

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

**Independent Panel Report to Hastings District
Council**

1 INTRODUCTION

- 1.1 Plan Change 6 (**PC6**) has been advanced and processed under the Severe Weather Emergency Recovery (Resource Management Streamlined Planning Process) Order 2023 (**SPP Order**).
- 1.2 Following the appointment of an independent panel under cl 16(1)(g) of the SPP Order comprising George Lyons (Chair) and Kitt Littlejohn (**Panel**), a hearing into the submissions made on PC6 was conducted on 5 June 2024.
- 1.3 This report is prepared to satisfy cl 16(3)(c) of the SPP Order and sets out:
 - (a) how the Panel has considered submissions; and
 - (b) the modifications the Panel has made to PC6 in light of the submissions.
- 1.4 In preparing this report the Panel has had particular regard to the further evaluation undertaken in accordance with s 32AA of the Resource Management Act 1991 (**Act**).¹
- 1.5 Clause 16(3)(b) of the OIC requires the Panel to comply with cls 10(1) to (3) of Schedule 1 of the Act. In accordance with these provisions, the Panel has prepared a decision on the provisions and matters raised in submissions (Appendix 1 to this Report) as well as a further evaluation under s 32AA of the Act (Appendix 2 to this Report). The further evaluation focusses on instances where the Panel has not accepted the recommendations in the s42A Report and has made changes to the provisions of PC6 following its consideration of submissions and other relevant matters.
- 1.6 Clause 16(3)(f) of the SPP Order also requires the Panel to prepare a summary document for the Council to submit to the Minister showing how PC6 complies with cl 83(1)(f) of Schedule 1 of the Act. The summary document showing how PC6 complies with the requirements of relevant national directions and the Act is included in Appendix 3 to this report.
- 1.7 Our report provides a summary of the background leading to the drafting of PC6, the summary of the key issues raised in submissions, describes the hearing process that was followed and explains the reasons for our decisions on the key issues and recommended changes to PC6.
- 1.8 Our recommendation is that PC6 be approved with modification and that the submissions be accepted or accepted in part, or rejected, as set out in Appendix 1.
- 1.9 Useful background to PC6 is set out in the s32AA Report and s42A Report. We have endeavoured to avoid undue repetition of what is set out in those reports in this report.

¹ Section 32AA Further Evaluation Report, dated 22 May 2024 (**s32AA Report**) (Attachment 9 to the s42A Report prepared for the hearing by Rowan Wallis (**s42A Report**)).

2 OVERVIEW OF PC6 AS NOTIFIED

- 2.1 PC6 is intended to assist property owners displaced by the flooding from Cyclone Gabrielle to find similar replacement housing within the district. It is a bespoke plan change which only applies to Category 3 landowners who have signed a voluntary buy-out agreement.
- 2.2 In the months following Cyclone Gabrielle, affected property owners identified that there were not a lot of housing options available for them within the area and community from where they had been displaced. Many of these property owners had small rural blocks or lifestyle units which they wished to replicate while remaining in the community. The Council investigated how it might assist in meeting these aspirations and ensuring that they had a safe living environment into which to relocate. Creating an easier pathway through the subdivision lifestyle process was identified as the best method of assisting.
- 2.3 PC6 is limited to those who have reached an agreement under the Category 3 buy-out process for several reasons. First, the plan change is being progressed under the Severe Weather Emergency Legislation (Resource Management Streamlined Planning Process) Order 2023, which is strictly confined in scope (as discussed below). Second, there is a desire to avoid undermining the general approach taken within the Hastings District Plan (**HDP**) to limiting lifestyle subdivision in Rural areas, in order to meet higher order district, regional and national planning objectives in relation to highly productive land.
- 2.4 In order to constrain the lifestyle subdivision opportunity to Category 3 landowners, specific eligibility criteria (in the form of performance standards to be met) were included within the proposed PC6 provisions. These include:
- There must be an unconditional buy-out agreement for the affected property or similar relocation offer which includes the permanent removal of the ability to use the affected Category 3 land for residential purposes. This is necessary to ensure the plan change is within the scope of the OIC and ensures there is no net increase in residential uses in the Rural area (because only where residential rights have been relinquished can they be re-established elsewhere); and
 - A statement by the Category 3 landowner must be provided which confirms that the new lot is intended for use by the landowner for permanent housing. This is necessary to meet the requirement of the OIC that the plan change is directed at providing permanent housing for people displaced by a severe weather event, rather than a wider pool of potential residents.
- 2.5 PC6 is intended to make the subdivision process for creating a replacement rural living or lifestyle site easier by removing the need to comply with the minimum site size standards for lifestyle sites in Table 30.1.6B of the District Plan. These include a minimum 20 ha balance being required on a Rural zoned site and a minimum and maximum site size for the new lot. In addition, there is a limitation that a lifestyle site may only be created once every three years. A failure to meet either of these rules results in such subdivision proposals being assessed as a non-complying activity.

As proposed, PC6 excludes subdivisions being undertaken to enable a new site to be created for a Category 3 landowner from having to meet these requirements and enables a one-off additional site of not less than 4000m² being created as a controlled activity, defaulting to restricted discretionary where certain proposed performance standards were not met.

2.6 The overall purpose and objectives of PC6 are:

- To provide a pathway for Category 3 landowners who have signed a voluntary buy-out agreement to relocate to a new site within their community
- To enable displaced landowners to move back into permanent housing as quickly as possible.

2.7 The provisions introduced through PC6 only apply to the Rural and Rural Residential zones within the district and not to land in the Plains Production Zone (**PPZ**) which comprises almost entirely of land classed as highly productive under the National Policy Statement – Highly Productive Land (**NPS-HPL**). The application of PC6 to this zone is further discussed in Section 4 of this report.

2.8 PC6 as notified proposed amendments to the subdivision section (30.1) of the HDP to:

- Insert a new objective and accompanying policies that support the creation of lifestyle sites within the Rural or Rural Lifestyle Zones for a permanent housing outcome where Category 3 landowners have surrendered the ability to reside on their cyclone damaged property.
- Provide a rule framework to enable the creation of sites for displaced landowners to remain within their community, where those sites would not otherwise be allowed under the existing rule framework.
- Introduce performance standards to ensure that the provisions only apply to Category 3 landowners who have been through the buy-out process and that the sites are within their community of interest.

2.9 As notified, these new subdivision provisions only apply to the Rural Zone and the Rural Residential Zones, with applicants envisaged to be from Category 3 properties in Aropoanui, Tangoio, Eskdale, Whirinaki, Dartmoor Road, Puketapu and Rissington areas of the district, along with those Category 3 properties within the Napier boundary. Maps of the Category 3 identified properties within the Hastings District are included in attachments 3 to 8 of the s42A Report.

3. CONSIDERATION OF SUBMISSIONS

3.1 PC6 was notified on 24 February 2024 and submissions closed on 22 March 2024. A total of 27 submissions were received for PC6.² The Panel reviewed all of the submissions lodged prior to the hearing.

² The submissions received on PC6 were also provided with the s42A Report.

- 3.2 The s 42A Report analysed the submissions under the following topics, generally reflecting the structure of the PC6 provisions:
- Plan Change in its entirety (Support or Opposition)
 - Scope of Plan Change
 - Objectives and Policies
 - Performance standards
 - Assessment criteria
 - Definitions – the community of interest radius
- 3.3 The Panel endorses the structure of the s42A Report and its assessment of submission relief points as grouped in the topics identified.
- 3.4 The s42A Report recommended accepting various relief points made in submissions and amending the proposed provisions of PC6 in response. In the result, a number of submitters chose not to attend the hearing on the understanding that the s42A Report recommendations reflected the likely outcome of the hearing process. Although it is the Panel who is delegated the ultimate decision-making role with respect to PC6 and submissions, the Panel advises that it has accepted all of the s42A Report recommendations except in relation to some important matters where it has preferred the outcome sought by submitters. These matters are discussed further below.
- 3.5 A hearing of submissions took place at the Hastings District Council Chambers in Hastings on the 5th of June 2024. The persons who attended the hearing and presented submissions and or evidence were:
- Andrew Torrens (Submitter 7).
 - Andrew Taylor (Submitter18).
 - Elliemarie Zugel – on behalf of Malcolm Redmond (Submitter 6).
 - Williams Family Trust (B Williams) (Submitter 19).
 - Ian Cadwallader (Submitter 15).
 - Bernadette Hamlin (Submitter 22).
 - Sue Averill (Submitter 20).
- 3.6 The Panel asked questions of submitters who attended the hearing.
- 3.7 The Panel records its gratitude for the further information provided to it by submitters.
- 3.8 The Panel is satisfied that it has properly considered all submissions on PC6.
- 3.9 By way of summary, the issues from submissions that remained in contention at the hearing were:

- a) Whether the plan change's provisions to allow the subdivision of a lifestyle site could be applied to land within the PPZ (i.e., land which is classed as highly productive under the NPS-HPL);
 - b) The performance standard relating to the length of time that a landowner who has gone through the Category 3 buy-out process has to lodge a subdivision application under the plan change provisions; and
 - c) The performance standard requiring replacement lots to be within the displaced landowner's 'community of interest', and whether the definition of that term should specify a distance radius from the original site, and if so, how much.
- 3.10 Our consideration of these issues in contention has resulted in our recommendation that PC6 be modified in certain ways. We discuss these modifications next.

4. MODIFICATIONS MADE TO PLAN CHANGE 6

- 4.1 In light of the submissions, the Panel has made a number of modifications to the provisions of PC6 as notified.
- 4.2 First, the Panel has adopted various changes recommended to the provisions in the s42A Report in response to submissions. Some of these changes were proposed in Attachment 2 to the s42A Report, whereas some were proposed after the close of hearing and by way of reply.³ These changes are shown in the tracked version of the PC6 provisions in Attachment A to this report. In adopting these changes, the Panel endorses the reasoning for the changes as set out in the s42A Report, or the Council's reply submissions, respectively. These reasons are further summarised in Appendix 1.
- 4.3 Second, in light of the submissions, the Panel has also modified PC6 as notified as follows:
- a) The Panel has deleted the idea of 'community of interest' being an additional prerequisite to constrain the location of replacement lots for Category 3 landowners. This includes deletion of:
 - references to this concept within the policies and explanatory provisions;
 - the defined term;
 - rule SLD16A (RDNN rule where subdivision applications do not comply with the 'community of interest' performance standard); and
 - performance criterion (4); and
 - new assessment criteria to be triggered for applications under rule SLD16A.
 - b) The Panel has amended performance criterion (2) to provide for the 2-year

³ Reply on behalf of Hastings District Council, 6 June 2024.

sunset to commence on the date the plan change is made operative, or on settlement of the buy-out agreement, whichever is the latter.

- c) The Panel has modified performance criterion 3 to ensure that PC6 gives effect to the NPS-HPL.
- 4.4 The Panel's reasons for the modifications summarised at 4.3(a) and (b) above are set out in Appendix 1, and also further evaluated in Appendix 2.
 - 4.5 With respect to the modification referred to at 4.3(c), the Panel records that this is not strictly an amendment that is within the scope of submissions, but is a modification that is necessary to ensure that the plan change gives effect to the NPS-HPL, and as such is made pursuant to those higher order directives that must be complied with.
 - 4.6 The NPS-HPL came into force in October 2022. The NPS-HPL provides national direction on how land identified as highly productive should be managed and protected. This has direct relevance for a number of the property owners displaced by the floods, particularly the Pakowhai and Dartmoor / Puketapu Category 3 landowners, as a large proportion of the land within their community of interest is classified as highly productive land and zoned Plains Production.
 - 4.7 The HDP actively discourages lifestyle subdivision in the PPZ with the only provision for such subdivision being where non-complying sized lots are to be amalgamated with an adjoining site and no additional sites will be created. The PPZ comprises almost entirely of Class 1-3 soils and therefore is classified as highly productive land and must be managed in accordance with the NPS-HPL. Clause 3.8 of the NPS-HPL states that territorial authorities must avoid the subdivision of highly productive land except in very limited circumstances, which are highly unlikely to apply to lifestyle subdivision. Clause 3.8(4) requires territorial authorities to include objectives, policies and rules in their district plans which give effect to the requirements of cl 3.8.
 - 4.8 In the course of considering the provisions of PC6, the Panel heard evidence that small areas of 'highly productive land' are also present within the Rural zone of the Hasting district and consequently could be affected by subdivision pursuant to PC6. A new rule allowing controlled activity lifestyle subdivision on highly productive land would not give effect to the NPS-HPL.
 - 4.9 However, rather than exclude the Rural zone from the plan change, and thus frustrate the effectiveness of PC6, the Panel has modified the proposed provisions to include a further performance standard that no new lot created under the plan change can be located on land considered to be 'highly productive' for the purposes of the NPS-HPL. Failure to achieve this standard defaults the subdivision proposal to a non-complying activity.
 - 4.10 With this modification, the Panel is satisfied that PC6 gives effect to the requirements of the NPS-HPL that lifestyle subdivision be avoided on highly productive land.

4.11 These further modifications are shown in the tracked version of the PC6 provisions in Attachment A to this report.

23 July 2024



George Lyons
Independent Panel Member
(Chair)



Kitt Littlejohn
Independent Panel Member

ATTACHMENT A

Proposed Plan Change 6 – Category 3 Landowner Subdivision Provisions (Tracked)

Tracking Key:

Changes included or ~~deleted~~ by s42A Report recommendation adopted by Panel

Changes included or ~~deleted~~ by Panel following consideration of submissions

Chapter 30.1 Subdivision and Land Development

Insert new Objective and Policies

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

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

**POLICY
SLDP23** Limit the ability to undertake Cyclone-Gabrielle related lifestyle subdivision to the provision of permanent housing ~~within an affected landowner’s community of interest for displaced~~ Category 3 landowners.

Explanation

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

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

The special lifestyle subdivision option is specifically to provide an opportunity for those

landowners whose residential property rights have been removed as a result of accepting a Voluntary Buy-Out offer [or an equivalent arrangement under the Kaupapa Māori Pathway](#), ~~to remain living close to the property from which they have been displaced, within their community,~~ to support and enable their recovery process.

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

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

Section 30.1.5 Rules

Insert new rule SLD7A

SLD7A	<p>Subdivision of lifestyle sites in Rural and Rural Residential Zones to replace Category 3 residential uses</p> <p>Subdivisions to create lifestyle lots in the Rural Zone and Rural Residential Zone which comply with all relevant Subdivision Site and General Site Performance Standards and Terms specified in 30.1.7.</p> <p>Note, compliance with 30.1.6 is not required.</p>	C
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~~Insert new Rule SLD16A~~

SLD16A	<p>Subdivision of lifestyle sites in Rural and Rural Residential Zones to replace Category 3 residential uses not meeting General Site standards and terms in 30.1.7</p> <p>Subdivisions to create lifestyle lots in the Rural Zone and Rural Residential Zone which comply with 30.1.7.AA(1), (2), (3) and (5) but do not comply with 30.1.7.AA(4) or one or more General Site Performance Standards and Terms in 30.1.7 not specifically listed.</p>	RDNN
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Section 30.1.6B Lifestyle Lots

SMA/Zone	Minimum Area	Maximum Area	Minimum Balance Area	Number of Additional Sites that can be created	Application must comply with the following:
3 year Rural lifestyle	4000m2 (net site)	2.5ha (net site)	20 ha (net site)	One only	<p>A site shall only be eligible to be subdivided to create a Lifestyle site under this rule once every three years, and at least three years shall have lapsed from the date the subject title was created.</p> <p>Where the subject title was created as the result of subdivision under rule SLD7A, the three year lapse period shall run from the date the previous subject title was created.</p>

Section 30.1.7 General Site Performance Standards and Terms

Insert new performance standard 30.1.7AA

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

1. Any application under this rule shall be accompanied by:
 - (a) an unconditional agreement with the Council under the Category 3 Voluntary Buy-Out Policy for a property purchase or relocation offer, or an equivalent agreement for whenua Māori under the Kaupapa Māori Pathway, which includes the permanent removal of the ability to use the Category 3 land for residential purposes; and
 - (b) a statement by the Category 3 landowner which confirms the new lot is intended for use by the landowner for permanent housing.
2. An application under this rule must be made within 2 years of [date PC6 becomes operative] or settlement entering of the Agreement above, whichever is later.
3. The new lot shall not be located within Category 3 Land, a Natural Hazard area identified as a River Hazard Overlay, the Coastal Environment, an Outstanding Natural Feature or Landscape identified in Appendix 43, a Wahi Taonga identified in Appendix 50,⁴ or on land in the Rural Zone defined as "highly productive land" for the purposes of the National Policy Statement on Highly Productive Land.
- ~~4. The new lot shall be within the identified Community of Interest area of the site that is being replaced.~~
5. The new lot shall be a minimum of 4000m².
6. A maximum of one new lot shall be created per Category 3 site being replaced.

Section 30.1.8 Assessment Criteria

~~Insert new Assessment Criteria 27.~~

~~27. Category 3 Replacement Lifestyle Subdivision~~

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

⁴ Note, this amendment to performance standard 3 was recommended by the s42A Report author at the hearing on 5 June 2024 as a minor amendment for clarity.

- a. ~~Whether the proposed subdivision achieves the purpose of enabling the development of housing in the Hastings district that is necessary or desirable to provide permanent housing for people displaced by Cyclone Gabrielle.~~
- b. ~~The proposed legal instrument for ensuring that the creation of the lifestyle lot is for permanent housing for displaced Category 3 landowners;~~
- c. ~~Consideration of whether the proposed site can reasonably be considered to be within the “community of interest” of the Category 3 affected property to ensure that the objective of allowing people to remain in their community can be achieved.~~

Chapter 33.1 Definitions

Insert new definitions

~~**Community of interest** means an area no further than 5 kilometres from the closest boundary of the relevant Category 3 land.~~

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

Proposed Plan Change 6 – Category 3 Landowner Subdivision Provisions

Chapter 30.1 Subdivision and Land Development

Insert new Objective and Policies

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

POLICY

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

POLICY

SLDP23 Limit the ability to undertake Cyclone-Gabrielle related lifestyle subdivision to
the provision of permanent housing for displaced Category 3 landowners.

Explanation

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

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

The special lifestyle subdivision option is specifically to provide an
opportunity for those landowners whose residential property rights have

been removed as a result of accepting a Voluntary Buy-Out offer or an equivalent arrangement under the Kaupapa Māori Pathway to support and enable their recovery process.

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

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

Section 30.1.5 Rules

Insert new rule SLD7A

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

SMA/Zone	Minimum Area	Maximum Area	Minimum Balance Area	Number of Additional Sites that can be created	Application must comply with the following:
<u>3 year Rural lifestyle</u>	<u>4000m2 (net site)</u>	<u>2.5ha (net site)</u>	<u>20 ha (net site)</u>	<u>One only</u>	<p><u>A site shall only be eligible to be subdivided to create a Lifestyle site under this rule once every three years, and at least three years shall have lapsed from the date the subject title was created.</u></p> <p><u>Where the subject title was created as the result of subdivision under rule SLD7A, the three year lapse period shall run from the date the previous subject title was created.</u></p>

Section 30.1.7 General Site Performance Standards and Terms

Insert new performance standard 30.1.7AA

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

1. Any application under this rule shall be accompanied by:
 - (a) an unconditional agreement with the Council under the Category 3 Voluntary Buy-Out Policy for a property purchase or relocation offer, or an equivalent agreement for whenua Māori under the Kaupapa Māori Pathway, which includes the permanent removal of the ability to use the Category 3 land for residential purposes; and
 - (b) a statement by the Category 3 landowner which confirms the new lot is intended for use by the landowner for permanent housing.
2. An application under this rule must be made within 2 years of [date PC6 becomes operative] or settlement of the Agreement above, whichever is later.
3. The new lot shall not be located within Category 3 Land, a Natural Hazard area identified as a River Hazard Overlay, the Coastal Environment, an Outstanding Natural Feature or Landscape identified in Appendix 43, a Wahi Taonga identified in Appendix 50, or on land in the Rural Zone defined as “highly productive land” for the purposes of the National Policy Statement on Highly Productive Land.
4. The new lot shall be a minimum of 4000m².
5. A maximum of one new lot shall be created per Category 3 site being replaced.

Chapter 33.1 Definitions

Insert new definitions

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

Appendix 1

Plan Change 6: Category 3 Landowner Subdivision Provisions

Independent Panel Decisions on Submissions

1. STRUCTURE OF DECISION REPORT

- 1.1 This decision report contains the Independent Panel's decisions on submissions on PC6.
- 1.2 The report follows the same issue-based structure utilized in the s 42A Report as follows:
 - a) Issue 1 - PLAN CHANGE IN ITS ENTIRETY (GENERAL OPPOSITION AND CONCERNS)
 - b) Issue 2 - SCOPE OF PLAN CHANGE
 - c) Issue 3 - OBJECTIVES AND POLICIES
 - d) Issue 4 – PERFORMANCE STANDARDS
 - e) Issue 5 – ASSESSMENT CRITERIA
 - f) Issue 6 – DEFINITIONS
- 1.3 A final version of the PC6 provisions as determined by the Panel is included in Attachment 1.

ISSUE 1: PLAN CHANGE IN ITS ENTIRETY (GENERAL OPPOSITION AND CONCERNS)

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Panel Decision
001.1	Daniel Pepper	All	Support with specific amendments	Supports the proposed provisions with the exception of one of the performance standards	Accept in part
003.1	Bex Smiley	All	Support	Support the plan change and seek that Council approve it	Accept
005.1	Andrew O'Connor	All	Support with specific amendments	Supports the proposed provisions and seeks that they be applied to Category2P	Accept in part
006.1	Malcolm Redmond	All	Support with specific amendments	Supports the plan but want to be able to subdivide 1.5 ha	Accept in part
007.1	Andrew Torrens	All	Support with specific amendments	Supports the Plan Change with the exception of the range of community of interest	Accept
008.1	Jill Hankin	All	Support with specific amendments	Supports the Plan Change with the exception of the range of community of interest	Accept
009.1	Brian Hankin	All	Support with specific amendments	Supports the Plan Change with the exception of the range of community of interest	Accept
010.1	Jaclyn Hankin	All	Support with specific amendments	Supports the Plan Change with the exception of the range of community of interest	Accept
014.1	Melissa Burn	All	Not stated	Do not rush through a plan change at this stage as further consultation with the community is required	Reject
015.1	Ian Cadwallader	All	Oppose	Most suitable land for Dartmoor Valley is on northern side and is zoned Plains	Reject
016.1	Hawke's Bay Regional Council	All	Support with specific amendments	Retain the general intent and purpose of PC6. Make adjustments to performance standards	Accept in part
017.1	Napier City Council	All	Support with specific amendments	Supports the provisions with the addition of changes to the definition of community of interest.	Accept in part
019.1	Williams Family Trust	All	Support with specific amendments	Generally supportive of the plan change with changes to performance standards and assessment criteria.	Accept in part
023.1	Gillian Wilson	All	Support	Support in full	Accept
024.1	A& J Maurenbrecher	All	Oppose	Withdraw or decline unless amendments sought are made	Reject in part
025.1	Te Kuini	All	Oppose	Oppose the subdividing of land to help with the housing crisis – How will this help the people of Kahungunu?	Reject

2. ISSUE 1 - SUMMARY OF REASONS FOR DECISIONS

- 2.1 Submission points 003.1 (Bex Smiley) and 023.1 (Gillian Wilson), expressing support for Plan Change 6 and seeking that the plan change be adopted, are accepted because:
- g) The plan change provides a pathway for Category 3 landowners to find permanent housing within their community.
 - h) The plan change will provide for the sustainable management of natural and physical resources by enabling displaced landowners to provide for their social, economic and cultural wellbeing and importantly for their health and safety.
- 2.2 Those parts of submission points 015.1 (Ian Cadwallader), 024.1 (A& J Maurenbrecher) and 025.1 (Te Kuini), opposing Plan Change 6, are rejected (but noting that the amendments suggested are considered under other topic headings within this decision), because not proceeding with the plan change will not provide a pathway for Category 3 landowners to achieve a permanent housing outcome within an efficient timeframe.
- 2.3 Submission point 006.1 (Malcolm Redmond), seeking that a decision be made allowing the subdivision of an area of his land for Category 3 affected landowners, is accepted in part because such a proposal is possible in theory under the provisions of the plan change, subject to the necessary criteria and standards being met for such an application.
- 2.4 Submission points 001.1 (Daniel Pepper), 005.1 (Andrew O'Connor), 007.1 (Andrew Torrens), 008.1 (Jill Hankin), 009.1 (Brian Hankin), 010.1 (Jaclyn Hankin), 016.1 (Hawke's Bay Regional Council), 017.1 (Napier City Council), and 019.1 (Williams Family Trust), supporting Plan Change 6 but seeking amendment to the provisions, are accepted in part for the same reasons set out in 1.1. The specific amendments sought will be considered under other topic headings in this decision.
- 2.5 Submission point 014.1 (Melissa Burne), seeking that Plan Change 6 be delayed to allow further consultation to be undertaken, is rejected because the Panel is satisfied that sufficient consultation has been undertaken, there are a significant number of landowners who are actively engaged in the voluntarily buy-out process and it is appropriate that there is some mechanism to assist them with moving forward in an expeditious manner.

ISSUE 2: SCOPE OF PLAN CHANGE

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Panel Decision
005.2	Andrew O'Connor	SLD7A	Support with specific amendments	Seeks that the provisions be applied to Category 2P properties	Reject
015.2	Ian Cadwallader	SLD7A	Support with specific amendments	Opposes the Plan Change and seeks that the Plains Zone land in the Dartmoor Valley be included.	Reject
016.4	Hawke's Bay Regional Council	Section 30.1 and 33.1	Support with specific amendments	Amend the Plan Change to allow the provisions to apply to landowners in Napier City who may find a site within Hastings District	Accept
017.2	Napier City Council	Section 33.1 Definition of Community of Interest	Support with specific amendments	Amend the definition of Community of Interest to include the subject property being within the Napier City boundary	Accept in part
027.2	Claire O'Connor-Bryant		Support with amendments	Include land across Napier boundary	Accept in part

2 ISSUE 2 - SUMMARY OF REASONS FOR DECISIONS

- 2.1 Submission point 005.2 (Andrew O'Connor), seeking that the provisions of Plan Change 6 be applied to Category 2P properties, is rejected because the plan change provisions are specifically for displaced property owners who have given up their residential right and category 2P landowners have a pathway for ensuring that their residential right is maintained while any risk to life can be mitigated.
- 2.2 Submission point 015.2 (Ian Cadwallader), seeking that the subdivision pathway be applied to the Plains Production Zone (**PPZ**) on the northern side of Dartmoor Road, is rejected because the National Policy Statement-Highly Productive Land (**NPS-HPL**) requires the avoidance of subdivision of highly productive land for lifestyle subdivision and the PPZ comprises predominantly highly productive land. Increased provision for lifestyle subdivision in the PPZ would also not achieve the objectives and policies of the PPZ.
- 2.3 Submission points 016.4 (Hawke's Bay Regional Council) and 017.2 (Napier City Council), seeking that the provisions of Plan Change 6 be applied to Category 3 landowners who have entered into a voluntary buy-out agreement with Napier City Council and have identified a site for subdivision within Hastings District, are accepted because that outcome is consistent with the over-riding purpose of the plan change.
- 2.4 Submission point 027.2 (Claire O'Connor Bryant), seeking that Plan Change 6 should be reciprocal and apply in both Napier City and the Hastings District, be accepted in part because Category 3 land owners within Napier City will be able to apply the provisions within the Rural and Rural Residential zones of Hastings District. This entitlement cannot be reciprocated in the Napier City District however, because Hastings District Council has no jurisdiction to amend the Napier District Plan.

ISSUE 3: OBJECTIVES AND POLICIES

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Panel Decision
013.1	Hastings District Council	Objective SLDO7 & Policies SLDP22 and SLDP23	Support with amendment	Include in the explanation to the objective and policies that the provisions are able to be applied under the Kaupapa Māori Pathway	Accept
021.1	Angela McFlynn	Policy SLDP23		Amend the policy to exclude Category 3 landowners in Pakowhai and introduce a new policy to allow landowners in this area to create a lifestyle subdivision outside of their area of interest.	Accept in part

3 ISSUE 3 - SUMMARY OF REASONS FOR DECISIONS

- 3.1 Submission point 013.1 (Hastings District Council), seeking that the explanation to the objectives and policies be amended to clarify that the provisions of Plan Change 6 apply equally to Category 3 landowners who have surrendered their residential rights under the Kaupapa Māori Pathway, is accepted because this provides a fair and equitable pathway for all Category 3 landowners.
- 3.2 Submission point 021.1 (Angela McFlynn), seeking amendment of Policy SLDP23 to exclude Pakowhai properties and a new policy to allow those landowners to create a lifestyle subdivision outside of their immediate community of interest, is accepted in part in that the 'community of interest' definition and related performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed in topic heading 4) and Policy SLDP23 is therefore to be amended as a consequence.

ISSUE 4: PERFORMANCE STANDARDS

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Panel Decision
001.2	Daniel Pepper	30.17AA	Support with amendments	Seek that the 4000m ² is amended to align with the displaced area bought out.	Accept
002.1	Katherine Basher		Support with amendments	A 5km radius provides no scope from Tangoio. A 10km radius would be better.	Accept in part
004.1	Rachelle Basher	30.1.7AA	Support with amendment	Extend the 5km radius to at least 20km.	Accept in part
007.2	Andrew Torrens	30.1.7AA	Support with specific amendments	Increase the radius or allow for the site to be created anywhere.	Accept in part
012.2	Troy & Tracey Duncan	30.1.7AA	Support with amendment	The 2 year sunset clause should start at the point the money arrives in the persons bank account.	Accept in part
013.1	Hastings District Council Policy Team	30.1.7AA	Support with amendments	Amend performance standard 30.1.7AA(1)(a) by including provision for whenua Māori under the Kaupapa Māori pathway. Include a new performance standard of "a maximum of one new lots shall be created per category 3 site being replaced."	Reject in part
016.4	Hawke's Bay Regional Council	30.1.7AA	Support with specific amendments	Amend the Plan Change to add a sunset clause so that the effects are temporary.	Accept
017.3	Napier City Council	30.1.7 AA(2)	Support	Supports the 2 year timeframe for the application to be made.	Accept
018.1	Andrew Taylor Surveying the Bay	30.1.7AA	Support with specific amendments	The sites should be excluded from the 3 year stand down period. The 2 year sunset period should be extended to 5 years.	Accept in part
020.2	Sue Averill	30.1.7AA	Support with amendment	The 2 year sunset clause should start at the point the money arrives in the persons bank account.	Accept in part
021.2	Angela McFlynn	30.1.7AA	Support with amendments	Include a provision in the performance standard to also allow owners of undeveloped sites that are no longer able to be built on to remain within the community to ensure that the plan change is fair and equitable to all affected landowners.	Reject
024.3	A& J Maurenbrecher	30.1.7AA	Oppose or Amend	Extend the sunset clause from 2 years to 5 years and delete the text in 30.1.7AA4 and replace with "The new lot shall be within the rural residential zoned areas and any areas currently identified by the Future Development Strategy (FDS).	Reject

4 ISSUE 4 - SUMMARY OF REASONS FOR DECISIONS

4.1 Submission point 001.2 (Daniel Pepper), seeking to have the land size aligned with the

size of the displaced land area, is accepted in part in that there is no maximum site size applied to the new site. The reference to 4000m² is as a minimum site size applied to any new site created under the Plan Change 6 provisions (i.e., there is no maximum site size applied so any landowner can make the new site any size they wish as long as it meets the 4000m² minimum to allow the on-site servicing requirements to be met.

4.2 Submission points 002.1 (Katherine Basher), 004.1 (Rachel Basher), and 007.2 (Andrew Torrens), seeking that the 5km 'community of interest' radius within which replacement sites can be created as a controlled activity be increased or deleted, are accepted in part by the deletion of the 'community of interest' performance standard because, in summary, it:

- a) serves no obvious resource management purpose within the context of PC6;
- b) is difficult to apply and administer as a performance standard given the personal (i.e., subjective) nature of what constitutes a 'community of interest'; and
- c) does not avoid, remedy or mitigate any adverse effects on the environment.

4.3 As this decision represents a substantial change from PC6 as notified we have further evaluated it pursuant to s 32AA (refer Appendix 2 to Summary Report). We note further that:

- Deleting this criterion would allow displaced landowners to find a replacement site anywhere within the rural or rural residential zones within the district, based on their preference, and would allow them to do so quickly and without consent hurdles.
- Although a proposed policy of the plan change notes that its provisions will be limited to enabling new permanent housing within the 'community of interest', ensuring new lots are within a defined radius of displaced lots is not an express objective of the proposal or PC6.
- Furthermore, the evidence we heard indicated that displacement areas do not consistently have capacity to provide for the lifestyle sites within the current rule framework and this represents an impediment to the attainment of the objective of PC6 which is to remove restrictions so that more capacity is available for Category 3 landowners.
- Being within a community is important for those landowners who need to continue to manage/service their land for productive purposes, but that is not the same for all landowners. The 'community of interest' concept thus potentially limits attainment of the objective of PC6.
- With the number of potential new replacement lots being quite small within the context of the district as a whole (166), the effects on the environment of not having a 'community of interest' requirement would be minor. As accepted by Council, no resource management harm would follow if the criterion was deleted.

4.4 Submission point 013.1 (Hastings District Council), seeking that performance standard 30.1.7AA(1)(a) be amended by including provision for whenua Māori under the Kaupapa Māori pathway, is rejected in part because the 'community of interest' definition and related performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed

below), and proposed restricted discretionary rule SLD16A and associated Assessment Criteria 27 deleted as a consequence.

- 4.5 Submission point 016.4 (Hawke's Bay Regional Council), seeking to have a sunset clause introduced so that it assists in providing a further incentive for this special subdivision provision to be exercised, is accepted in part in that the sunset clause is already applied to the provisions as notified, but is to be further amended to set a clear date from which the sunset period commences (see below).
- 4.6 Submission points 016.5 (Hawkes Bay Regional Council) 018.1 (Andrew Taylor, Surveying the Bay) and 024.2 (A& J Maurenbrecher), seeking that the extent of the sunset clause be lengthened to 5 years, is rejected in part because:
- a) A 5-year sunset period would be contrary to the purpose of the legislation under which the plan change is promulgated, which is to get displaced people back into permanent housing within their community by means of a streamlined planning process; and
 - b) The proposed 2-year sunset period, as further clarified by way of a specified commencement date (see below), is a realistic length of time to ensure that momentum of the subdivision process is maintained.
- 4.7 Submission point 017.3 (Napier City Council), supporting the 2 year time period for the lifestyle subdivision application to be made, is accepted because the sunset period proposed, as further clarified by way of a specified commencement date (see below), is a realistic length of time to ensure that momentum of the subdivision process is maintained be accepted.
- 4.8 Submission points 012.2 (Troy & Tracey Duncan) and 020.2 (Sue Averill), seeking that the 2-year sunset period should begin once the buy-out money is received in the bank account i.e. settlement date, is accepted because applying the date of signing as the commencement of the sunset period could put those people who need to have a longer settlement date at a disadvantage.
- 4.9 Submission point 018.1 (Andrew Taylor Surveying the Bay), seeking that subdivisions created under Plan Change 6 not be subject to the 3 years stand down period, is accepted because proposed rule SLD7A as notified provides for exclusion from the 3 year stand down period.
- 4.10 Submission point 021.2 (Angela McFlynn), seeking that provision be made in performance standard 30.1.7AA(1)(a) to include owners of undeveloped sites that are no longer able to be built on to remain within the community, is rejected because:
- a) Such a provisions would not be consistent with the empowering legislation of Plan Change 6 which is "*to provide permanent housing for people displaced by a severe weather event*".
 - b) Plan Change 6 is promulgated around the premise that the buy-out extinguishes rights on the Cat 3 land so there is a no net gain for the landowners involved, which objective would not be achieved where there is no buy-out.
- 4.11 Submission point 024.3 (A&J Maurenbrecher), seeking that the text in 30.1.7AA(4) be deleted and replaced with: "The new lot shall be within the rural residential zoned areas and any areas currently identified by the Future Development Strategy (FDS)", is

rejected because:

- a) The Future Development Strategy is a draft document and will not provide any certainty for Category 3 landowners entering into the buy-out process.
- b) It would be inappropriate to enable lifestyle subdivision on land identified as appropriate for urban development, as this would compromise its ability to be developed efficiently for urban purposes.

ISSUE 5: ASSESSMENT CRITERIA

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Panel Decision
017.4	Napier City Council	30.1.8	Support	Supports the assessment criteria as the overarching purpose is to enable people to remain in their communities for the purpose of permanent housing.	Reject in part
019.2	Williams Family Trust	30.1.8	Support with specific amendments	Seeks that Assessment Criteria 27(c) be amended so that consideration is given to not only remaining in the community but alternatively that can continue to service category 3 land. Include a new assessment criteria (d) <i>Where any site is outside of the community of interest but is owned or occupied by an existing family or whanau member of the displaced category 3 landowner and the category 3 landowner can demonstrate that (i) it is necessary or desirable to provide permanent housing on such proposed site, and (ii) the proposed site can service the requirements of the Category 3 landowners category 3 land.</i>	Accept in part
021.4	Angela McFlynn	30.1.8	Oppose	Delete assessment criteria 27(b) relating to the legal instrument ensuring that the site is being created for permanent housing. Delete assessment criteria 27(c) or amend to remove the reference to defined community of interest.	Accept in part

5 ISSUE 5 - SUMMARY OF REASONS FOR DECISIONS

- 5.1 Submission point 017.4 (Napier City Council), supporting the assessment criteria in Section 30.1.8 (27), is rejected in part because the 'community of interest' definition and related performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed in Issue 4), and proposed restricted discretionary rule SLD16A and associated Assessment Criteria 27 deleted as a consequence.
- 5.2 Submission point 019.2 (Williams Family Trust), seeking amendments to Assessment Criterion 27(c) to include reference to servicing the category 3 land and an additional criterion (d) to consider applying the provisions to family property outside of the community of interest area. is accepted in part because the 'community of interest' definition and related performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed in Issue 4), and proposed restricted discretionary rule SLD16A and associated Assessment Criteria 27 deleted as a consequence.
- 5.3 Submission point 021.4 (Angela McFlynn) seeking that Assessment Criterion 27(b) be deleted as it does not provide any certainty for landowners and 27(c) be deleted or amended to provide clear guidance on what will be considered to be an appropriate location, be accepted in part because the 'community of interest' definition and related

performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed in Issue 4), and proposed restricted discretionary rule SLD16A and associated Assessment Criteria 27 deleted as a consequence.

ISSUE 6: DEFINITION – COMMUNITY OF INTEREST

Sub Point	Submitter / Further Submitter	Provision / Section of the Hastings District Plan	Position	Summary of Decision Requested	Panel Decision
002.1	Katherine Basher		Support with amendments	A 5km radius provides no scope from Tangoio. A 10km radius would be better	Accept in part
004.1	Rachelle Basher	Section 33.1	Support with amendment	Extend the 5km radius to at least 20km	Accept in part
005.2	Andrew O'Connor	Section 33.1	Support with amendment	Increase the radius or allow for the site to be created anywhere	Accept in part
007.2	Andrew Torrens	Section 33.1	Support with specific amendments	Increase the range defining the community of interest to no further than 15km	Accept in part
008.2	Jill Hankin	Section 33.1	Support with specific amendments	Increase the range defining the community of interest to no further than 15km	Accept in part
009.2	Brian Hankin	Section 33.1	Support with specific amendments	Increase the range defining the community of interest to no further than 15km	Accept in part
010.2	Jaclyn Hankin	Section 33.1	Support with specific amendments	Increase the range defining the community of interest to no further than 15km	Accept in part
012.2	Troy & Tracey Duncan	Section 33.1	Support with amendment	The provisions should be extended across the whole district and not confined to 5km	Accept in part
017.5	Napier City Council	Section 33.1	Support with amendment	Add a note to the definition of community of interest so that it is clear that the displaced property may be in Napier City.	Refer Issue 2
018.3	Andrew Taylor – Surveying the Bay	Section 33.1	Support with amendment	The 5km radius is too limiting and should be increased to 15km	Accept in part
019.3	Williams Family Trust	Section 33.1	Support with amendment	Seeks that the definition of community of interest is extended to 8km	Accept in part
020.2	Sue Averill	Section 33.1	Support with amendment	There should be no limit on the radius.	Accept in part
022.1	Bernadette Hamlin	Section 33.1	Support with amendment	The 5km radius is too restrictive and should be extended.	Accept in part
024.4	A& J Maurenbrecher	Section 33.1	Support with amendment	Delete current definition and replace with “ <i>Community of interest means an area not further than 20km from the closest boundary of the relevant Category 3 land.</i> ”	Accept in part
027.2	Claire O'Connor-Bryant	Section 33.1	Support with amendment	Any radius needs to be from the edge of the category 3 area and the landowners boundary and needs to be representative of the community so a 10km radius would be more accurate.	Accept in part

6 ISSUE 6 – SUMMARY OF REASONS FOR DECISIONS

6.1 Submission points 002.1 (Katherine Basher), 005.2 (Andrew O'Connor), 007.2 (Andrew Torrens), 008.2 (Jill Hankin), 009.2 (Brian Hankin), 010.2 (Jacklyn Hankin), 018.3 (Andrew Taylor), 019.3 (Williams Family Trust), 022.1 (Bernadette Hamlin) and 027.2 (Claire O'Connor-Bryant), seeking that the definition of 'community of interest' be

amended by altering the radius from 5km to various distances ranging from 8km through to 15km, are accepted in part because the 'community of interest' definition and related performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed in Issue 4).

- 6.2 Submission points 004.1(Rachelle Basher), and 024.4 (A& J Maurenbrecher), seeking that the distance for the community of interest be extended to a 20km radius, are accepted in part because the 'community of interest' definition and related performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed in Issue 4).
- 6.3 Submission points 012.2 (Troy & Tracey Duncan), and 020.2 (Sue Averill), seeking that there should not be a limit on the area of the community of interest, are accepted in part because the 'community of interest' definition and related performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed in Issue 4).
- 6.4 Submission points 002.1 (Katherine Basher), and 027.2 (Claire O'Connor-Bryant), seeking that the radius be applied from the edge of the Category 3 land and not the site, are accepted in part because the 'community of interest' definition and related performance standard 30.1.7AA(4) is to be deleted (for the reasons discussed in Issue 4).

Appendix 2

Plan Change 6: Category 3 Landowner Subdivision Provisions

Independent Panel Further Evaluation under s32AA

1. Introduction

- 1.1 This report sets out a further evaluation of the modifications proposed by the Independent Panel to proposed Plan Change 6 (**PC6**) to the Partially Operative Hastings District Plan (**HDP**), in accordance with s 32AA of the Resource Management Act 1991 (**Act**), following its consideration of the plan change and submissions and completion of a hearing.
- 1.2 This report is focused on the changes to the provisions of PC6 since the s 32AA report prepared by the Council dated 22 May 2024. Minor changes made to the provisions to ensure clarity and consistency have not been evaluated.
- 1.3 This further evaluation should be read alongside the s 32AA further evaluation dated 22 May 2024.

Summary of further changes evaluated

- 1.4 The further changes proposed to the provisions of PC6 are summarised below.
- 1.5 First, the Panel has adopted various changes recommended to the provisions in the s42A Report in response to submissions. Some of these changes were proposed in Attachment 2 to the s42A Report, whereas some were proposed after the close of hearing and by way of reply.¹ These changes are shown in the tracked version of the PC6 provisions in Attachment A to this report.
- 1.6 The Panel adopts the s 32AA evaluation of the changes proposed as part of the s42A report and agrees that these changes are appropriate. The further changes proposed by the Council in reply are considered to be minor and simply ensure that the intent of PC6 is carried through and clear within the overall rule structure of the HDP. For this reason, and as recorded in paragraph 1.2, no further evaluation of these changes is undertaken.
- 1.7 Second, the Panel has also modified PC6 as follows:
 - a) By deleting the idea of 'community of interest' as an additional prerequisite to constrain the location of replacement lots for Category 3 landowners. This includes deletion of:
 - references to this concept within the policies and explanatory provisions;
 - the defined term;
 - rule SLD16A (RDNN rule where subdivision applications do not comply with the 'community of interest' performance standard); and
 - performance criterion (4); and
 - new assessment criteria to be triggered for applications under rule SLD16A.

(Community of Interest Change)

¹ Reply on behalf of Hastings District Council, 6 June 2024.

- b) By amending performance criterion (2) to provide for the 2-year sunset to commence on the date the plan change is made operative, or on settlement of the buy-out agreement, whichever is the later (**Sunset Date Change**).
- c) The Panel has modified performance criterion 3 to ensure that PC6 gives effect to the NPS-HPL (**HPL Change**).

2. Section 32AA Evaluation Requirements

2.1 Further evaluations under s 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. The purpose of a s 32AA evaluation is to communicate decision-makers' thinking behind their recommended amendments to proposals. The evaluation also provides a record for future reference of the process, including the methods, and any technical studies.

2.2 The s 32AA evaluation report:

- (a) must be undertaken in accordance with section 32(1) to (4); and
- (b) 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
- (c) 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 further evaluation was undertaken in accordance with this section.

2.3 Clause 6 of the Severe Weather Emergency Recovery (Resource Management – Streamlined Planning Process) Order 2023 (**SPP Order**) modifies the requirements under s 32 of the Act as they would otherwise apply to PC6. In particular:

- (a) there is no requirement to assess the efficiency and effectiveness of the provisions in achieving the objectives (s 32(1)(b)(ii)) or to identify and assess the benefits and costs, and the risk of acting or not acting (s 32(2)); and
- (b) s 32(1)(c) is amended to read:
 - (c) *contain a level of detail that is reasonable in the circumstances having regard to—*
 - (i) the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal; and*
 - (ii) the urgent need to provide permanent housing for people displaced*

by a severe weather event.

3. Appropriateness in achieving the purpose of the Act

3.1 None of the changes made to PC6 by the Panel relate to its objective, namely:

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

3.2 The Panel agrees with the original s 32 evaluation that the objective of PC6 is the most appropriate way to achieve the purpose of the Act.

4. Appropriateness of changes to achieve objective

4.1 Options analysis tables for the three changes made to PC6 by the Panel are included at the end of this report.

4.2 The options considered for the three changes are as follows:

4.2.1 Community of Interest change

Options are:

1. **Do Nothing** – this option leaves the provisions as recommended by the s 42A report (i.e., a 15km radius).
2. **Delete the 'community of interest' criterion** – This option would do away with the concept of community of interest as part of the plan change.

4.2.2 Sunset date change

Options are:

1. **Do Nothing** – this option leaves the provisions as recommended by the s42A report (i.e., sunset begins from date of settlement of buy-out agreement).
2. **Introduce a further amendment to the 2-year sunset date commencement date** – this option involves amending the 2-year sunset date to commence from the operative date of PC6 or settlement, whichever is the later.

4.2.3 HPL Change

Options are:

1. **Do nothing** – this option leaves the PC6 provisions as notified.
2. **Exclude Rural zoned land from PC6** – this option excludes application of PC6 from Rural zoned land.
3. **Exclude new lots from Highly Productive Land** – this option excludes new

lots on Rural zoned land from being on highly productive land.

- 4.3 Overall, the options chosen by the Panel are considered to be the most appropriate to achieve the purpose and objective of PC6.

Table 1: Issue: Community of Interest Change:

	<p>OPTION 1: Retain the provisions of PC6 as notified.</p>	<p>OPTION 2: Delete the ‘community of interest’ concept from the provisions of PC6.</p>
<p>Option Analysis for Achieving the Objectives:</p>	<p>The issue concerns establishing a community of interest in order to meet one of the main purposes of the plan change, being to assist displaced category 3 landowners to remain within their community.</p> <p>The 5km distance is an arbitrary measure.</p> <p>The evidence is that people’s community of interest is much wider, and that community exists at a distance beyond 5km.</p> <p>While this option is efficient in ensuring that the area would fall within the community of interest area, it is not effective in meeting all displaced landowners’ expectations and needs.</p>	<p>This option would allow displaced landowners to find a replacement site anywhere within the rural or rural residential zones within the district.</p> <p>This option would potentially allow the displaced landowner to establish a new permanent home in their preferred area of the district without consent hurdles and more quickly.</p> <p>Although a proposed policy of the plan change notes that its provisions will be limited to enabling new permanent housing within the ‘community of interest’, ensuring new lots are within a defined radius of displaced lots is not an express objective of the proposal or PC6.</p> <p>Furthermore, the displacement areas do not consistently have 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.</p> <p>Being within a community is important for those landowners who need to continue to manage/service their land for productive purposes, but that is not the same for all landowners. The ‘community of interest’ concept thus potentially limits attainment of the objective of PC6.</p>

		<p>With the number of potential new replacement lots being quite small within the context of the district as a whole, the effects on the environment of not having a 'community of interest' requirement would be minor.</p> <p>Option 2 is more appropriate to achieve the objective of PC6.</p>
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Table 2: Issue: Sunset Date Change:

	<p>OPTION 1: Retain the provisions of PC6 as notified.</p>	<p>OPTION 2: Introduce a further amendment to the 2-year sunset date commencement date.</p>
<p>Option Analysis for Achieving the Objectives:</p>	<p>The notified PC6 provisions (as modified at the hearing) require an application to be made within 2 years of settlement of a buy-out agreement, in order to ensure the replacement lot opportunity is taken up quickly, thus reflecting the purpose of the plan change.</p>	<p>Some Category 3 landowners have already settled buy-out agreements and have been waiting on the PC6 opportunity to become operative.</p> <p>There is a concern that the commencement of the 2-year period from the date of those agreements may be insufficient for displaced landowners to find a replacement lot.</p> <p>Option 2 would start the sunset date from either the operative date of PC6, or the date of settlement, whichever is the later.</p> <p>Option 2 provides greater assurance for displaced landowners that they can use PC6 to find a replacement lot without losing their entitlement and is thus more appropriate to achieve the objective of PC6 than Option 1.</p>

Table 3: Issue: HPL Change:

	OPTION 1: Retain the provisions of PC6 as notified.	OPTION 2: Exclude Rural zoned land from PC6.	OPTION 3: Exclude replacement lots being established on highly productive land.
<p>Option Analysis for the Achieving Objectives:</p>	<p>The provisions of PC6 as notified apply to land zoned Rural and Rural Lifestyle.</p> <p>Some Rural zoned land would meet the definition of highly productive land under the National Policy Statement – Highly Productive Land.</p> <p>Retaining the provisions as notified would provide the maximum land area for displaced landowners to look for replacement lots, but allowing the subdivision of that land if it contained highly productive land would not give effect to the NPS:HPL.</p>	<p>Option 2 would significantly reduce the area of land within the district on which replacement lots could be established and would thus frustrate the objective of PC6.</p> <p>Not all Rural zoned land contains highly productive land.</p>	<p>Option 3 would still enable replacement lots to be established on land zoned Rural but would preclude new lots being located on highly productive land (where identified).</p> <p>Option 3 provides the greatest flexibility of choice while also giving effect to the NPS:HPL.</p>

Appendix 3

Hastings District Council

Plan Change 6: Category 3 Landowner Subdivision Provisions

Independent Panel Compliance Summary Document

1. INTRODUCTION

- 1.1 Plan Change 6 (**PC6**) has been advanced and processed under the Severe Weather Emergency Recovery (Resource Management Streamlined Planning Process) Order 2023 (**SPP Order**).

Purpose of PC6

- 1.2 PC6 is intended to assist property owners displaced by the flooding from Cyclone Gabrielle to find similar replacement housing within the Hastings district. It is a bespoke plan change which only applies to Category 3 landowners who have signed a voluntary buy-out agreement.
- 1.3 PC6 makes the process to subdivide and create a replacement rural living or lifestyle site easier by removing the need to comply with the minimum 20ha site size standard for new lifestyle sites in the Rural zone, minimum and maximum site sizes for the new lot, and the limitation that a lifestyle site may only be created every three years. A failure to meet any of these rules results in such subdivision applications being assessed as a non-complying activity.
- 1.4 As proposed, PC6 makes subdivisions to enable a new site to be created for a Category 3 landowner in the Rural zone a controlled activity, defaulting to restricted discretionary where certain performance standards are not met.
- 1.5 In order to constrain the lifestyle subdivision opportunity to Category 3 landowners, specific eligibility criteria (in the form of performance standards to be met) were included within the proposed PC6 provisions. These include:
- There must be an unconditional buy-out agreement for the affected property or similar relocation offer which includes the permanent removal of the ability to use the affected Category 3 land for residential purposes; and
 - A statement by the Category 3 landowner confirming that the new lot is intended for use by the landowner for permanent housing.

Hearing

- 1.6 Following public notification of PC6 and receipt of submissions, an independent panel was appointed under cl 16(1)(g) of the SPP Order¹ and a hearing into the submissions was conducted on 5 June 2024.

Statutory compliance requirements

- 1.7 Under the SPP Order, PC6 must complete certain minimum statutory compliance requirements as follows:
- (a) A decision on the provisions and matters raised in submissions (in accordance with cls 10(1) to (3) of Schedule 1 to the Resource Management Act 1991 (**Act**)) must be made - cl 16(3)(b) of the SPP Order. This decision has been prepared separately and provided to the Council.

¹ Comprising George Lyons (Chair) and Kitt Littlejohn (**Panel**).

- (b) A report showing how submissions received on PC6 have been considered and any modifications to the plan change in light of those submissions must be prepared - cl 16(3)(c) of the SPP Order. This report has been prepared separately and provided to the Council.
 - (c) A further evaluation under s 32AA of Act must be undertaken – cl 16(3)(1)(d) of the SPP Order. This further evaluation has been undertaken and provided separately to the Council.²
 - (d) A summary document for the Council to submit to the Minister must be prepared – cl 16(3)(1)(f) of the SPP Order.
- 1.8 This summary document has been prepared to satisfy the statutory requirement noted at paragraph 1.7(d) above. It shows how PC6 complies with cl 83(1)(f) of Schedule 1 of the Act.
- 1.9 This summary document also addresses cl 17(5) of the SPP Order, which requires a summary document showing how PC6 satisfies the criteria in s 80C(2) of the Act (as amended by the SPP Order³).

2. SECTION 83(1)(f)(i) – RELEVANT NATIONAL DIRECTIONS

- 2.1 Relevant national directions include national planning standards, national environmental standards, regulations made under s 360 of the Act and national policy statements.⁴
- 2.2 The National Policy Statement – Highly Productive Land (**NPS-HPL**) is the only relevant national direction with which PC6 must comply.
- 2.3 In its notified form, the subdivision opportunity enabled by PC6 could only be realized on land within the Hastings District zoned Rural or Rural Lifestyle and not on land zoned Plains Production. The evidence to the Panel was that land zoned Plains Production is ‘highly productive’, as defined in the NPS-HPL. By precluding land zoned Plains Production from PC6, subdivision of that land for small-lot lifestyle or rural living, even by Category 3 landowners, will remain non-complying. In this way, subdivision of highly productive land for lifestyle purposes is avoided.
- 2.4 The Panel has not modified this aspect of PC6, despite submitter requests that it do so.
- 2.5 In the course of considering the provisions of PC6, the Panel heard evidence that small areas of ‘highly productive land’ are also present within the Rural zone of the Hasting district and consequently could be affected by subdivision pursuant to PC6. Rather than exclude the Rural zone from the plan change in order to give effect to the NPS-HPL, and thus frustrate the effectiveness of PC6, the Panel has modified

² The further evaluation under s 32AA prepared by the Panel focussed on the modifications made to PC6 following the evaluation submitted with the s 42A report and the consideration of submissions.

³ Clause 10(3) of the SPP Order. References to s 80C(2) of the Act are references to that section as modified by the SPP Order.

⁴ Section 80B(3) of the Act.

the proposed provisions to include a further performance standard that no new lot created under the plan change can be located on land considered to be 'highly productive' for the purposes of the NPS-HPL. Failure to achieve this standard defaults the subdivision proposal to a non-complying activity.

2.6 With this modification, PC6 complies with the requirements of the NPS-HPL that lifestyle subdivision be avoided on highly productive land.

3. SECTION 83(1)(f)(ii) – THE ACT AND REGULATIONS

3.1 PC6 does not engage any specific regulations for consideration.

3.2 The requirements of the Act are several as follows:

- Part 2 - purpose and principles.
- Section 31 - functions of territorial authorities.
- Section 32 (as modified by the SPP Order) - consideration of alternatives, benefits and costs.
- Section 74 - matters to be considered by territorial authorities.
- Section 75 - contents of district plans

3.3 PC6 complies with these requirements as follows:

- (a) PC6 promotes the sustainable management of natural and physical resources. It will assist to manage the use and development of natural resources (rural land) in a way that enables people and communities to provide for their social, cultural and economic well-being and for their health and safety while sustaining that resources for the reasonably foreseeable needs of future generations, safeguarding the life-supporting capacity of soil, and avoiding, remedying or mitigating adverse effects on the environment (s 5 of the Act).
- (b) PC6 does not engage any matters of national importance for specific recognition or provision (s 6 of the Act), but does indirectly engage for consideration certain other matters under s 7 of the Act (i.e., efficient use and finite characteristics of natural resources; the effects of climate change).
- (c) PC6 recognises the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) (s 8 of the Act).
- (d) PC6 is consistent with the functions of the Hastings District Council under ss 31(1)(a) and (b) of the Act.
- (e) An evaluation and further evaluations of PC6 under ss 32 and 32AA have been completed to the satisfaction of the Panel.
- (f) PC6 has been prepared in accordance with the requirements of s 74 of the Act.

- (g) PC6 achieves the mandatory requirements of s 75 of the Act, notably the obligation to give effect to national policy statements.

3.4 In summary, PC6 complies with the Act.

4. SECTION 80C(2)

4.1 PC6 has been advanced under the SWER streamlined planning process authorised by the SPP Order and notice was given to the Minister in this regard on 2 February 2024. In doing so, the Council had to be satisfied that:⁵

- (a) *the proposed planning instrument is only for the purpose of enabling the development of housing or papakāinga in the local authority's region or district that is necessary or desirable to provide permanent housing for people displaced by a severe weather event; and*
- (b) *the proposed planning instrument will support the recovery of affected communities and persons from the impact of a severe weather event; and*
- (c) *the scale of development authorised by the proposed planning instrument will support the aspirations of the local authority or a relevant iwi authority (or both) for recovery in the region, district, or rohe; and*
- (d) *if the proposed planning instrument is for the purpose of enabling the development of papakāinga, the relevant iwi authorities have agreed that papakāinga may be established in the proposed location.*

4.2 As PC6 is not directly intended to enable the development of papakāinga, s 80C(2)(d) is not engaged.

4.3 As summarised below, PC6 satisfies the criteria in s 80C(2)(a), (b) and (c) of the Act.

Section 80C(2)(a)

4.4 PC6 proposed performance standard 30.1.7AA(1) requires applicants seeking to use the controlled activity subdivision rule to provide as part of the application:

- (a) A copy of their unconditional agreement with the Council under the Category 3 Voluntary Buy-Out Policy for a property purchase or relocation offer, or an equivalent agreement for whenua Māori under the Kaupapa Māori Pathway, which includes the permanent removal of the ability to use the Category 3 land for residential purposes; and
- (b) A statement by the Category 3 landowner which confirms the new lot is intended for use by the landowner for permanent housing.

4.5 Failure to submit such documentation defaults the application to non-complying.

⁵ Section 80C(2) as modified by cl 10(3) of the SPP Order. References to s 80C(2) of the Act are references to that section as modified by the SPP Order.

4.6 The effect of these eligibility criteria is to limit the availability of the PC6 subdivision opportunity to people displaced by a severe weather event (Cyclone Gabrielle) and to ensure that it provides for their permanent housing following that displacement.

4.7 In this way, PC6 achieves the criterion of s 80C(2)(a).

Section 80C(2)(b)

4.8 The Panel heard evidence from the Council⁶ that in the months following Cyclone Gabrielle, affected property owners identified that there were insufficient housing options that would allow them to remain in the rural community from which they had been displaced. Many of these property owners had small rural blocks or lifestyle units which they wished to replicate while remaining in the community.

4.9 This state of affairs was endorsed by numerous affected property owners who made submissions supporting the intent of PC6 when it was notified. Several of these submitters attended the hearing and confirmed that they wished to stay in the district and PC6 would support them to do so.

4.10 Enabling residents of the Hastings district displaced by Cyclone Gabrielle to remain in the district supports the recovery of that community from the impact of a severe weather event. PC6 therefore achieves the criterion of s 80C(2)(b).

Section 80C(2)(c)

4.11 PC6 applies in limited circumstances as noted above. The scale of the development it authorises is directly proportional to the number of Category 3 landowners. The evidence was that 166 properties fall within this category, of which 152 are within the Hastings district.

4.12 The limited opportunity provided by PC6 at the scale proposed will support the aspiration of the Hastings District Council for recovery of the district from Cyclone Gabrielle. PC6 therefore achieves the criterion of s 80C(2)(c).

⁶ Section 42A report prepared for the hearing. In person at the hearing from Rowan Wallis.