

# **Proposed Plan Change 6: Category 3 Landowner Subdivision Provisions**

## **Section 32AA Further Evaluation Report**

22 May 2024

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# 1. Introduction

## 1.1 Purpose of this Report

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

## 2. Section 32AA Evaluation Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3.2.1 Subdivision Entitlement for Category 3 Buy -out.

Options are:

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

### 3.2.2 Identifying community of interest for Category 3 affected land owners

Options are:

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

## 1. Evaluation of Options

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

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

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



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

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

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