

**PROPOSED DISTRICT PLAN HEARINGS PANEL
CENTRAL HAWKE'S BAY DISTRICT COUNCIL
AT WAIPAWA**

BETWEEN **JAMES BRIDGE**

 Submitter

AND **CENTRAL HAWKE'S BAY DISTRICT COUNCIL**

 Council

**LEGAL SUBMISSIONS ON HEARING STREAM 6
Dated this 10th day of November 2022**

GASCOIGNE WICKS
LAWYERS
BLENHEIM

Solicitor: Joshua S Marshall
(jmarshall@gwlaw.co.nz)

Submitter's Solicitor
79 High Street
PO Box 2
BLENHEIM 7240
Tel: 03 578 4229
Fax: 03 578 4080

MAY IT PLEASE THE HEARINGS PANEL—

- 1 These are the written legal submissions on behalf of James Bridge in support of his submissions falling for consideration under Hearing Steam 6 (Mapping and Miscellaneous) on the proposed District Plan. Three of James' submission points are relevant to this hearing stream. I have addressed each in turn below.
- 2 Accompanying these submissions are short evidence statements from:
 - (a) Steve Goodman – Farming Expert; and
 - (b) Angela McFlynn – Planner.

S105.024 – Rezone submitter's land from General Rural to Large Lot Residential

- 3 Mr Bridge is seeking the rezoning of part of his land north of Pourerere from General Rural to Large Lot Residential. See diagram below:

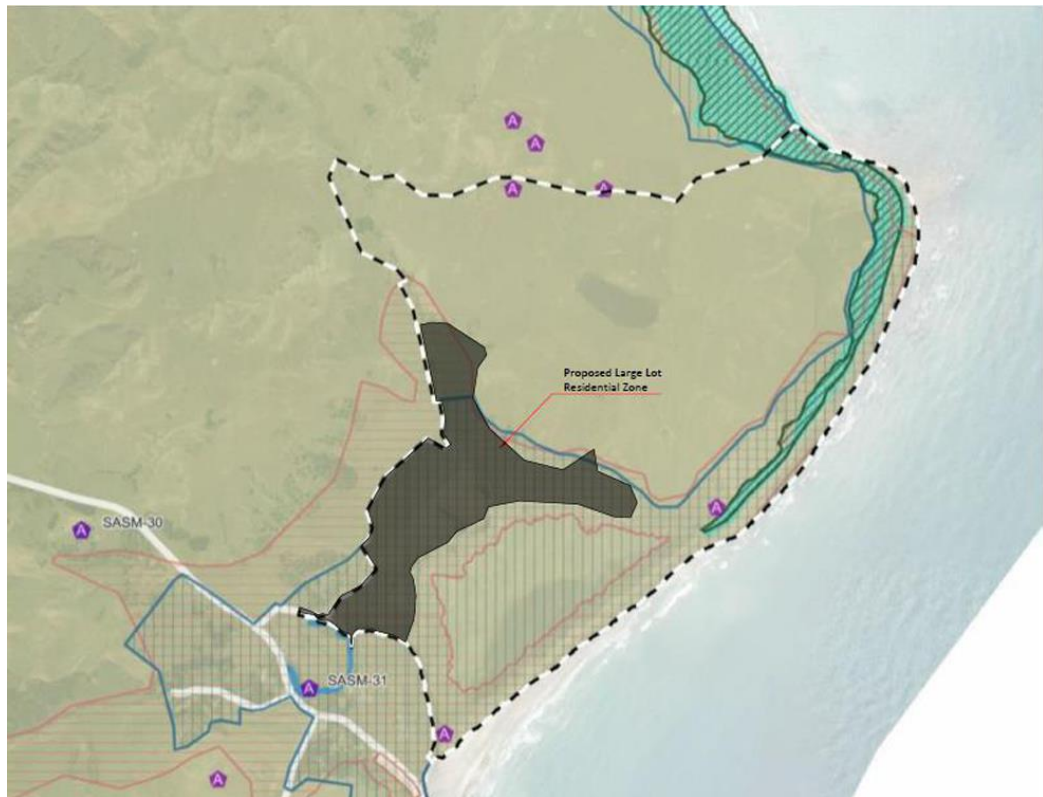


Figure 1 - Land Sought to be Rezoned

- 4 The land in question can be divided into three different categories:
 - (a) Part of the land at the south west has been subdivided into 20 residential lots each around 5,000 m² plus a communal lot of about 5,000 m² jointly owned by the owners of the 20 residential lots. I refer to this land as the “**Existing Subdivision Land**”.

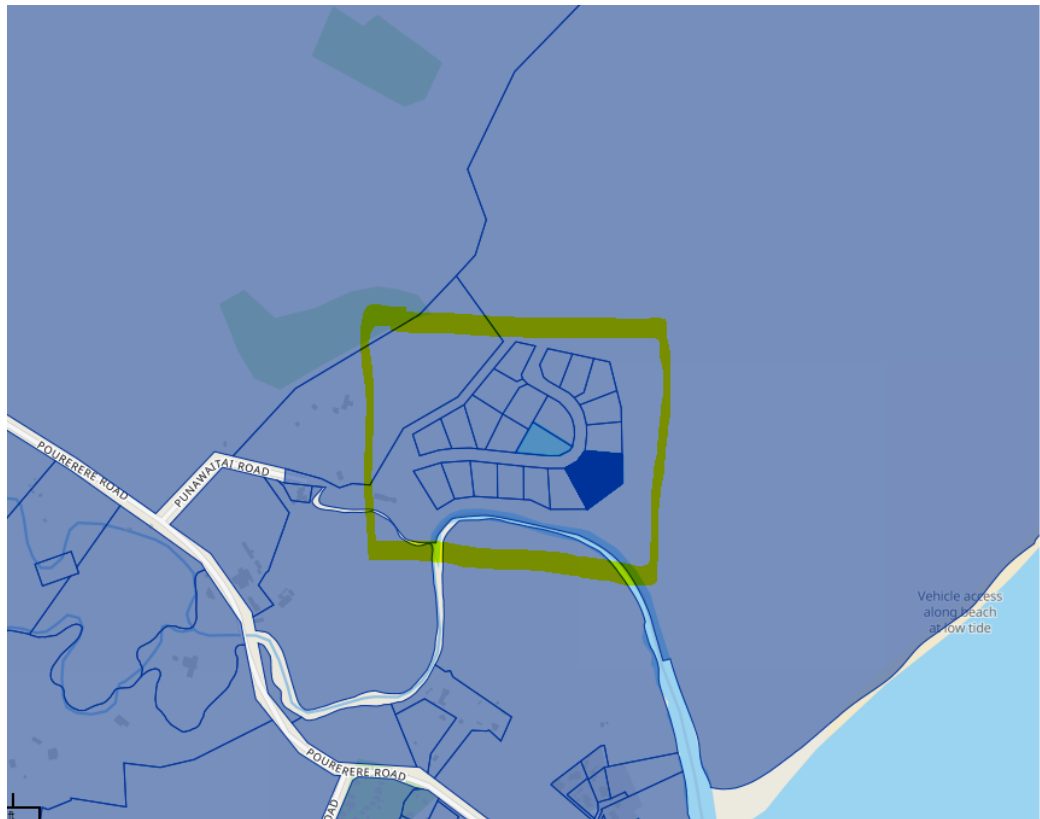


Figure 2 - Existing Subdivision Land Circled in Yellow

- (b) Part of the land is currently subject to an application for a resource consent to be subdivided into 48 residential allotments (plus 3 share open space allotments, 2 shared access allotments and 1 allotment for stormwater detention and treatment). I refer to this land as the **“Proposed Subdivision Land”**.



Figure 3 - Proposed Subdivision Land



Figure 4 - Proposed Subdivision Land relative to Existing Subdivision Land

(c) The remainder of the land is not currently subdivided nor is it under any application for consent to be subdivided.

5 Each of the lots in the Existing Subdivision have a covenant registered against them requiring them to be members of and comply with rules in a community incorporated society. Those rules are not generally consistent with primary production being carried out on the lots (see in particular schedule 2 of the rules attached to Ms McFlynn's evidence.

The 42A Report

6 The s 42A report recommends the submission be rejected.¹

7 While James maintains his position for the submission in relation to the Proposed Subdivision Land, he does not intend to call evidence on that. His is, however, calling evidence in support of rezoning the Existing Subdivision to Large Lot Residential.

Arguments for rezoning existing subdivision

8 The RMA regime and its associated national and local planning documents are fundamentally concerned with regulating effects on the environment. The critical question for the panel is 'what is the environment?'

9 As noted in the s 42A report and Ms McFlynn's evidence, the Existing Subdivision resource consent has not only been granted, but the consent has been implemented and new titles have been issued. Most of the lots have now been sold to third parties.² The existing environment is not one of rural production land but rather residential land. The covenants and rules registered against the title restrict what activities can occur on the land.

10 As noted in previous submissions to the panel, the zoning of the land needs to follow from the relevant policies in the proposed plan and in relevant national and regional planning direction. It would be legally incorrect for the zoning decision to follow from the consequences in the rules.

National Planning Standards

11 The national direction in the National Planning Standards require the Existing Subdivision Land to be rezoned.

¹ Section 42A report on Mapping and Rezoning Requests (Volume 1) at [20.2].

² Statement of Angela McFlynn

- 12 The National Planning Standards are relatively new: this proposed plan is one of the first to implement them. As such, they are not widely understood. It is tempting to assume that the Standards are essentially a technical drafting guide only guiding mundane matters such as formatting.³ However, this would be incorrect. The content of what may be included in National Planning Standards is very broad:⁴
- (a) The Standards may include any matter which could be included in a National Policy Statement.⁵
- (b) It may prescribe objectives, policies, methods, rules and other provisions which must be included in plans.
- 13 The Council is required to prepare its plan in accordance with the National Planning Standards⁶ and must give effect to them.⁷
- 14 The Zone Framework Standard states (emphasis added) “A district plan ... *must* only contain the zones listed in table 13 *consistent with the description of those zones* except for [special purpose zones under direction 3]”.⁸ An extract of Table 13 is set out below (emphasis added):

Zone name	Description
Large lot residential zone	Areas used predominantly for residential activities and buildings such as detached houses on lots larger than those of the Low density residential and General residential zones, and where there are particular landscape characteristics, physical limitations or other constraints to more intensive development.

³ In fact, early drafts of the bill providing for the national planning standards referred to them as the “national planning template”. However, the word “template” was replaced as it was considered misleading for this reason.

⁴ Section 58C.

⁵ Section 58C(2)(a).

⁶ Section 74.

⁷ Section 75.

⁸ Zone Framework Standards, Direction 1.

General rural zone	Areas used predominantly for primary production activities, including intensive indoor primary production. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location.
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- 15 The Standards are not merely imposing a drafting requirement with a selection of names which the Council is free to use when defining zones in their district. Rather, there is a substantive requirement that the zones set by the council in the district plan reflect the descriptions for the zone in the standards. To take an extreme example, it would be unlawful for the Council to zone an area of land as an “Airport zone” where there is no airport and no plan for there to ever be an airport on the land.
- 16 The General Rural Zone must only be used for land “used predominantly for primary production activities”. There is no prospect of any of the Existing Subdivision Land being used for any primary production activity in the future.⁹ The Existing Subdivision Land is wholly inconsistent with the description of the General Rural Zone in national direction and is far more consistent with the description for the Large Lot Residential Zone.
- 17 The purpose of the national planning standards is to address a matter that “requires national consistency”.¹⁰ The standards must be complied with. For this reason alone, the Existing Subdivision Land should be rezoned as Large Lot Residential.

Policies in Proposed District Plan

- 18 The various issues, objectives, policies and methods in the proposed district plan give guidance on the regulation of activities within particular zones. However, there is no policy guidance in the proposed plan as to how the zoning exercise should be conducted.

⁹ Mr Goodman’s evidence.

¹⁰ Section 58B

- 19 In the absence of policy guidance within the plan itself, the zoning decisions must follow the relevant national direction.

Matters in the s 42A report

- 20 The policies in the National Policy Statement for Highly Productive Land are not engaged for the Existing Subdivision Land. While the land is technically “highly productive land” under the NPS, the land as an existing environment has no productive capacity.¹¹ Rather, the land is already residential in nature. As the land has already been subdivided, it can be said that its residential development capacity is required and reasonably practicable and feasible. Since the rezoning will reflect the existing environment, there are no costs to rezoning.
- 21 To refuse to rezone as large lot residential an environment which already reflects a large lot residential environment would be an absurd outcome.
- 22 The s 42A author asserts that rezoning the Existing Development Land may require consideration of factors not considered by the Council when the resource consent was granted. I submit that, even if this were true, it is not relevant. The resource consent for the Existing Subdivision was granted under the planning framework at the time. It has been implemented and the subdivision is now part of the existing environment.
- 23 I submit that it is the job of the Council, when making the plan, to allocate appropriate zones to the district in accordance with the relevant policy framework and, in particular, in accordance with the descriptions in the Zoning Framework of the National Planning Standards. The plan should then, through appropriate policies and rules, regulate activities within each zone. The s 42A report author’s assertion that the rezoning assessment should consider the proposed rules framework for each zone is contrary to the law as established by the Environment Court and senior courts. It is similar to a discredited idea that policies in a plan should be drafted to conform with proposed rules.

S105.026 – Rezone coastal settlements generally

- 24 The submitter does not propose to call evidence on this point. The relevant legal points have already been made above for submission point s105.024.
- 25 In general terms, the Council, in drafting its plan, has a legal obligation to propose zoning which conforms with the zone descriptions in the Zoning

¹¹ Mr Goodman’s evidence.

Framework of the National Planning Standards. The plan, as proposed, does not do this for coastal settlements generally.

- 26 The purpose of district plans is also to “assist territorial authorities to carry out their functions in order to achieve the purpose of [the RMA]”.¹² The functions of a territorial authority include:¹³
- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district; and
 - (b) the establishment, implementation, and review of objectives, policies, and methods to ensure that there is sufficient development capacity in respect of housing and business land to meet the expected demands of the district.
- 27 The consequence of these provisions it that the council is under a legal duty to look to the future when allocating zoning under its plan. It is not sufficient for the zones to merely describe the current environment in the district. A district plan must plan for the future.
- 28 The zoning in the district plan as currently proposed for coastal settlements does not meet the Council’s legal obligations.

S105.025 – Remove “(Coastal)” from Large Lot Residential Zone name

- 29 As noted above, one of the express purposes of the National Planning Standards is to ensure national consistency. Furthermore, their implementation is mandatory, not merely recommended.
- 30 The National Planning Standards, in the Zone Framework Standard, when setting out a list of zone names which may be used, expressly provides an exemption in direction 3 for “special purpose zones” which may not conform to the 31 zone options in Table 13. This demonstrates that the authors of the National Planning Standards have expressly contemplated that, in some circumstances, the prescribed zones may not be appropriate. However, the authors have specified strict circumstances which must be met before such a zone may be used:

¹² Section 72.

¹³ Section 31.

- (a) The proposed land use activity or anticipated outcomes must be significant to the district, region or country;
 - (b) They must be impractical to be managed through another zone; and
 - (c) They must be impractical to be managed through a combination of spatial layers.
- 31 The fact that the authors have expressly provided for the Table 13 zones to be departed from but have set out specific criteria for this implies that no other departure from Table 13 can be allowed.
- 32 The section 42A author does not suggest that the special purpose zone criteria in direction 3 are made out.
- 33 Departing from the zone name set out in the standards is clearly contrary to their purpose of providing for national consistency, particularly where one of the issues the standards are trying to address is an inconsistency in naming conventions around the country.
- 34 The inclusion of the words “(coastal)” in the zone name could cause issues for people who are trying to categorise zones in a national database. It also has the potential to mislead someone not familiar with the plan into thinking it is a special purpose zone.
- 35 The label “(Coastal)” is not necessary as it is not necessary for someone to be able to identify from the zone name where the zone predominates.
- 36 Finally, the inclusion of the name “(Coastal)” is not future proof. It is conceivable that a person in the future could apply for a private plan change to rezone a particular block of land not near the coast as large lot residential. In that case, there are three options, none of which are desirable:
- (a) The new zoned area would be misleadingly described as “(coastal)”;
 - (b) There would be two large lot residential zones in the district: one coastal and the other not;

- (c) All existing large lot residential zones near the coast would have to be renamed needlessly complicating the private plan change application.

Dated this 10th day of November 2022



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Joshua S Marshall
Solicitor for Submitter