of rural subdivision on land-based primary production activities, any rural-residential living opportunities within the rural zones should be of a size, intensity and scale that is consistent with productive land uses so that the wider rural environment and associated land use activities are not compromised.

The PDP includes minimum lot size standards that provide landowners with sufficient flexibility and certainty to create sites which are of an appropriate size to achieve the scale, density and type of development provided for by the objectives, policies and methods for each zone and district-wide activity. The minimum lots size for the GRUZ is 20ha. However, a lifestyle site can be provided for as a controlled activity under Rule SUB-R5(1) provided only one lifestyle site is created every three years, and the balance lot is at least 20ha. The lifestyle site is to have a minimum net site area of 2500m² and a maximum net site area of 2.5ha.

As is stated further below, rural lifestyle subdivision within the Coastal Environment is assessed under a more stringent activity status under Rule SUB-R5(10) as a Discretionary Activity.

The day-to-day management of subdivision, use and development in the coastal environment retains an underlying zoning of General Rural Zone. Those zone provisions, along with the provisions in the District Plan relating to subdivision and network utilities, also come into play. In addition, the natural character of the Coastal Environment is to be preserved. However, this does not preclude use and development in appropriate places and forms, and within appropriate limits.

District Plan Notations

The Operative District Plan (**ODP**) map for the site includes the Coastal Margin boundary line as shown in red in *Figure 4* below. The PDP Map (as shown in *Figure 5*) does not include any Coastal Margin Area, and instead includes the Coastal Environment area to reflect the Coastal Environment as mapped in the Hawke's Bay Regional Coastal Environmental Plan. The PDP layers include the Tsunami Hazard (Near Source Inundation Extent), the Coastal Environment and eight recorded archaeological sites.



Figure 10: Excerpt from the Operative District Plan Maps. The eastern portion of the site where it adjoins Mangakuri Settlement is within the Township Zone

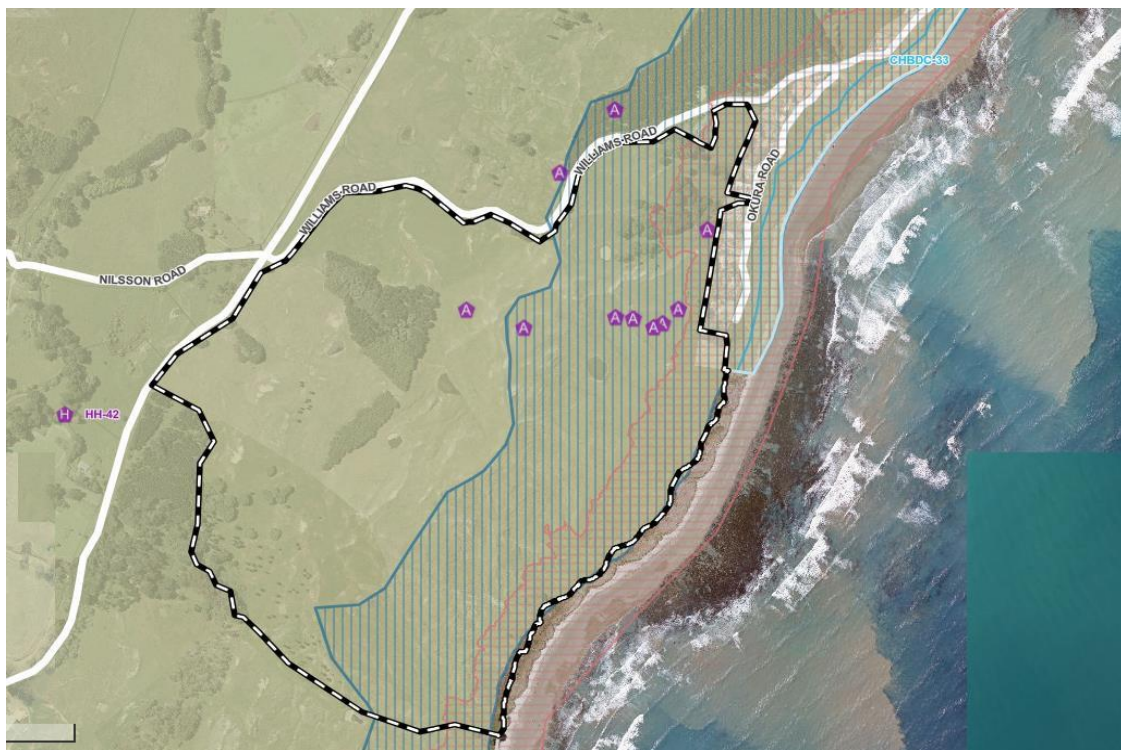


Figure 11: Excerpt from Proposed District Plan Maps Blue hatching showing the coastal environment and red hatching the Tsunami Hazard zone.

Hawke's Bay Hazard Portal

The Hawke's Bay Regional Council Hazard Portal identifies a number of coastal hazards on the eastern portion of the site. These include the application site being within the Coastal Environment, Tsunami Hazard (Near Source Inundation Extent) and a Cliff Shore Hazard Zone. Landslide hazards include areas of moderate earthflow risk in the west and severe earthflow risk in the eastern portion of the site. Images of these hazards are included in the assessment of natural hazard effects in Section 6 below.

5.0 REASONS FOR CONSENT AND ACTIVITY STATUS

The current application was received by the Council on 23 February 2023. At that time, the PDP had been notified, but decisions on the PDP were not notified until 24 May 2023. Appeals against decisions on the PDP closed on 7 July 2023 and are presently before the Environment Court.

Section 86B of the RMA provides that, in most cases, a rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified. While certain rules took legal effect upon notification of the PDP (for instance those relating to ecosystems, historic heritage and sites and areas of significance to Māori) none of the rules relevant to the current application (as set out below) had legal effect until 24 May 2023. Accordingly, at the time the application was lodged, the only relevant rules which had legal effect were those in the ODP.

Section 88A of the RMA provides when the type of activity for which the application was made is altered after the application is made, it continues to be processed, considered and decided as an application for the type of activity that it was for at the time it was first lodged:

88A Description of type of activity to remain the same

- (1) Subsection (1A) applies if-*
 - (a) An application for a resource consent has been made under section 88 and 145; and*
 - (b) The type of activity (being controlled, restricted, discretionary, or non-complying) for which the application was made, or that the application was treated as being made under section 87B, is altered after the application was first lodged as a result of-*
 - (i) a proposed plan being notified; or*
 - (ii) a decision being made under clause 10(1) of Schedule 1; or*
 - (iii) otherwise.*
- (1A) The application continues to be processed, considered and decided as an application for the type of activity that was for, or was treated as being for, at the time the application was first lodged.*
- (2) Notwithstanding subsection (1), any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b).*

As the subject application was lodged on 23 February 2023, the activity status was set by the ODP, and it continues to be assessed according to that status.

For completeness, I note that regardless of whether the activity status of the application is impacted by the PDP, it is nevertheless relevant to the assessment of the application. I discuss this later in the report.

As noted, an assessment of the proposal's compliance with the relevant rules has been undertaken. The activity status is determined by assessing the relevant rules and associated performance standards in Sections 4 (Rural Zones) and 9 (Subdivision) of the ODP, and the relevant rules and associated performance standards of the PDP.

5.1 Operative District Plan

Appendix A of this report details my assessment of the proposal's compliance with the relevant rules of the ODP. The following non-compliances are noted:

Operative District Plan		
Subdivision Rules and Performance Standards	Compliance	Comment
<p>Rule 9.9.4 – <u>Discretionary Subdivision Activities</u></p> <p>iii. Any subdivision which does not comply with anyone or more Subdivision Performance Standards.</p> <p>ii. Any subdivision, within the coastal margin area of the Rural Zone or any area of significant nature conservation value or outstanding landscaping view, as shown on the Planning Maps</p>		<p>The proposed subdivision within the Township Zone will not comply with Performance Standard 9.10(g)(iii) (see below) and therefore must be assessed as a Discretionary Activity under Rule 9.9.4(i)</p> <p>The proposed subdivision within the Rural Zone contains the coastal margin and therefore must be assessed as a Discretionary Activity under Rule 9.9.4(ii).</p>
<p>Performance standard 9.10(g) – <u>property access</u></p> <p>iii. Where a lot has direct vehicle access to a road then vehicle access shall be subject to the vehicle access provisions set out in Chapter 8: Transport Rules, as they apply.</p>	Does not comply	<p>Williams Road is a 100km/ph road and is required by the performance standard to have sight distances of 170m in both directions. The southern access (Lots 6, 7, 8, 9 and 10) and the existing farm (Lots 11 and 12) are approximately 100m I each direction.</p> <p>The northern access to Williams Road (Lots 3 and 4) and the existing farm (Lot 11) will be have sight distances of approximately 50m to the north and 100 to the south. This vehicle crossing does not comply with the sight line distance requirements, refer to the Transport Rule below.</p>
Transport Performance Standards	Compliance	Comment
<p>Rule 8.5.2 (f) <u>Sight Distances from Vehicle Crossings and Road Intersections</u></p> <p>Unobstructed sight distances, in accordance with the minimum sight distances</p>	Does not comply	<p>Williams Road has a legal speed limit of 100km/hr however, operating speeds will be significantly lower. The posted speed limit requires a minimum sight distance of 170 metres. The sight distances for the vehicle crossing are over 100m in each direction but</p>

specified in Table 3, shall be available from all vehicle crossings and road intersections. <i>100km/hr: 170m sight distance</i>		less than 170m.
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Under **Rule 9.9.4 ii** any subdivision within the Coastal Margin Area of the Rural Zone, as shown on the Planning Maps shall be assessed as a Discretionary Activity. An excerpt from the Operative District Plan E-Map is shown in the Figure 10 above. The Coastal Margin is denoted by the red line.

Overall, the application is a **Discretionary Activity** under the ODP.

5.2 Proposed District Plan

An assessment of the proposal's compliance with the relevant rules of the PDP has been undertaken and the following non-compliances are noted:

Proposed District Plan		
Subdivision Rules	Compliance	Comment
<p>SUB-R1(1) – Subdivision not otherwise provided for.</p> <p>Where the following conditions are met:</p> <ul style="list-style-type: none"> a. Compliance with SUB-S1. b. The land being subdivided does not contain any part (or all) of the sites or areas identified in the following: <ul style="list-style-type: none"> i. HH-SCHED2. ii. SASM-SCHED3. iii. ECO-SCHED5. iv. ONL or ONF within NFL-SCHED6. v. CE-SCHED7. c. Compliance with: <ul style="list-style-type: none"> i. SUB-S4(1); ii. SUB-S5; iii. SUB-S6; iv. SUB-S7(1) and SUB-S7(2); v. SUB-S8; and vi. SUB-S9. d. Compliance with: <ul style="list-style-type: none"> i. SUB-S4(2) and SUB-S4(3) National Grid Subdivision Corridor; and ii. SUB-S4(4) and SUB-S4(5) Gas 	<p>Discretionary</p>	<p>A portion of the site to be subdivided is located within a natural hazard area, Tsunami Hazard as identified on the planning maps. Therefore, the subdivision does not comply with SUB-R1 e.</p> <p>The proposal also does not comply with the subdivision performance standard <i>SUB-S8 Property Access</i> which requires all new lots to have vehicular access to an existing, legal road that complies with the relevant provisions of the TRAN – Transport chapter. Refer to the Transfer Performance Standards below.</p> <p>As a result of these non-compliances, the activity would be a Restricted Discretionary Activity under Rule SUB-R1 (2).</p>

Transmission Network. e. The land being subdivided is not located within a Natural Hazard area identified on the Planning Maps. Compliance with SUB-S7(3).		
SUB-R5(10) – Subdivision for a Lifestyle Site in the Coastal Environment.	Discretionary	Compliance with the relevant standards are met because they are not relevant to this application.
Transport Performance Standards	Compliance	Comment
<u>TRAN-S8 Safe Sightline Distances</u> Vehicle accesses and intersections must be located to ensure that Safe Sightline Distances are maintained. The definition of safe sight distances includes the following note: Refer to the Land Transport Safety Authority's 'Guidelines for visibility at driveways RTS6' for further guidance on the location of vehicle driveways on the road network	Does not comply – Restricted Discretionary	Williams Road has a legal speed limit of 100km/hr however, operating speeds will be significantly lower. The posted speed limit of 100kph requires a minimum sight distance of 160 metres in accordance with RTS6. The sight distances for the vehicle crossing are over 100m in each direction, but less than 160m.

Of the above rules, SUB-R1 is subject to appeal and is therefore not treated as operative under s 86F. However, TRAN-S8 is not subject to appeal and is therefore treated as operative under s 86F.

On a bundled basis, the activity is to be assessed as Discretionary. This is also the activity status under the ODP, the relevant rules of which are still operative and therefore under 88A.

5.3 National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) came into force on 1 January 2012. The NES-CS requires consideration at time of change in land use, subdivision or earthworks on a piece of land upon which an activity on the Hazardous Activities and Industries List (HAIL) has/is or is more likely than not to have been undertaken. The NES-CS applies when *“a person wants to do an activity described in any of subclauses (2) to (6) on a piece of land described in subclause (7) or (8) (NES Regulation (5)(1)(a)”*.

Regulation 5(7) of the NES-CS states that a piece of land is a ‘piece of land’ that is described by one of the following:

- an activity or industry described in the HAIL is being undertaken on it;
- an activity or industry described in the HAIL has been undertaken on it; or
- it is more likely than not that an activity or industry described in the HAIL is being or has been undertaken on it.

Regulation 6(1) Methods specifies that there are only two methods that may be used for

establishing whether an area is ‘a piece of land’ that is subject to the NES-CS:

- 6(2) *By using the most up to date information about the area where the piece of land is located that the territorial authority holds on its dangerous goods files, property files or resource consent database or relevant registers or which it has available from the regional council.*
- 6(3) *By relying on the report of a Preliminary Site Investigation (PSI) stating that an activity on the HAIL is or is not/has or has not/been or is being undertaken on the piece of land or stating the likelihood of a HAIL being or been undertaken on the piece of land.*

A preliminary site investigation report was not submitted with the application.

The application states that the applicant does not have knowledge of any HAIL activities being carried out on the site, as there is no indication of HAIL activities within the site and it is unlikely that there have been any sheep dips or spray races. The site is rural but does not contain any farm sheds or stock yards.

A review of Hawke’s Bay Hazard Portal confirms that the site has not been listed as HAIL. I have checked the Council’s property files and did not locate any evidence of activities having been carried out on the site that would indicate potential contamination.

I am therefore satisfied the site is not a “piece of land” because it is highly unlikely an activity on the HAIL has been undertaken on the site in the past, and the proposal does not trigger any consenting requirements under the NES-CS.

5.3 Activity Status Summary

Overall, for the reasons set out above, the application is to be assessed as a **Discretionary Activity**.

6.0 PUBLIC NOTIFICATION ASSESSMENT AND RECOMMENDATION (SECTIONS 95A-95G)

Given the comprehensiveness of the application and assessment of environmental effects, I have focused this report on potential areas of contention, where further information has been required and where the applicant has adopted conditions in response to the Council’s experts’ review. Unless otherwise stated, I agree with and adopt the conclusions stated in the application and this report should be read in conjunction with the application.

This report should also be read in conjunction with the review reports of Council’s experts, who have informed my assessment. As with my assessment of the application, I have focused on potential areas of contention and responses to further information.

6.1 Public notification assessment s95A

Section 95A(1) of the RMA states that the consent authority must follow the steps set out in that section, in the order given, to determine whether to publicly notify an application for resource consent. Those steps are set out below.

Step 1: mandatory public notification in certain circumstances – section 95A(2) and (3)

Mandatory public notification is not required as:

- (a) the applicant has not requested that the application is publicly notified (s95A(3)(a))
- (b) there are no outstanding or refused requests for further information or the commissioning of a report under section 92(2)(b) (s95C and s95A(3)(b)); and
- (c) the application does not involve an application to exchange recreation reserve land under

s15AA of the Reserves Act 1977 (s95A(3)(c)).

Step 2: Public notification precluded in certain circumstances – section 95A(4) to (6)

Section 95A(5)(a) requires consideration of whether public notification is precluded where one or more activities in a resource consent application are each precluded by a rule or national environment standard.

There are no rules relevant to this proposal that preclude public notification.

Section 95A(5)(b) precludes public notification when an application for resource consent relates to a:

- controlled activity; or
- restricted discretionary, discretionary or non-complying boundary activity.

The application is for a **Discretionary Activity** but is not a boundary activity. Accordingly, public notification is not precluded under this provision.

Step 3: Public notification required in certain circumstances – section 95A(7) and (8)

Section 95A(8) provides that public notification is required if:

- the application is for a resource consent for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification (section 95A(8)(a)); or
- the consent authority decides, in accordance with s 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor (section 95A(8)(b)).

There are no rules in the PDP or the ODP that require public notification (section 95A(8)(a)).

Section 95A(8)(b) requires an assessment in accordance with section 95D as to whether the activity will have or is likely to have adverse effects on the environment that are more than minor.

In making this assessment, the Council may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect (section 95D(b)). In this case, all subdivisions of land require consent therefore there is no applicable permitted baseline.

It must also disregard any effects on those who own or occupy any land they own adjacent to that land (section 95D(a)).

For the purposes of this assessment, I have disregarded any effects on the persons who own or occupy any adjacent land (section 95D(a)). The land adjacent to the subject site is identified in Figure 12 below.



Figure 12: Map of properties to which Section 95D(a) applies

In terms of the other matters that the Council must disregard, the application is not for a restricted discretionary activity, there are no trade competition effects, and there have been no written approvals provided with the application (section 95D(c)-(e)).

The adverse effects of this proposal considered relevant to this application are:

A. Landscape, Natural Character and Visual Amenity Effects

Mr Shannon Bray of Wayfinder outlines the existing landscape character on Pages 4 and 5 of his assessment at Appendix D1 to the revised AEE. Mr Bray makes a distinction between the Mangakuri Settlement where the built form has a distinctly coastal, bach-like character; and, above the settlement where the landscape is predominantly pastoral farmland within Mangakuri Station. He describes the landscape as evidentially heavily modified. However, it still retains a coastal character, largely as a result of the low-density settlement, the presence of some replanted native vegetation, and the expansive dune area.

Mr Bray outlines a 'landscape-led' approach to the proposal, including the 'Design Controls' and the implementation of 'Landscape Management Plan', as referred to in Section 2.4 of this report. To assist in the assessment of effects, Mr Bray has prepared a visual representation of the proposed land use change included in Appendix D2 of the revised application.

Mr Bray's assessment of the landscape, natural character and visual amenity effects of the proposal are summarized below.

Potential Landscape Effects

Mr Bray describes the potential landscape effects of the proposal as follows²⁰:

The concept is to utilise generally poor quality farmland and enhance its character through significant coastal native revegetation. The associated dwellings have been designed to sit within this vegetation framework, with the new owners collectively responsible for maintaining an enhanced coastal amenity. As a result, an intended consequence is that landscape change will happen as a result of this proposal.

...

Therefore, putting the vegetation framework to one side, a notable additional change will be the introduction of built form across the site, breaking the linearity of the existing settlement and elevating the township area up the hillside. It is recognised that often the elevation of dwellings in coastal settlements can increase the dominance of built form over the natural coastal qualities, particularly if dwellings are expansive.

However, in this instance, the site is well contained, defined to the south by a prominent ridgeline that also marks the end of the existing settlement, and defined to the north and west by Williams Road. Design controls, limiting the upper sites (Lots 3-9) to a single storey, and controlling both colour and materiality will be imposed, alongside the requirement for all buildings (dwellings and any ancillary buildings) on each lot to have a combined footprint of less than 250m² (this will be applied to all lots across the site, noting that there is an additional restriction in the Operative District Plan requiring dwellings within the Coastal Area to be less than 200m²). In addition, the three ownership zones, particularly the Landscape Enhancement zones, will ensure that all buildings are integrated into the wider vegetation framework.

As will be further outlined below, the visibility of the proposal is also relatively limited. There are few, if any locations where all the proposed building platforms will be visible. The development will not appear as a new cluster of residential buildings, but rather a relatively scattered array that is contained within the same area of landform as the southern part of the existing settlement. In this regard, the proposal is consistent with the small scale of settlement that defines the character of Mangakuri, albeit that it will now include some elevated properties.

Overall, Mr Bray considers that the landscape effects are considered to be **low**²¹. The proposal is located within a highly modified landscape and introduces dwellings at a small, scattered scale within a confined site, albeit Mr Bray acknowledges that the existing landform is less modified.

Potential Natural Character Effects

No outstanding or high natural character area/features are identified on the site, recognised by any Regional or District statutory document. In Mr Bray's opinion, only the recovering dune area behind the beach holds any particular natural value and all of the waterways are highly modified and have little, if any, natural character value²².

²⁰ Appendix D1, pgs 11-12

²¹ The scale of effects used by Mr Bray is in accordance with the *Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines*, as set out in Appendix D1, pg 3.

²² Ibid, pg 12-13.

Mr Bray considers that the establishment of a significant framework of coastal native species can be considered an overall enhancement to natural character. As he puts it, the proposal does not attempt to fully restore the landscape to a natural state, but rather 'swing the balance away from highly modified' with the proposed dwellings and the continued operation of the farm through the centre of the site. He considers that the adverse effects on natural character resulting from the proposal will be **very low**.

Potential Visual Effects

Mr Bray considers that:

- From Williams Road, there will be sequential visibility of some of the upper-most lots, notably Lot 10, Lot 6 and Lot 4. For the latter two, it may also be possible to see Lots 7 and 3, but these will be largely screened by landform and vegetation.
- the two entrances to the site will be visible, particularly the upper most entry (Photograph 4) as this is located in alignment with a short straight section of the road climbing up the ridgeline.
- the visual experience of arriving at Mangakuri will largely be protected. This is first achieved after Williams Road has gone over the top of the ridgeline and has started to descend towards the beach.

Mr Bray surmises that:

"Considering visual effects overall, there is no doubt that the proposal will be visible from various public and private locations, and as identified under landscape effects, it will result in a change to the overall visual character (and amenity) of the site and wider landscape. However, the change and visual effects resulting from this change are not necessarily adverse. The extensive vegetation framework will enhance the naturalness of the site and help to visually integrate each of the dwellings. Proposed design controls will help to recess any built form, and the site is well contained within the landform (mostly below the skyline ridge). There is unlikely to be any shading or privacy effects.

*Overall, it is therefore considered that the visual effects of the proposal will be **low**".*

Overall, the adverse effects on Landscape, Character and Visual Amenity Effects will be **minor**.

B. Property access and traffic effects

Traffic impact effects have been addressed in the Traffic Impact Assessment prepared by East Cape Consulting (ECC) submitted with the application and reviewed by Mr Chris Rossiter at Stantec. The proposal is to upgrade the existing farm access vehicle crossing to the standard for residential use and for the ROW access to be established, prior to s 224(c) certification and titles being issued. Future maintenance of the ROW will be addressed via the easement instrument registered on the record of titles.

The addition of eight lifestyle lots will result in potential additional traffic movements of up to 155 vehicle movements per day. Mr Rossiter considers that this is well within carrying capacity for a two-way, two-lane rural road. It can therefore be considered that traffic effects on Williams Road and the wider transportation environment from an additional eight rural lifestyle lots plus two balance lots will be **less than minor**.

With regard to the vehicle access location, both the ECC and Stantec traffic experts agree that the vehicle crossing location on Williams Road will provide appropriate and safe ingress and egress for vehicles without the need to widen or upgrade the road frontage, or remove any roadside features. While it is noted that the required distance (160m) to meet the PDP permitted activity standards for sight lines related to accesses onto roads with a 100km/hr speed limit will not be met, the sight distance of just over 100m is considered acceptable in the specific location.

The formation of the access has been detailed in the Geotechnical report and the Civil Engineering report submitted with the revised application, having regard to the stability of associated earthworks. The assessment below on Natural Hazards includes further consideration of the hazard risks associated with access.

Considering the information provided by the applicant, the Council's traffic engineers and the conditions of consent offered by the Applicant, in relation to accessway formation, I am satisfied that environmental effects in relation to property access and on the safe and efficient operation of the roading network are considered **less than minor**.

C. Servicing

With no reticulated services at this location, wastewater, water supply and stormwater disposal are proposed to be managed on site. The servicing arrangements are summarised in Section 2.4 of this report and further outlined in the Strata Group Civil Engineering Report (Appendix G2). On behalf of the Council, Mr Hodson of Stantec has peer reviewed this Civil Engineering Report and generally consider the proposed servicing solutions to be acceptable. The following describes how effects are to be managed and the mitigation proposed by the Applicant.

Stormwater

The stormwater system for all lots has been designed to achieve hydraulic neutrality by requiring stormwater to be detained on site to be then slowly released.

The Strata Group report recommends that water supply tanks serve dual purpose for the required stormwater attenuation and have provided calculations to achieve this. It is noted that Lots 11 and 12 are not included in the recommendations by Strata Group. However, the applicant has confirmed that water supply tanks will also be provided for any building on these lots as part of development of that land use.

In addition to a recommended stormwater detention quantity to be retained on site, the proposed solution for dealing with tank overflows and additional surface run off from the building platforms is via the construction of bubble up trenches installed in a manner that does not result in any scouring or erosion downstream of the discharge point. Bubble up trenches disperse stormwater over a wider area and will need to be installed in a level line across the slopes, below the toe of any engineered fill. Recommended bubble up trench positions have been mapped and are positioned away from areas of fill and the anticipated wastewater disposal fields. The bubble up trenches are to be formed as part of the subdivision works, with a pipe connection available at each building platform.

A dry detention pond to be constructed to the north of Williams Road. The pond will have a restricted outflow allowing the pond to fill during rainfall events and slowly drain out, reducing downstream peak flow rates and increasing the time of concentration for the Catchment. This arrangement is to be secured via easement over Lot 3 DP 481291 (which is also owned by the applicant).

The requirement for a detention pond was based on run off calculations for four lots draining in this direction. However, the applicant has offered that “Dry stormwater detention pond B” (shown in Figure 24 of the Strata Group report) be constructed as a 224 condition as part of this application, with detailed design to be confirmed as part of the engineering approval process.

The applicant has confirmed that they are amenable to consent conditions which seeks to avoid or mitigate adverse effects from further development on Lots 11 and 12. A future building platform on Lot 11 would likely connect into the proposed stormwater infrastructure within this allotment. Given the size of Lot 12 (52.535 ha) there is likely multiple locations for building platforms and a range of options for mitigating potential adverse stormwater effects on-site.

Wastewater

An on-site wastewater system is proposed for each lot at time of building consent. Indicative sizing and disposal area requirements are noted in the engineering report, including slightly larger areas proposed for steeper slopes. Consent conditions are proposed in relation to ensuring geotechnical confirmation of slope stability in the areas proposed for wastewater disposal, or if alternatives need to be provided including a centralised system and or remote disposal areas beyond the individual lots.

Water supply

Water supply proposed relies on rain water storage tanks with treatment systems provided for potable water supply. Supplementary supply (likely tanker supplied) would be expected during dry-periods however this has not been assessed in the engineering report.

The report also notes that a 100mm coupling from tank is recommended to be included for fire-fighting purposes. It is recommended that consideration is given to requiring house sites to provide an alternative fire-fighting water supply in accordance with SNZ PAS 4509:2008, including volumes and access provisions.

Overall assessment

Overall, with the servicing recommendations stated above that will either be applied as consent notices on the title or as conditions of consent before title can be issued, the proposal will ensure that current and future buildings on the lots will be adequately serviced and adverse effects on the environment in relation to infrastructure servicing will be **less than minor**.

D. Natural Hazards

As noted above, a number of natural hazards exist on the site. The Hawke’s Bay Hazard Portal notes coastal hazards on the site include a Tsunami Hazard (Near Source Inundation Extent) and a Cliff Shore Hazard Zone. Landslide hazards include areas of moderate earthflow risk in the west of the site. An excerpt of the Hawke’s Bay Hazard Portal maps is shown in *Figures 13-16* below.

With regard to the Cliff Shore Hazard Zone (*Figure 13*), this hazard has been mapped by the Regional Council but there are no specific objectives, policies or rules that exist for this zone in the Hawke’s Bay Coastal Plan. The proposed building platforms are located outside of the Tsunami Hazard Zone (*Figure 14*) on higher ground. The PDP contains provisions to restrict ‘vulnerable activities’ within Tsunami Zones which include activities where larger numbers of people can congregate. The residential land use and farming activity are not considered vulnerable activities and higher ground for Tsunami evacuation is readily available in any event.



Figure 13: Excerpt from the Hawke's Bay Hazard Portal



Figure 14: Excerpt from the Hawke's Bay Hazard Portal



Figure 15: Excerpt from the Hawke's Bay Hazard Portal



Figure 16: Excerpt from the Hawke's Bay Hazard Portal

The geohazards on the site have been investigated and reported on by RDCL Ltd as part of the subject application. Council engaged geotechnical engineers at Stantec to peer review the initial RDCL Reports *Geotechnical Assessment Report, Project: 10-Lot Subdivision Mangakuri Beach*, dated 21 December 2022, submitted with the application. A number of iterations of the RDCL Reports followed as a result of questions from the peer reviewers.

Site investigations and stability analysis assessments resulted in a number of recommendations from RDCL to mitigate the risks posed by the presence of expansive soils and land instability on the site with the objective to reduce all geohazard risks to low. Recommendations are made for earthworks, future foundation types, wastewater and surface water controls. The recommendations in the RDCL Report should be read in conjunction with the applicant's engineering report by Strata Group that makes recommendations on earthworks, stormwater design, potable water and wastewater, based on the soil types present.

The RDCL Geotechnical Report concludes that the proposed building platforms for Lots 1, 3, 5 and 6 to 10 are suitable for residential development, provided the recommendations and Consent Conditions in this report are implemented. These recommendations and conditions are summarised in Section 2.2 of this report. It is noted that building platforms have not been considered by RDCL on the balance Lots 11 and 12, and these are stated as being “outside the scope of future development.” However, the applicant offers a consent notice²³ stating that no dwelling shall be established unless any application for building consent is accompanied by geotechnical report from a suitably qualified engineer verifying the appropriateness of the proposed building platform and associated access way for a residential dwelling.

The following tables shown below set out the initial risk (likelihood vs consequence) for the eight lifestyle sites, a summary of the mitigations required to reduce the risk, followed by the final residual risk. The assessment table shows that, with the recommended mitigations in place, the risk will be reduced for all lots where the initial risk is indicated as ‘moderate’ or ‘medium’ to ‘low’. The exception is in relation to potential land stability induced by an earthquake resulting from movement from the Hikurangi Subduction Zone (HSZ), referred to as the HSZ Induced Landslide.

Definitions for initial risk were provided in the report as follows:

- **High risk** is defined as **high likelihood and consequence** to either health & safety, financial or environmental without engineering control;
- **Moderate risk** is defined as being **possible** likelihood and medium consequence to either health & safety, financial or environmental without engineering control;
- **Low risk** is defined as **unlikely** occurrence and low consequence to either health & safety, financial or environmental without engineering control; and
- **Negligible risk** is defined as being **very unlikely** to no consequence to either health & safety, financial or environmental without engineering control.

In relation to residual land stability risk for the HSZ Induces Land instability, RDCL comments that²⁴:

“Land damage associated with the Hikurangi Subduction Zone (HSZ) Fault Rupture is likely to lead to widespread across the North Island region.

The Likelihood of this event occurring is proportional to the recurrence interval (1 in 500yr) event and is considered “Possible” (3).

The consequence of a HSZ event without engineering control is considered to be “Medium (3) due to large scale land instability leading to significant property damage and risk to life. Property damage includes damage to the building platform, structural damage to buildings, road access and potential loss of life in a large-scale landslide event.

The likelihood and consequence of damage can be partially mitigated by:

- *TA accepting 1 in 500-year Recurrence Intervals for large earthquake events.*
- *Strategic location of building platforms outside of known earth & debris flow;*
- *Building in accordance with current Building Act regulations and guidelines.*
- *1170.0 Importance Level 2 (IL2) structures designed to meet ULS (Life Safety) objectives.*

²³ Applicant’s AEE pg 17

²⁴ RDCL, Geotechnical Assessment Report, 21 December 2023

With the above engineering controls implemented, the likelihood of a large earthquake occurring remains “Possible”. The engineering control implemented could arguably reduce the consequence of damage from “Medium” to “Minor” on the basis of approximate cost of damage.

The Risk level remains “Moderate” and may be tolerated in certain circumstances (Subject to regulatory approval).

Hazard	Initial risk			Mitigation	Residual Risk		
	Likelihood	Consequence	Initial risk		Likelihood	Consequence	Residual Risk
Expansive Soils risk to building foundations & damage to access	Likely (B)	Minor (4)	Moderate	Building Platforms & site won't fill to be tested for expansive properties. Road access to consider expansive soil modifications. Enhanced Foundation Design for IL2 building structures & building design restrictions (Section 7).	Unlikely (D)	Minor (4)	Low
Land Instability (Shallow Crust EQ)	Likely (B)	Minor (4)	Moderate	Strategic location of building platforms outside of known earth & debris flow. Stability assessment to address theoretical risk. Reduction of building platform and slope height significantly reduces the risk; and	Unlikely (D)	Minor (4)	Low
				Building setback criteria moves the risk outside of the hazard. Planting and erosion protection.			
Land Instability (HSZ Induced)	Possible (C)	Medium (3)	Medium	Strategic location of building platforms Building in Accordance with current Building Act regulations and guidelines. IL2 structures designed to meet ULS (Life Safety) objectives.	Possible (C)	Minor (4)	Moderate
Land Instability (Rainfall Induced)	Likely (B)	Minor (4)	Medium	Strategic location of building platforms Stability assessment to address theoretical risk. Reduction of slope height at building platform significantly reduces the risk. Apply building setback restrictions. Planting	Unlikely (D)	Minor (4)	Low
Tsunami Risk (Lot 1 Only)	Unlikely (D)	Medium (3)	Low	No practicable engineering mitigation for Tsunami Risk due to likelihood of occurrence.	Unlikely (D)	Medium (3)	Low
Flood Risk	Possible (C)	Minor (4)	Medium	NZBC E1 minimum requirements for flood hazard	Unlikely (D)	Minor (4)	Low
Liquefaction Susceptibility	Unlikely (D)	Minor (4)	Low	Material composition and qualitative liquefaction assessment	Unlikely (D)	Minor (4)	Low

All risk assessments were revisited through the peer review process and provided in version 3 of the RDCL Report. Further clarification was sought from Mr Edward Guerreiro from Stantec who confirmed that, in its view, the applicant's agents have sufficiently demonstrated that the proposed building platform and accessway development will not exacerbate existing hazards or create any new hazards that might affect the site, or adjacent land. Final advice Council received from the peer reviewers at Stantec was as follows:

- *[RDCL] have come back with a risk matrix that suggests the risk of the 1/500 Hikurangi Subduction Zone can be made no more than moderate.*
- *The consequence is "minor", however due to the nature of the risk matrix this still technically puts this in the "moderate" residual risk category.*
- *Given the scale of the event (1/500 yrs) and the mitigations in place to ensure the effects are minor, in this particular case, we recommend the risk could be accepted. (If the HSZ goes off half the countryside will fall down).*

Considering the above conclusions reached by the Geotechnical Engineers regarding initial risk, the mitigations proposed to manage this risk, and the residual risk following adoption of this mitigation, I consider that environmental effects in relation to the geohazards that exist on the site can be appropriately mitigated through the imposition of consent conditions and consent notices offered by the Applicant, to the extent that the potential effects on the environment will be no more than minor. I consider that residual hazard risks are limited to the site only, and not the broader environment.

Further to the above, I consider that the proposed stormwater management, including on-site stormwater detention, bubble up trenches, and the construction of a dry stormwater detention pond on the applicant's property on the northern side of Williams Road, will also assist to mitigate potential land instability effects from stormwater runoff from buildings and access formation for both lots.

Overall, in light of the proposed mitigations, conditions and consent notices, and taking into account the residual risk, I consider that the natural hazard effects will be **minor**.

E. Effects on Archaeology and Historic Heritage

The site is of known historic heritage value with recorded archaeological sites present (see Figure 9 above) which are related to past Māori occupation. The applicant engaged Heritage Services Hawke's Bay (HSHB) to undertake an archaeological assessment field survey to assess any potential effects the subdivision may have on these sites. HSHB conclude that²⁵:

"The original subdivision plan was modified following the identification of six new sites in the area by Stella August and Wikitoria Moore who undertook the archaeological field survey on 15 June 2022. The new subdivision has avoided all the known sites, but extent [sic] of the subsurface features surrounding these sites is unknown. The number of recorded sites indicates this is a complex cultural landscape and more subsurface sites may be encountered during the development of the subdivision".

²⁵ HSHB, Archaeological Assessment of Effects: Pg 46

As noted above, no building platform locations have been identified for Lots 11 and 12. However, the applicant offers a consent notice stating that no dwelling shall be established unless any application for building consent is accompanied by an archaeological report from a suitably qualified archaeologist verifying that the proposed building platform and associated access will not modify or destroy any known archaeological sites.

The report recommends (and the applicant has offered consent conditions in this regard) that the removal of topsoil, and the excavation involved in the proposed earthworks to establish the building platforms be monitored by an archaeologist. If any archaeological material is uncovered, work is stopped and the material is investigated and analysed by the appropriate specialists. The applicant's AEE states that these recommendations have now been superseded by (and included within amongst other matters) the conditions of Archaeological Authority No: 2023/218, dated 18 November 2022, that the applicant has obtained for works across the site. Reference to this authority is to be referred to as an advice note for all future land development on the site.

I consider this advice note is also appropriate for this consent and if in place, the adverse effects in relation to archaeology and historic heritage will be **less than minor**.

F. Cultural Effects

General cultural effects relate to the risk posed from damage to known heritage sites, and any potential new sites that could be uncovered (accidental discovery). The above effects assessment in relation to historic heritage relates to past Māori occupation of the site which reflects the cultural significance of coastal environment to mana whenua. The applicant engaged with Kairakau Lands Trust (KLT) to understand the cultural effects of the proposed subdivision, commissioning a cultural impact assessment (CIA) report.

The CIA was prepared on behalf of Ngāti Hikatoa, Ngāi Te Oatua and Ngāi Tamara hapū and that the Trust is the mandated rūpu to represent these hapū on all Māori issues. An additional CIA was completed by Ngā Karanga Hapū o Kairakau, a separate entity representing the same hapū groups.

The CIA reports recognise and support the archaeological assessment completed in regard to protection of existing cultural heritage sites and any potential new sites. In relation to general cultural effects, I consider that with the Archaeological Authority in place, cultural effects will be **less than minor**.

G. Effects on the Coastal Environment

The site is partially located within the Coastal Environment of Central Hawke's Bay which is described in the Proposed District Plan as the area where coastal processes are dominant or significant. The PDP contains a new specific chapter on the Coastal Environment which recognises that, although already highly modified by rural activities and beach settlements, the Coastal Environment contains a distinct natural character and holds special significance and cultural association for mana whenua. Areas of high natural character are mapped in the PDP. The site is not within an area of the Coastal Environment that is mapped as having high natural character.

The ODP maps show the site to be partially within the Coastal Margin. There are no objectives and policies in the ODP that refer specifically to the Coastal Margin, Assessment Matter 14 in the subdivision chapter directs an assessment of effects of potential buildings that could be developed as a result of subdivision. This includes their effect on the natural character of the wider environment of the coastline, including loss of views, viewpoints and the apparent naturalness of the coastline.



Figure 17: The location of the building platforms as viewed from the beach.

In assessing the effects of the proposal on the Coastal Environment I have referred to Appendix D2 of the application, being the graphical attachment prepared by Mr Bray which includes images to demonstrate the visual impact of all proposed lots (including that included in Figure 17 above). Mr Bray assessment considered that visual effects from Okura Road and the beach will be very low. Based on Mr Bray's assessment I consider that the visual impact on the coastal environment will be **less than minor**.

H. Earthworks and Construction Effects

Extensive earthworks can have visual amenity effects on an otherwise predominately natural coastal environment. The earthworks chapter in the PDP introduces several controls on earthworks in the rural zone including the extent of cut and fill and maximum slope degrees. Earthworks are to be designed to reflect natural landforms. A preliminary assessment of the earthworks required to create the building platforms indicates that a land use consent for earthworks is not required.

The proposed development will generate accompanying construction related effects such as: construction noise and vibration; dust generation; construction traffic; temporary visual impacts; and, onsite construction activity. However, for development of this nature and scale, effects associated with construction works cannot be avoided altogether.

The applicant proposed to implement an ESCP during construction activities, employing a series of on-site measures to avoid or mitigate potential adverse effects from earthworks activities.

The applicant intends to complete the proposed earthworks and construction activities incrementally, in accordance with the staging plan provided. The earthworks areas will be progressively resurfaced and/or re-grassed/planted as each phase of earthworks is completed, leaving building platforms to be developed later (likely be future purchasers of the allotment(s)).

I consider that the potential construction effects on the environment will be localised; limited in extent and duration. The adverse earthworks and construction related effects are considered to be **no more than minor**.

I. Effects on Coastal Processes

The applicant intends to limit the location of proposed buildings to identified building platforms, albeit noting that no building platform has been identified for the balance lots (Lots 11 and 12). In terms of coastal processes, nominated building platforms are well set back from the sensitive intertidal coastal environment. Overall, I consider the effects on the Coastal Environment will be **less than minor**.

J. Fragmentation Effects

As outlined in Section 5.0 of this report, the Council's Decision on the PDP has been notified and has bearing on this application, including when determining the scale of effects. The Operative District Plan provided for a single Rural Zone and a relatively permissive planning framework to subdivision within that zone. Rural lifestyle development was provided for as a Controlled Activity where lots meet the minimum lot size of 4000m² (in addition to other relevant Controlled Activity performance standards)²⁶. This approach has led to ad-hoc subdivision of small lifestyle blocks throughout the District.

In contrast, the PDP provides clear *Strategic Direction* on the management of the *Rural Land Resource* at a *district-wide scale* and includes a clear delineation of associated rural zones, as outlined below:

- *RPROZ - Rural Production Zone*: encompassing the concentration of highly productive land in and around the Ruataniwha and Takapau Plains and Waipukurau, Waipawa and Otane;
- *GRUZ - General Rural Zone*: encompassing the bulk of the District's rural land (including a wide range of primary production and Coastal Environment where this falls outside of the Large Lot Residential Zone (Coastal)); and,
- *RLZ – Rural Lifestyle Zone*: providing for low density residential development in the District in close proximity to the main urban areas of Waipukurau and Waipawa.

The PDP provisions and policy direction outline a different regime for rural lifestyle subdivision in the General Rural Zone. For example, RLR-P3 seeks to *minimise* fragmentation and to *limit* lifestyle subdivision in the General Rural Zone. Similarly, GRUZ-P8 seeks to limit residential and rural lifestyle subdivision that results in fragmentation of the rural land and/or that restricts the use of rural for productive purposes. RLR-O3, RLR-P3 and GRUZ-P8 are further supported by the Controlled Activity Performance Standards SUB-R5 and SUB-R7. SUB-R4 provides for a Lifestyle Site outside the coastal environment with a maximum lot size of 2.5ha to be created every 3 years when accompanied with a (one) balance lot over 20 ha. SUB-R7 provides for a Lifestyle Site when associated with the creation of a Conservation Lot A more restrictive activity status (Discretionary Activity) applies under R5(10) when sites are located in the Coastal Environment.

The PDP sets out the *Principal Reasons* for adopting the policies and methods, which explains (emphasis added):

“The subdivision of land will be primarily for the purpose of achieving a more efficient outcome for land based primary production around pastoral, cropping or forestry purposes. There may be the need to subdivide off a surplus residential building or provide for those property owners

²⁶ Subdivisions within the Coastal Margin, such as the subject site, are assessed as Discretionary Activities.

who may wish to subdivide their house from the farm and retire on the property, but these activities need a level of control. The Plan aims to prevent large numbers of small holdings in the rural environment, particularly on the highly productive land within the Rural Production Zone".

Policy GRUZ-02 seeks to achieve that the predominant character of the General Rural Zone is maintained, including the overall low-density built form, with open spaces and few structures; and, a predominance of primary production activities. Here, the proposal clusters a number of lifestyle allotments within close proximity to one-another. A total of 8 lifestyle sites are proposed to be created with two balance lots (Lot 11 at 53.906ha and Lot 12 at 52.535ha) both capable of containing further residential development in accordance with the permitted activity performance standards for the rural zone. Mr Bray's assessment does not specifically address future buildings within Lots 11 and 12 which could occur as permitted activities.

The PDP envisages that controlled lifestyle lots where they are provided for in the GRUZ appear one at a time every three years (outside the Coastal Environment). As outlined in Section 2.6 of this report, the applicant's proposed consent notice condition prevents further subdivision for a 6-year period on proposed Lot 11 and three record of titles associated with Mangakuri Station. These conditions address some of the potential fragmentation effects for the 6-year period that it applies for. However, the number of lifestyle sites (8) in a single application would be the equivalent of 21 years of fragmentation as may occur within the General Rural Zone under Rule SUB-R5(1)²⁷. These lots are also closer together than controlled lifestyle subdivision across that station would provide for.

I have considered the proposed lifestyle sites in addition to those permitted buildings within Lots 11 and 12, and, in combination with the extent of landform modification proposed. Applying the 'lens' of the PDP and the change in policy direction and changes signalled by associated provisions within the PDP, I consider that the resultant fragmentation adverse effects on the environment will be **more than minor**.

Summary

Overall, on the basis of my assessment above, I consider that any adverse effects on the wider environment will be **more than minor**.

Conclusion under Section 95A – Step 3 s95A(7)(a):

I have set out my reasons above as to why I consider that the adverse effects on the wider environment will be **more than minor** in accordance with s95D. Should the Council's decision maker agree with this recommendation then the consent authority must publicly notify the consent application as per s95A(7)(a).

In the event that the decision maker reaches a different conclusion, that is, that the adverse effects on the environment are not more than minor(s95(7)(b)), then the decision maker must consider under s95A(9) whether special circumstances exist which warrant public notification.

Step 4: Public notification in special circumstances – s95A (9)

If an application has not been publicly notified because of any of the previous steps, the Council is required to determine whether special circumstances exist that warrant it being publicly notified.

²⁷ This 21-year period is based on consecutive applications being made under Rule SUB-R5(1) utilising the 3-year timeframe required to be assessed as a Controlled Activity. It is acknowledged that rural lifestyle subdivision within the Coastal Environment is assessed as a Discretionary Activity under Rule SUB-R5(10).

Case law has found that special circumstances to be those that are:

- exceptional or unusual, but something less than extraordinary;
- outside of the common run of applications of this nature; or
- circumstances which make notification desirable, notwithstanding the conclusion that the adverse effects will be no more than minor.

I have considered whether there are any matters which may amount to special circumstances. Below I have included the assessment of two particular matters which could be considered to meet the above tests:

1. Risks from natural hazards and the impacts of Cyclone Gabrielle.
2. Public interest in the application.

Risks from natural hazards and the impacts of Cyclone Gabrielle

As set out above, the site is one which is subject to several natural hazard risks. Cyclone Gabrielle devastated parts of the north island in February 2023 causing widespread damage to river catchments in the Hawke's Bay and heavy rain resulting in a number of slip events throughout the region. The event highlights the need for territorial authorities to ensure that the development and use of land generally considers natural hazard risks. With this in mind, particular attention has been paid to geotechnical matters with the applicant's geotechnical assessment being subject to a comprehensive peer review and a number of reiterations and clarifications resulted. This included further considerations of natural hazard risks following the impact of recent severe weather and if such events would create any change in the geotechnical effects assessment(s) provided.

In processing this application, I have considered the information before me and the advice of expert geotechnical and stormwater engineers in relation to the design of access, drainage and building platforms. I don't consider that public notification would produce any additional information that could add to an understanding of natural hazard risk associated with this subdivision. At this point and time, knowledge on the 'general unpredictability of weather events' is not something that is likely to produce information that is not already within the current state of knowledge readily available to the technical experts. I note also that the recent cyclone weather event resulted in new land categorisations for parts of Hawke's Bay where it was deemed that future flooding effects may continue to pose a threat to life and property. I note that the Central Hawke's Bay coastal environments were not re-categorised as part of this work.

For these reasons, I do not consider that concerns regarding known natural hazards risks across the site would meet the threshold of special circumstances.

Public interest in the application

While processing this application, Council received correspondence from residents of Okura Road including from Matthew McClelland KC, Karen Stoddard, David Allen and Mike Smith. I understand that these parties to be owners/occupiers of properties which I have identified as 'adjacent land' in Figure 12 above.

The primary concerns from these residents relate to the unstable nature of the hillside on the site that sits above their properties, and a general view that it is getting increasingly difficult to predict the impact of future rain events. The view was expressed that this in turn makes an expert's role in predicting likely outcomes from the effects of development, of limited value.

Summary of conclusions under s95A(9):

In conclusion, I consider that the effects on the wider environment will be more than minor under Section s95A(3) and therefore I recommend that the application proceed with public notification as required under s95(7)(a). The decision maker need not consider s95A(9) further (e.g. Step 4).

In the event that the decision maker reaches a conclusion that the effects on the environment are **not** more than minor (s95A(7)(b)) then the decision maker must consider whether special circumstances exist which warrant public notification (s95A(9)). In my opinion, I consider that there are no circumstances which warrant public notification under s95A(9) of the RMA.

Summary

In conclusion, I consider that the effects on the wider environment will be more than minor under section 95A(3) and therefore I recommend that the application proceed with public notification.

5.1 Conclusion of Notification

It is recommended that pursuant to Sections 95A and 95B of the RMA, application RM230016 for a **Discretionary Activity** is processed on a **publicly notified** basis for the reasons given above.

Recommendation prepared by:



Ryan O'Leary
Consultant Planner

Date: 10 April 2024

DECISION

Under delegated authority from the Council, I support the notification recommendation of the Consultant Planner.



Sophie Elliott
Resource Consents Manager
Central Hawkes Bay District Council

Date: 10 April 2024

Appendix A – Assessment of ODP Rules

Subdivision Rules and Performance Standards	Compliance	Comment
Operative District Plan		
9.10(a) – minimum lot size	Complies	The minimum lot size for the Rural Zone is 4,000m ² . The proposal complies with this requirement.
9.10(b) – road widening	N/A	The road frontage of the subject site is not subject to a road widening designation.
9.10(c) – water supply	N/A	The subject site is not connected to a Council reticulated water supply and this performance standard is not applicable. No new connections are proposed.
9.10(d) – sanitary sewage disposal	N/A	The proposed subdivision is in the Rural Zone. This performance standard relates to new lots in the Residential and Business Zones only.
9.10(e) – protection of vegetation	N/A	There are no notable trees (District Plan Appendix B) on the subject site.
9.10(f) – lot dimensions	Complies	Each new lot must be able to accommodate a 15 x 17m rectangle. The proposal complies with this requirement.
9.10(g) – property access	Complies	The proposed subdivision is in the Rural Zone. Both lots will have access to Williams Road via a shared vehicle crossing and right of way easement.
9.10(h) – construction standards for private vehicular access	Complies	All vehicle crossings will be formed and finished consistent with Rules 8.5.2 of the District Plan at the time of construction. Appropriate advice notes and conditions can be placed on the consent to ensure that the future access to this proposed lot complies with performance standard 9.10(g).
9.10(i) – construction standards for roads	N/A	A new road is not proposed.