

**BEFORE THE ENVIRONMENT COURT AT WELLINGTON
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2019] NZEnvC 101

IN THE MATTER of the Resource Management Act 1991
AND of an appeal pursuant to s120 of the Act
BETWEEN BRETT STONE
MARY STONE
(ENV-2018-WLG-00028)
Appellants
AND HASTINGS DISTRICT COUNCIL
Respondent

Court: Judge MJL Dickey
Judge BP Dwyer
Environment Commissioner JA Hodges

Hearing: At Napier on 9-10 April 2019

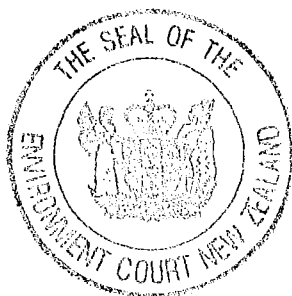
Appearances: MB Lawson for Brett and Mary Stone
ME Casey QC for Hastings District Council

Date of Decision: 4 June 2019

Date of Issue: **04 JUN 2019**

DECISION OF THE ENVIRONMENT COURT

- A: The appeal is refused.
- B: Any application for costs must be made within 10 working days of receipt of this decision and the party against whom costs are sought must respond within a further five working days.



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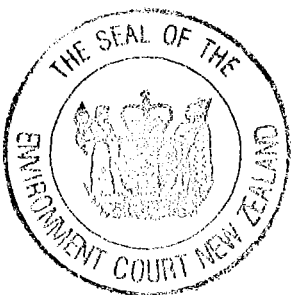
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REASONS

Introduction

[1] By application dated August 2017, Brett and Mary Stone (**the Stones**) applied through their agent, Development Nous Limited, for a resource consent as follows:

Land use consent is sought to gain consent for a two-lot rural subdivision at 826 Te Apiti Road, Waimarama.

[2] The application was processed as a non-notified application and consent was refused by Council staff acting under delegated authority on 12 September 2017.

[3] An objection was subsequently lodged by Development Nous Limited on 2 October 2017. On 12 December 2017, the Council dismissed the objection on the basis:

- (a) that the proposal is contrary to the objectives and policies of the Rural Resource Strategy, the Rural Zone and the Subdivision sections of the Proposed District Plan and with the relevant Assessment Criteria under Section 30.1.8.2 of the Proposed District Plan;
- (b) that the proposal would create a precedent;
- (c) that it challenges the integrity of the Proposed District Plan; and
- (d) that the proposal does not meet the requirements of the Resource Management Act 1991.

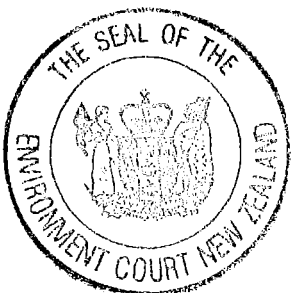
[4] It is that decision of the Council which is being appealed, and that decision to which regard must be had by the Court under s290A of the Resource Management Act (**RMA**).

The proposal

[5] The application is for a non-complying Rural Zone subdivision to subdivide a 5.2609ha rural lot into a lifestyle lot of 1.65ha and a balance lot of 3.62ha.

[6] Proposed Lot 1 would carry with it the right to construct a future dwelling on site, while Lot 2 contains an existing dwelling with associated curtilage.

[7] Both lots can be serviced by on-site means and accessed from Te Apiti Road.



[8] The application proposes to restrict future development rights to a single dwelling and accessory building on Lot 1 by way of consent notice and restrict Lot 2 to its existing buildings other than replacement, in addition to surrendering the commercial and industrial rights created by the new Lot 1.

The issue

[9] The primary issues for the Court's determination are:

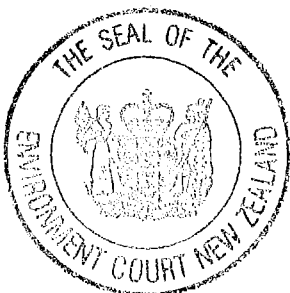
- (a) whether the application is contrary to the objectives and policies of the proposed Hastings District Plan as amended by decisions (**the PDP**); and
- (b) if the proposal is contrary to those relevant plan provisions, is that a factor which should determine whether or not consent should be granted, i.e. would granting consent create an undesirable precedent or create plan integrity issues?

[10] At its heart, the difference between the Stones and the Council is stark.

[11] For the Stones, it is argued that the proposal will not be inconsistent with the overall intent of the relevant objectives and policies of the PDP particularly when an effects based approach is taken. Further, that the application is not inconsistent with the expectations of the community, there is no loss of existing productive land, amenity remains unchanged, surrounding landowners have given written approvals and a residential activity is permitted under the rules of the PDP.

[12] For the Council, it is argued that the PDP seeks to retain the primary production role for the rural land resource, to encourage the retention of larger land parcels and to limit the scale and intensity of residential activity in the Rural zone in order to focus such activity in urban areas. Further, that the PDP provides a strong direction to limit 'lifestyle sites' in the rural environment in favour of residential activity occurring in residential or Rural Residential Zones. Finally, that further fragmentation of existing undersized lots to create multiple lifestyle sites in the rural area is precisely the type of development the PDP directs against.

[13] Both parties accepted that the effects on the environment of subdividing the property would be minor.



The Environment

[13] This site is located some 8km down Te Apiti Road from its junction with Waimarama Road, which is largely an unsealed gravel road south of the Waimarama settlement and near the district boundary with Central Hawke's Bay District.

[14] The site is irregular in shape and rolling-to-steep in topography. Two streams run through it, being the Puhokio Stream (running south to north following the alignment of Te Apiti Road) and the second being a smaller tributary stream (unknown name) running west to east close to the site's northern boundary before joining the Puhokio Stream confluence at the north-eastern end of the site.

[15] The site contains an existing dwelling, garage and utility building at the south-west corner, and an existing utility shed in the middle of the site. All buildings are accessed via a metal track running through the middle of the site from Te Apiti Road, with a concrete bridge providing access over Puhokio Stream.

[16] There are two lucitana plantations on the site; one with an area of 7,600m² to the north-east between the two streams and the site's northern boundary, and the other being some 6,300m² in area to the south-east of the site on the left bank of the Puhokio Stream.

[17] Neighbouring properties to the north-west and south-west are utilised for larger scale pastoral farming – running mostly sheep. The property to the north-east is utilised for forestry that has just been harvested and replanted in the last 9-12 months. The property to the south-east is held by Landcorp and is utilised for a variety of pastoral farming and forestry uses.

Background to application

[18] The Stones purchased the property approximately 30 years ago. The house on the property was originally the homestead of one of the small farms that existed in the area. The house they purchased was vacant as a result of the amalgamation of two farms, as it was surplus to the requirements of the amalgamated farming operation. The home and some land was eventually subdivided off, with the property comprising a little over 5.26ha in area.



[19] The land surrounding the house was sparsely planted in willows and silver poplars prior to the Stones taking over. The property had been used to run angora goats, and many of the trees were damaged and ringbarked. There were a few special areas planted in exotic species by the original owners to commemorate the loss of their son in World War II.

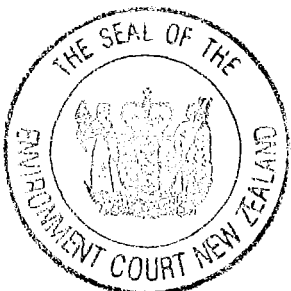
[20] The Stones spent the next years clearing the land, refencing and starting on a tree planting programme for both erosion control and aesthetic beauty. They planted Crow's Nest poplars and interplanted with native trees and flaxes. They grow their own organic vegetables and fruit and use the minimum of chemical spraying for blackberry and other weeds.

[21] The Stones have a neighbour who grazes their land during winter. It can sustain no more than a dozen sheep and is unsuitable for grazing in the summer months when the grass dries out.

[22] The Stones advised that none of the neighbouring farms are interested in purchasing the house as all of the farms around them have already established homes. They have long been members of the Waimarama community and want to remain in that community. They advise that their house is a large country home, too large for their needs as the children have now left home. They wish to downsize and retain part of the property, being the proposed Lot 1, and build a modest home to retire. They would like to continue to make improvements, fencing off the Puhokio Stream and establish native riparian planting. Mr Stone confirmed that he had been in discussions with the Hawke's Bay Regional Council and planned to get this under way in the next 12 months. At the hearing he produced an Erosion Control Plan which sets out the detail of the work to be undertaken.¹ The Stones advised that their block is approximately 40 minutes' drive from Hastings city. They find it frustrating that their proposed development would be allowed in Central Hawke's Bay, where its boundary is only a few kilometres to the south.

[23] They obtained their neighbours' consent to the subdivision proposal.

[24] The Council's decision was made under the proposed Hastings District Plan (as amended by decisions). That plan was notified on 12 September 2015 and the provisions took legal effect on that date. The appeal period closed on 23 October 2015. There were



¹ Exhibit 1: Erosion Control Scheme.

appeals received against provisions in the subdivision and land development section; however, we are advised that none of these appeals affect the provisions which apply to this application.

[25] The site is zoned rural under the PDP.

[26] Subdivision in the Rural Zone, that complies with all relevant subdivision performance standards and terms, is a restricted discretionary activity under Rule SLD18.

[27] The minimum site area in this zone is 20ha.

[28] While there are a number of standards against which a subdivision must be assessed, and with which it must comply, this hearing was focussed on the fact that the proposal did not meet the minimum site area for subdivision in the Rural Zone and it was therefore assessed as a non-complying activity under Rule SLD25 of the PDP.

Statutory framework

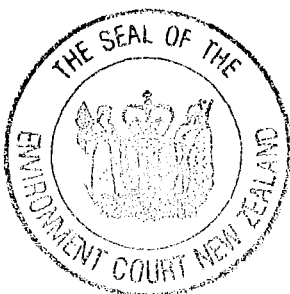
[29] Section 104D of the RMA is relevant because the proposal is a non-complying activity. This states that a consent authority may only grant consent provided it is satisfied that:

- (a) the adverse effects on the environment will be minor; or
- (b) the application is for an activity that will not be contrary to the objectives and policies of the relevant planning documents.

[30] If the proposal can meet one or both of the s 104D elements, the proposal needs to be considered against the matters set out in s 104.

[31] Section 104(1) directs that, in respect of Part II, regard must be had for:

- (a) any actual and potential effects on the environment of allowing the activity;
- (b) any relevant provisions of a plan; and
- (c) any other relevant matters.



Statutory instruments

National and Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2011

[32] This document affects subdivisions being undertaken on sites which have or had contained hazardous activities or industries. We were advised that a search of the records for both the Hastings District Council and Hawke's Bay Regional Council provided no evidence to support the possibility that the proposed sites have or had contained an activity identified on the Hazardous Activities and Industries List.

National and Environmental Standards for Plantation Forestry 2017

[33] Mr McKay, Planning Consultant to the Hastings District Council, considered that this standard is relevant as, in his opinion, a potential productive use of the site would include commercial forestry. We address that matter later in this decision.

Regional Resource Management Plan

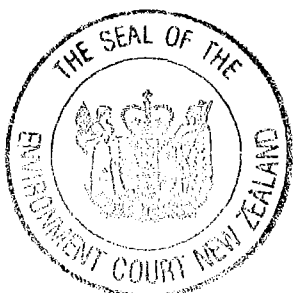
[34] Hawke's Bay's Regional Council's Regional Resource Management Plan (**RRMP**) is a combined Regional Policy Statement (**RPS**) and Regional Plan. Chapters 2 and 3 of the RRMP are relevant. We address these chapters in more detail later in this decision. On 1 January 2014, plan change 4 to the RPS introduced new provisions relating to the built environment and infrastructure. The purpose was to assist with the implementation of the Heretaunga Plains Urban Development Strategy (**HPUDS**). That plan change became operative on 1 January 2014.

District Plan

[35] The relevant District Plan is the Proposed Hastings District Plan (Decisions Version 2015) (**PDP**), which was notified on 12 September 2015. We were advised that, while the PDP is not yet operative, the provisions that are relevant to this application can be treated as such pursuant to s 86F of the RMA.

[36] The following sections of the PDP are relevant to this application:

- Section 2.4 Urban Strategy;
- Section 2.8 Rural Resource Strategy;



- Section 5.1 Rural Strategic Management Area;
- Section 5.2 Rural Zone; and
- Section 30.1 Subdivision and Land Development.

Heretaunga Plains Urban Development Strategy (HPUDS)

[37] The HPUDS was adopted in 2010, with a review of it having been completed in 2016 and adopted in 2017.

[38] The stated purpose of HPUDS is to "provide a comprehensive integrated and effective growth management strategy for the Heretaunga Plains sub-region".² The Strategy focuses on the Heretaunga Plains and does not include the Stones' land.

[39] There was disagreement between the parties as to the relevance of this Strategy and its place in the statutory framework. It was agreed that it is not a RMA statutory document.

[40] It is, however, referred to in the RRMP and PDP. In fact, those documents make it clear that reliance is placed on its findings to support aspects of the planning framework. It was the opinion of Mr McKay, who gave evidence for the Council, that the Strategy has some relevance to the proposal as it provided high level strategy direction to inform both the RPS and the PDP. He was of the view that:

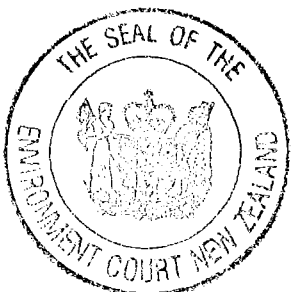
A deliberate decision has been made in the PDP via the Schedule 1 process of the Act to apply the same provisions to the whole of the Rural Zone and not to differentiate between those areas inside or outside of the HPUDS Heretaunga-Plains sub-region.

[41] We consider, therefore, that to the extent it is referenced in the planning documents, it is relevant to our assessment of the application.

[42] Further, we consider that it is a document to which we can have regard under s 104(1)(c) as another relevant matter. We sound one note of caution, however.

[43] The PDP on occasion refers to HPUDS (2010), and other times to HPUDS without mentioning the date of the strategy. We note that the Introduction to the Urban Strategy

² <http://www.hpuds.co.nz/strategy/>



Chapter refers to the review undertaken in 2017, but it is not entirely clear whether the PDP relies on that 2017 review.

[44] We were advised in the hearing that the information contained in the 2017 review was incorporated into the PDP, but we are not clear on how that occurred or what information was relied on.³

Effects of the proposal

[45] There was no dispute between the parties that the effects on the environment of subdividing the Stones' property would be minor. The focus of the evidence, therefore, was on the relevant planning instruments and the extent to which the proposal complied with or was contrary to those provisions.

[46] In his evidence, Mr Holder said:

The Appellant and Respondent agreed that there are no adverse environmental effects associated with the proposed subdivision and the proposed new Lot can be readily serviced in terms of wastewater, storm water, potable water, roading, and is geotechnically sound.

[47] Subject to a desire to see certain conditions addressing potential effects, Mr McKay in his evidence for the Council, also confirmed that he considered the adverse effects of the proposed subdivision on the environment will be minor.

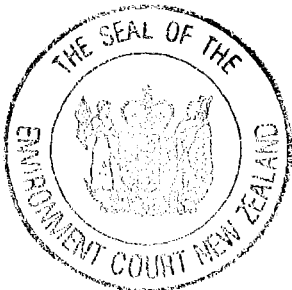
Analysis of Statutory Planning Documents

[48] We heard evidence from two planners on the relevant planning provisions:

- (a) Mr MP Holder for the Stones; and
- (b) Mr PA McKay for the Council.

[49] We further record that Mr CJ Sutton gave evidence for the Council on the number of Rural zoned sites in the district that are of a similar size to that sought to be subdivided by the Stones.

[50] The planning witnesses had conferenced and provided a joint witness statement to the Court. The planners agreed on the status of the proposed subdivision, relevant rules



³ Transcript, page 96, Lines 1-8 and 11-31.

and standards and the like. They agreed on the relevant parts of the RRMP and the relevant objectives and policies of the PDP.

[51] Matters of disagreement primarily revolved around the impact of the proposal on the relevant objectives and policies of both the RPS and the PDP.

[52] In the following part of the decision we set out those RPS and PDP provisions we consider have particular relevance to the matters at issue. We have considered all relevant plan provisions as they relate to this proposal but do not set them all out in this decision.

RRMP

Chapter 2 Key Regional Policy Statement Objectives and Chapter 3 Regionally Significant Issues, Objectives and Policies

[53] Chapter 2 contains high level objectives, two of which were highlighted for our attention:

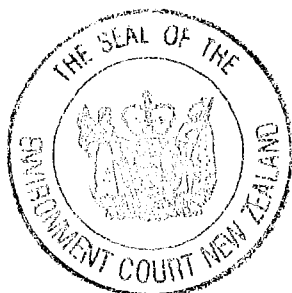
OBJ 1 To achieve the integrated sustainable management of the natural and physical resources of the Hawke's Bay region, while recognising the importance of resource use activity in Hawke's Bay, and its contribution to the development and prosperity of the region.

OBJ 2 To maximise certainty by providing clear environmental direction.

[54] Chapter 3 contains more specific objectives and policies at Chapter 3.1B Managing the Built Environment under the heading Urban Development and Strategic Integration of Infrastructure. The issues set out at ISS UD1 are focussed on the adverse effects of sporadic and unplanned urban development, particularly in the Heretaunga Plains sub-region. The Stones' property is not within that sub-region. However, the issues and the objectives which follow are not directed solely at the Heretaunga Plains sub-region. The objectives are directed at urban form across the region, with specific objectives directed at the Heretaunga Plains sub-region. These objectives are high level; they inform the District Plan provisions.

Proposed District Plan (PDP)

[55] We were referred to a number of provisions in each of the relevant sections of the PDP. A feature of the PDP is that each Policy is always followed by a detailed Explanation. When setting out the relevant objectives and policies we have, on occasion,



set out the Explanation as well because it assists us in our interpretation.

Part A Introduction

[56] Part A of the PDP *General Introduction* at s 1.1.5.2 *The Overall Structure of the Plan* states that Part A provides an overview of the Hastings District, its resources, the vision of the Community for the District, the District Plan's role in achieving that vision, the guiding principles that will be used to work towards the vision and its outcomes. The strategic directions of the Council are also outlined in this section and include the Council's aim of achieving a sustainable environment for the future and the steps that have been taken to date to achieve that. This section also outlines the various Council strategic documents that have formed a part of the decision-making process for planning for a sustainable environment, such as HPUDS and the Coastal Strategy. It states that the PDP will give further effect to this aim through the objectives, policies and methods contained in Part B of the PDP.⁴

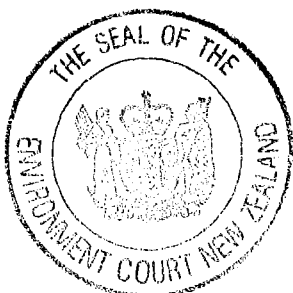
[57] Section 2.3 *Plan Philosophy and Integrated Resource Management* is also relevant, and refers to the Council's vision for the District, HPUDS and the Hastings Urban Design Framework.

Urban Strategy

Section 2.4

[58] Section 2.4.1 *Introduction to the Urban Strategy* provides context for the provisions which follow. It states:

In the past, Hastings District and Napier City have planned for their urban growth needs independently. However, recently both Councils and their communities have reached the viewpoint that, in light of the limited natural resources on the Heretaunga Plains, the issue of urban growth needs to be better managed. ... This has resulted in increased urban activities on the versatile land of the Heretaunga Plains, which has generated both environmental and amenity conflicts from a range of incompatible activities occurring in an uncontrolled manner. The subdivision of rural blocks into unsustainable 'peri-urban' sections has also occurred randomly through the Region.



⁴ PDP – Section 1.1.5.2 *The Overall Structure of the Plan – Part A Introduction and Strategies*.

In conjunction with the Hawke's Bay Regional Council, the Hastings District and Napier City Councils have agreed that a sub-regional approach over a longer period of time is the most appropriate method for considering urban growth issues. The Heretaunga Plains Urban Development Strategy (HPUDS) was completed in 2010 and reviewed in 2017, and provides for the growth needs of the two cities through the period 2015 to 2045. ...

[59] In s 2.4 *Urban Strategy* we were referred to UDO3 and UDP8 which provide as follows:

OBJECTIVE

UDO3 To establish an effective and sustainable supply of residential and business land to meet the current and future demands of the Hastings District Community.

POLICY

UDP8 Ensure that there is a range of residential development opportunities within the District.

Explanation

One of the aims of the Heretaunga Plains Urban Development Strategy is to ensure that the range of residential choices is retained over the life of the Strategy. This does not mean that there will be an unrestrained supply of the different types of residential development. The intention is that the emphasis for future residential development will be on creating compact urban form where the majority of development will take place within the existing urban boundaries. There is a sufficient supply of rural lifestyle sites through to 2045 and therefore no expansion of the Rural Residential Zones is envisaged. However, careful monitoring of supply and demand will be required to ensure that similar levels of choice between Napier and Hastings is maintained.

[60] We note s 2.4.4 *Methods* through which the preceding objectives and policies will be implemented. For the PDP a number of methods are listed, and for the Rural Zone the following:

Rural Zone (Section 5.2): Residential development is provided for in the Rural Zone of the Hastings District. Subdivision Rules and the District Plan permit lifestyle blocks to be subdivided on a limited basis in the Rural Zone.

Rural Resource Strategy

Section 2.8

[61] The planners also drew our attention to certain objectives and policies in s 2.8 *Rural Resource Strategy*. They are as follows:

OBJECTIVE

RRS01 To promote the maintenance of the life-supporting capacity of the Hasting District's Rural Resources at sustainable levels. ...



POLICY

RRSP2 To provide for a wide range of activities to establish, which complement the resources of the rural area, provided that the sustainability of the natural and physical resources of the area is safeguarded. ...

OBJECTIVE

RRS02 To enable the efficient and innovative use and development of rural resources while ensuring that adverse effects associated with activities are avoided, remedied or mitigated.

...

POLICY

RRSP3 To enable rural activities which might generate adverse effects, such as noise or smell, to operate in rural areas in accordance with accepted practices without being compromised by other activities demanding higher levels of amenity...

OBJECTIVE

RRS03 To enable the effective operation of primary production activities within established amenity levels in the rural areas of the Hastings District.

Part B Strategic Management Areas and Zones

Rural Strategic Management Area

Section 5.1

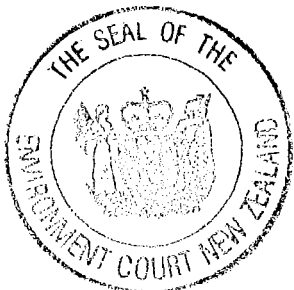
[62] In s 5.1 *Rural Strategic Management Area*, one objective and two policies were identified. We consider that the *Introduction* located at s 5.1.1 assists with context for the provisions which follow. The *Introduction* describes the characteristics of the Rural Strategic Management Area and says, among other things:⁵

...

The rural resource plays a significant role in shaping and enabling the wellbeing of the District through its vast natural and physical resources, however primary production land is coming under increasing pressure from subdivision and development for housing. In the period since the previous District Plan was made operative (2003-2011), the percentage of subdivision applications accounted for 60% of total resource consent applications in the rural environment.

However, the long term trend for the rural area is one of a declining population. This is the result of several factors, including economic restructuring, increasing mechanisation, lowering returns for the commodities produced, and an ageing rural population. Closure of rural schools in the District is still happening, with an associated loss of identity for local communities. At the same time there has been an increase in the number of urban people wanting a rural lifestyle, but it has been noted that they might not become an integral part of

⁵ Section 5.1.1 Introduction to PDP, page 1.



rural communities and economies in the same way that traditional farmers do.

[63] The *Introduction* also addresses rural residential (lifestyle accommodation) and says:⁶

...

The increasing popularity of this form of housing was also recognised in the Hastings Urban Development Strategy Study carried out in 1993/1994. Rural residential development forms a significant part of the overall residential development strategy adopted as an outcome of that study. The provision of rural residential land to accommodate demand in the market is an accepted part of the Council's adopted residential strategy. The Heretaunga Plains Urban Development Strategy (HPUDS) plans for projected residential growth in the District from 2015-2045 while avoiding growth spreading onto the versatile Heretaunga Plains soils. The rural lifestyle component is a recognised residential housing choice in HPUDS although it recommends limiting further development due to excess supply.

Low density residential development, known as 'lifestyle blocks', have also developed in rural areas, capitalising on the previous 6ha minimum subdivision lot size which applied to them.

The Heretaunga Plains Urban Development Strategy (2010) identified that there is currently an excess of lifestyle sites within the rural environment and this is likely to continue to meet the needs of the District through to 2045 at current levels of supply and demand.

...

Providing for a range and flexibility of land use activities in the Rural SMA will be important for the future in adding diversity and resilience to the rural economy thereby providing additional employment and economic opportunities to the community. This outcome will need to be consciously balanced against the need to protect and retain the rural land resource for primary production and the health and availability of water.

[64] An *Anticipated Outcome* for the Rural Strategic Management Area is:

RSMA01 The number of non-complying activities and sites in the Rural SMA zones is minimised.

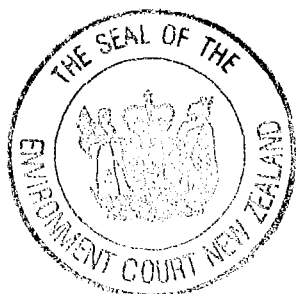
[65] Relevant objectives and policies are:

OBJECTIVE

RSM01 The primary production role and associated amenity of the rural environment is retained.

POLICY

RSMP1 Require that the subdivision of land within the rural environment shall be primarily for the purpose of land based productive use...



⁶ Supra, page 2.

POLICY

RSMP2 Require that activities and buildings in the Rural SMA are of a scale that is compatible with that environment...

*Rural Zone**Section 5.2*

[66] As is stated in the *Introduction* to the *Rural Zone*, it is one of the sections of the District Plan that is included in the Rural Strategic Management Area. It states:

... The Rural SMA (section 5.1) contains overarching objectives, policies and methods that should be referred to when considering matters in the Rural Zone...

[67] Relevant parts of the *Introduction* are:

The Rural Zone recognises the rural area of the District that accounts for the majority of the land within the Hastings jurisdictional boundary. The Rural Zone encompasses approximately 473,000 ha of land. It is the area of generally undulating to hilly land off the Heretaunga Plains extending right through to the various mountain ranges in the west and has a diverse range of land uses. The predominant land use is pastoral although the Zone includes production forestry blocks and the conservation estates of the ranges which form the backdrop to the District. The area of land within the Zone has been the backbone of the pastoral industry upon which Hawke's Bay economy was built. Although pastoral farming is not as strong as it has previously been, it remains crucial to the economic wellbeing of the District. Landowners and industry representatives have identified that its future is going to rely on being able to use the land in a flexible manner. In order to use the land in a sustainable manner there needs to be the ability to establish activities that might not have traditionally been the domain of pastoral Hawke's Bay, but nevertheless remain compatible with pastoral uses.

A significant area of the Rural Zone is in close proximity to the urban areas of Hastings, and Napier. As such this land can come under pressure from urban activities seeking to locate on land that is still within relatively close proximity to the main urban areas but is more cost effective. The Council wishes to ensure that there is a balance between providing landowners with sufficient flexibility to manage their holdings in the manner they choose while also ensuring that the land resource is used in a sustainable manner.

Sustainability involves consideration being given to the matters under Part 2 of the Resource Management Act 1991 (the Act). One of the matters under section 7 relates to the efficiencies of the end use of energy so that significant transportation costs do not eventuate as a result of more flexible use of the land. Flexibility of land use must be balanced against such matters and other issues such as reverse sensitivity. Another factor is the Heretaunga Plains Urban Development Strategy 2010 (HPUDS). This seeks to promote population growth within the existing urban areas so as to maximise sustainability and the efficient use of resources which



come with economies of scale and reducing transportation distances. Nevertheless, the Rural Zone is the residential location of necessity for farmers and other land users.

...

[68] We address each of the relevant objectives and policies in turn.

[69] Objective RZ01 and Policies RZP1 and P2 provide:

OBJECTIVE

RZ01 To ensure that the productive nature of the land within the Zone is not diminished.

POLICY

RZP1 Encourage the retention of larger land parcels within the Rural Zone.

POLICY

RZP2 ... Limit the scale and intensity of residential activity in the Rural Zone to safeguard the life supporting capacity of the land and soil resource.

Explanation

The District Plan seeks to support those people who work in the rural environment by providing for their residential needs. This Plan differs from the previous 2003 Plan by placing further limitation on lifestyle development within the zone. This is due to the Heretaunga Plains Urban Development Strategy that identifies that there is sufficient supply of lifestyle sites to meet the needs of the District through to 2045. Further spread of lifestyle sites will also undermine the long term aim for sustainable residential development, which is for the intensification of the existing residential areas.

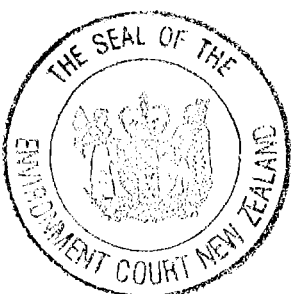
[70] Policies RZP13 and RZP14 are relevant, and their significance is disputed by the planning witnesses. We outline them in full:

POLICY

RZP13 Provide for farm park development and lifestyle sites in a limited manner on sites which can appropriately accommodate for residential lifestyle development to allow for the flexible use of the rural land resource, while not compromising the stated balance in residential lifestyle growth being 5% of the overall residential growth in the District as required by the Heretaunga Plains Urban Development Strategy, while recognising that the clustering of lifestyle lots has a lesser impact on the efficiency of rural properties.

Explanation

The creation of Rural lifestyle sites is limited by the district plan. Limitations placed on a Farm Park Development include Discretionary Activity status, site size requirements, and removing further subdivision potential if implemented. The District Plan also seeks to provide for flexibility of land use in the Rural Zone to allow landowners to adapt and diversify activities in response to changing economic and market climates. Farm park development has been provided for in the district plan historically and is continued in response to this policy. It provides an opportunity for landowners to create lifestyle sites that can be managed so as to not adversely affect the efficient functioning of the main property.



POLICY

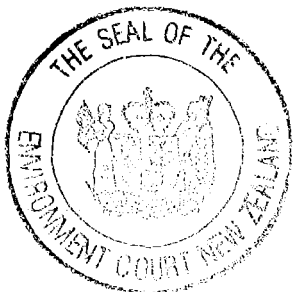
RZP14 Monitor the development of lifestyle sites and farm parks in the Rural Zone to track supply in relation to the recommendations arising from the Heretaunga Plains Urban Development Strategy, as a basis for the consideration of the future supply of lifestyle subdivision in the Rural Zone.

Explanation

The Heretaunga Plains Urban Development Strategy (2010) identified that there is sufficient supply of lifestyle sites to meet the needs of the District through to 2045 in the Heretaunga Plains Sub region. However, it is also recognised that there is also demand for this subdivision option to be used for estate planning and to allow houses associated with the farm to be held in separate titles. Monitoring the potential, and actual development of dwellings on lifestyle sites across the entire Rural Zone (the Heretaunga Sub region only covers part of this zone) needs to be better understood to more effectively consider the specific implementation of HPUDS across this Zone. As a first step towards implementing the recommendations of HPUDS to limit the creation of additional lifestyle sites across the Rural Zone, a 5 year stand down period will be introduced in 2018. Once the supply across the zone is more comprehensively understood, an appropriate policy to manage lifestyle sites can be implemented.

[71] We had some difficulty with the reference in Policy RZP13 to “the stated balance in residential lifestyle growth being 5% of the overall residential growth in the district...”. We sought clarification from Mr McKay as to what this meant and how it would be measured. He explained first that the reference comes from HPUDS but that the Policy is not limited only to the HPUDS study area because it speaks of “overall residential growth in the district”.⁷ He then took us to HPUDS 2017⁸ and explained that the Strategy contains a development allocation of 60% intensification, 35% greenfield, 5% in rural areas. He said that the 5% is not a figure to be achieved annually, it is the target being sought to the end of the HPUDS study period, which is 2045. He noted that, at the current time, the estimates are that 10% of all residential development occurs in rural areas, which include Rural Residential and rural lifestyle. Finally, Mr McKay stated that this proposal is not going to affect the 5% and what he was pointing out in his evidence was that the “...District plan’s strategy or direction in achieving that overall target is to limit lifestyle site subdivision in the rural zone and the way it’s chosen to limit it is to the three year 20 hectare balance rule.”⁹

[72] We now understand the origin of the 5% reference but have reservations as to how it might be measured and applied in the context of the direction contained in the Policy.



⁷ Transcript, page 132, Lines 15-26.

⁸ HPUDS 2017, pages 13 and 14; Transcript pages 132-133, Line 29 and following.

⁹ Transcript, page 133, Lines 24-30.

Subdivision and Land Development

Section 30.1

[73] Relevant objectives and policies contained at s 30.1.3 include:

OBJECTIVE

SLD01 To enable subdivision of land that is consistent with each of the Objectives and Policies for the various SMA, Zones, Precincts, or District-Wide Activities in the District Plan.

...

OBJECTIVE

SLD02 To ensure that sites created by subdivision are physically suitable for a range of land use activities allowed by the relevant Section Rules of the District Plan.

...

POLICY

SLDP1 That standards for minimum and maximum site sizes be established for each SMA/Zone in the District.

[74] There are a number of other objectives and policies to which we were referred. We do not consider they are particularly relevant to our assessment and do not elaborate further.

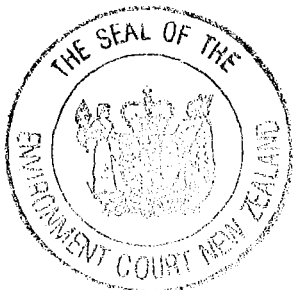
Plan rules

[75] Before commencing our analysis of the proposal against the objectives and policies of the PDP, it is helpful to consider certain PDP rules.

Permitted activities

[76] In opening submissions, Mr Lawson stated that the site could be developed with a supplementary residential building, seasonal workers' accommodation, and for residential and commercial activities within specified limits. Land based primary production and forestry is also permitted.¹⁰

[77] For a supplementary residential building, the maximum gross floor area, excluding garages and verandahs less than 20m² in area, shall be 100m².¹¹



¹⁰ Rules RZ 5, RZ 6, RZ 10, RZ 21.

¹¹ Rule 5.2.6D (2)(c).

Subdivision for residential purposes in the rural zone

[78] Table 30.1.6A *Minimum Site Sizes and Dimensions* in s 30.1.6 sets the minimum site size for a Rural Zone site at 20ha.¹² An excerpt from Table 30.1.6B Standards for lifestyle sites follows:

TABLE 30.1.6B STANDARDS FOR LIFESTYLE SITES					
SMA/Zone	Minimum area	Maximum area	Minimum Balance Area	Number of Additional Sites that can be created	Applications must comply with the following:
3 year Rural lifestyle	4000m ²	2.5ha (net site)	20ha (net site)	One only	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
Rural	4000m ² (net site)	2.5ha (net site)	6ha (net site)	None (amalgamation is required)	The subdivision shall involve the amalgamation of two or more existing sites. A maximum of one title exceeding 20 hectares in size may be involved

[79] There are also provisions for the creation of Rural: (Residential Farm Parks) and Rural Residential: (Residential Farm Parks).¹³

Evaluation

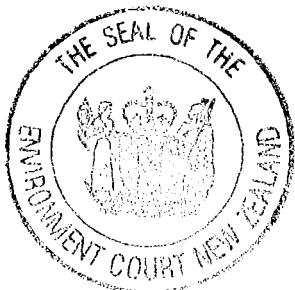
[80] Before commencing our evaluation we observe that the requirement is to undertake "a broad overall consideration of the purpose and scheme of the District Plan rather than a narrow assessment of the proposal against individual objectives and policies".¹⁴

[81] The approach taken to the PDP provisions by each of the planners was predicated on certain opinions as to the productive potential of the Stones' land now and after subdivision, its potential for forestry and the potential for its amalgamation with a larger site thereby facilitating a 'permitted' lifestyle subdivision. We address these matters each in turn.

¹² Table 30.1.6A(8), District Plan.

¹³ There are other subdivision opportunities in specific locations unrelated to this site.

¹⁴ *Bunnings v Hastings District Council* (2011) 16 ELRNZ 767 at [127].



Productive potential and forestry

[82] Mr Holder gave evidence to the effect that the land is not currently being used as a productive rural lot and what minor productive capacity the land holds (minor grazing), will not be diminished by the proposed subdivision nor will it affect the wider zone. It was also claimed that the proposal would provide an additional residential option to those working in the Rural Zone. In contrast Mr McKay, while acknowledging that the Stones' land has limited ability for a range of primary production activities considered that the land has potential for wood lot plantations, observing that the land currently contains two plantations of lucitana of 7600m² and 6300m²; that the subdivision and likely development of a dwelling would remove potential for forestry plantings.

[83] Having visited the land and noted both the topography and location of the streams which cross the land, we do not consider that the productive potential of the land would be changed as a result of the subdivision. It follows, therefore, that we do not consider that the National and Environmental Standards for Plantation Forestry 2017 have relevance to this proposal.

Amalgamation

[84] The PDP in exchange for amalgamation of two or more existing sites, enables the creation of a lifestyle site.¹⁵ The possibility for amalgamation was raised in the Council's decision on the Stone's objection and in the hearing. While we had no direct evidence on whether or not the possibility had been raised with Mr Stone's neighbours, we asked Mr Stone if he had explored the possibility of merging his property with his neighbours to which he replied "I don't think it wouldn't [sic] happen. Everybody has their house, the farms aren't big enough to sustain two homes."¹⁶ In addition, Mr Holder's evidence is "I was advised by Mr Stone that there has never been any interest from adjoining neighbours in purchasing the site".

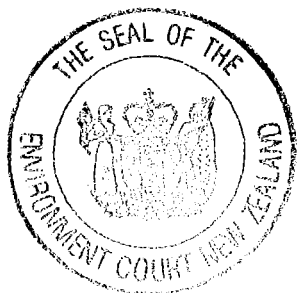
[85] We find that amalgamation is not a realistic option for this land.

RRMP – RPS

[86] The RPS, aside from the provisions in Chapter 3 of that document, contains high-level objectives more suitable for guiding plan preparation than assessing resource

¹⁵ PDP, Table 30.1.6B.

¹⁶ Transcript, page 33, Lines 17-20.



consent proposals.

[87] However, s 3.1B *Managing the Built Environment* is of some assistance. While primarily focussed on development in the Heretaunga Plains sub-region, there are parts of this section that are intended for region-wide application. There is a clear focus on addressing the adverse effects of sporadic and unplanned urban development. Objective UD1 is focussed on establishing a compact and strongly connected urban form throughout the region. We note, however, that that objective is not incorporated, in a region-wide sense, into any of the policies that follow. We accordingly apply our focus to the relevant objectives and policies contained in the PDP.

PDP

PDP strategies

[88] The *Urban Strategy* at s 2.4 addresses the aspirations of Hastings District and Napier City for urban growth within their boundaries. It also makes clear that the HPUDS was used to establish key principles and provide information that is then referred to in the PDP.¹⁷ It states that the relevant recommendations from HPUDS have been incorporated into the RPS and that the PDP will implement the directions established in the RPS as well as other recommendations from the HPUDS.¹⁸

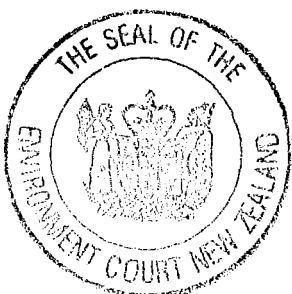
[89] As it relates to housing, the following statement from the *Introduction* assists in providing context for the provisions which follow:¹⁹

...

Through the process of HPUDS it was identified that a range of housing opportunities can be maintained through the combination of greenfield, compact, coastal and rural residential development, although no provision will be made for further growth of the Rural Residential Zone through the period of the District Plan.

Council will closely monitor the development of housing during the District Plan period and adhere to the HPUDS recommendations to direct new housing development away from highly versatile land in order to enhance the sustainable capacity for future generations.

[90] While the objectives and policies in s 2.4 *Urban Strategy* are largely focussed on urban development, there is a clear theme that emerges of creating a compact urban



¹⁷ Section 2.4.1 Introduction.

¹⁸ Section 2.4.1 Introduction.

¹⁹ Section 2.4 Introduction.

form requiring the majority of development to be within existing urban boundaries. The Methods outlined in s 2.4.4 reflect that, with the reference to the Hastings District Plan and the subdivision rules in the District Plan, which “permit lifestyle blocks to be subdivided on a limited basis in the Rural Zone”.

[91] The following s 2.6 *Medium Density Housing Strategy* continues the theme started in the RPS and carried through into the Urban Strategy, with reference to compact development within existing urban boundaries and sustainability of the Heretaunga Plains versatile soils. There is reference again to lifestyle sites and restrictions being placed on the opportunities to create those sites outside of the Rural Residential Zones. Such measures are designed to encourage greater levels of development within the existing urban boundaries.²⁰

[92] Directly relevant to the Rural Zone is the *Rural Resource Strategy* at s 2.8. The Strategy, as might be expected, is directed at ensuring the sustainable management of the region’s rural resources, managing reverse sensitivity effects, and managing pressure on the resource close to urban centres. The objectives and policies reflect those themes.

Strategic Management Areas and Zones

[93] Section 5.1 *Rural Strategic Management Area (RSMA)* covers a number of zones, including the Rural Zone. The area generally includes the rural areas located away from the flat, alluvial, and versatile Heretaunga Plains that surround the Hastings urban area.²¹ The role of the rural resource is described as a significant one “in shaping and enabling the wellbeing of the district through its vast natural and physical resources”. It notes that primary production land is coming under increasing pressure from subdivision and development for housing. The provision for rural residential (lifestyle) accommodation has been recognised, with reference to the introduction of a Rural – Residential Zone. Further, reference is made to the rural lifestyle component, but it is recommended that further development be limited due to excess supply.²²

[94] The Anticipated Outcomes for the RSMA include RSMA01 – that the number of non-complying activities and sites in the rural SMA zones is minimised.



²⁰ Section 2.6.1 Background.

²¹ Section 5.1.1 Introduction, page 1.

²² Section 5.1.1 Introduction, page 2.

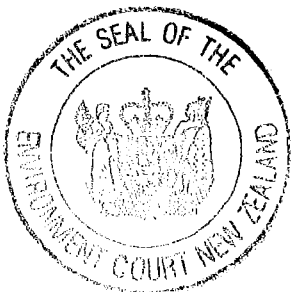
[95] We agree with Mr McKay's summary of the key points to be taken from section 5.1.1 of the PDP as follows:

- (a) Recognition that the rural land resource is coming under increasing pressure from subdivision and development, and that this has not necessarily helped in mitigating the effect on rural communities from depopulation;
- (b) That housing within specific 'Rural Residential Zones' (as opposed to the Rural Zone) has a significant role in the overall Residential Development Strategy;
- (c) In planning for residential growth out to 2045, HPUDS recommends limiting further development of rural lifestyle growth due to excess supply;
- (d) HPUDS has identified that the current excess supply of rural lifestyle sites is likely to continue to meet the needs of the district through to 2045 at current levels of supply and demand.²³

[96] We regard Objective RSM01 and Policies RSMP1 and RSMP2 as relevant, directed as they are to the retention of the primary production role of the rural environment, and limits placed on subdivision. We further note Methods at 5.1.4 when they refer to the Hastings District Plan and state that "Rules and Performance Standards to meet the abovementioned Objectives and Policies are outlined in s 5.2.4, 5.2.5 and 5.2.6 of the Plan". We consider the proposal to be contrary to Policy RSMP1 as the subdivision is not for the purpose of land based productive use. Having said that we acknowledge that the size of the site precludes that as a realistic possibility.

[97] That brings us to s 5.2 *Rural Zone*. Of note in the Introduction is the acknowledgement that a significant area of the Rural Zone is in close proximity to the urban areas of Hastings and Napier, which means that this land can come under pressure from urban activities seeking to locate on land that is still within relatively close proximity to the main urban areas but is more cost effective. The Council wishes to ensure that there is a balance between providing landowners with sufficient flexibility to manage their holdings in the manner they choose while also ensuring that the land resource is used in a sustainable manner.²⁴

[98] Objective RZ01 is directed at ensuring that the productive nature of the land within the zone is not diminished, and the two policies that follow implement that objective. We do not consider that the proposal is contrary to that objective, or the policies that follow,



²³ PA McKay, Evidence, paragraph 46.

²⁴ Section 5.2.1 Introduction.

given that the site is already small in a rural sense.

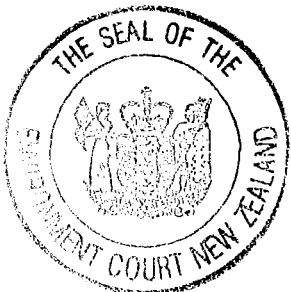
[99] The objective and policies with which we are particularly concerned, however, are contained at Objective RZ03, which is to enable the flexible use of land while not limiting the ability of land users relying on the productivity of the land or soils to undertake their activities, and Policies RZP13 and RZP14 which follow that objective. That is because the policies contain specific reference to the provision of lifestyle sites being enabled in a limited manner (Policy RZP13) and insofar as Policy RZP14 is concerned, there is reference made to the monitoring of the development of lifestyle sites in the Rural Zone to track supply.

[100] We consider that the proposal directly challenges and is contrary to Policy RZP13 because it falls outside of the permitted lifestyle development enabled by the PDP. While we do not understand how “the stated balance in residential lifestyle growth being 5% of the overall residential growth in the district...” will be achieved in any given case, we consider that the purpose of the Policy is otherwise clear. The Court’s view is supported by reference to the Explanation accompanying the policy which states, bluntly, that the creation of rural lifestyle sites is limited by the District Plan.

[101] Policy RZP14 refers to monitoring the development of lifestyle sites and farm parks. We agree with Mr McKay when he says:

I consider it significant that the above explanation to Policy RZP14 refers to monitoring the potential and actual development of dwellings on lifestyle sites across the entire Rural Zone, rather than just within the HPUDS Heretaunga Plains sub-region. There would be the potential for perverse outcomes if more permissive rules were to be applied in that part of the Rural Zone outside of that sub-region, as there could be an increase in lifestyle development on sites with the greatest travel distances to the urban centres.²⁵

[102] We observe that in the objectives and policies contained in s 30.1 of the District Plan, the overarching Objective SLD 1 seeks to enable the subdivision of land that is consistent with the objectives and policies of the SMA and Zones. Policy SLDP1 seeks to establish standards for minimum site sizes within each zone. We have already identified the rules that enable subdivision in the Rural Zone, and it is clear to us that those rules do not contemplate further subdivision in the Rural Zones beyond that already allowed.



²⁵ PA McKay, Evidence, paragraph 71.

[103] In conclusion, we consider that the proposal is contrary to the objectives and policies of the PDP in the sense that it directly challenges the Plan's approach to retaining the primary production role of the rural environment. The PDP makes provision for certain types of residential lifestyle subdivision in the Rural Zone, and the proposal does not fall within those categories.

[104] We accept that while further subdivision will not change the productive potential of this land, it will further fragment the land resource in a way that is not provided for in the PDP. This is not a case where the plan is silent on this type of activity with the subdivision merely defaulting to non-complying because it is not provided for. The PDP clearly sets out its aim of achieving compact development, limiting rural subdivision and the reasons for that and putting in place rules which give effect to that aim.

Section 104D RMA

[105] It was not in dispute in submissions from the parties that the proposal passed the first of the gateway tests and could therefore be considered for grant under s 104. As previously set out in this decision, we have no evidence on the issue of effects save the opinions of both planners that the adverse effects of the proposal on the environment will be minor. We accept that evidence. The application, therefore, passes the first gateway test.

Section 104

[106] We turn now to consider the elements of s 104.

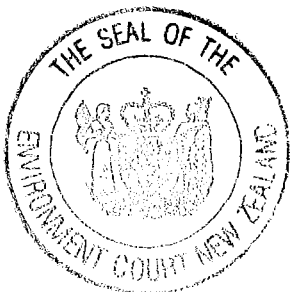
Actual and potential effects

[107] The parties are agreed that the effects of the proposal are minor.

[108] We note the Regional Council erosion control works agreed by Mr Stone. These works, however, stand to one side of the proposal, having already been agreed with the Regional Council. We understand that those works will be undertaken whether or not this proposal is consented.

Relevant plan provisions

[109] The Council's position can be encapsulated by the following, taken from Mr Casey's



opening submission:

[27] Regardless of whether the Court accepts the site has some productive potential which will be compromised by its subdivision, further fragmentation of existing under-sized lots to create multiple lifestyle sites in the rural area is precisely the type of development the PDP directs against.

[28] The Council considers the proposal is materially inconsistent with the PDP's approach to subdivision of rural land.

[110] In contrast, Mr Lawson submits that the application is consistent with, or at worst neutral in respect of the objectives and policies of the PDP.²⁶ And further:²⁷

This application is for a subdivision within the Rural Zone which has no effects on the environment and which has a considerable level of consistency with the relevant objectives and policies.

[111] Mr Lawson also submits that, in terms of hierarchy, the PDP gives greater emphasis to the protection of versatile soils of the Plains Production Zone.

[112] We have already found that the proposal is contrary to the objectives and policies of the PDP. While the PDP places emphasis on protecting the versatile soils of the Heretaunga Plains, it equally puts in place a suite of strategies, objectives, policies and rules to ensure that the productive nature of the land within the Rural Zone is not diminished by encouraging the retention of larger land parcels and limiting the scale and intensity of residential activity. In summary, the plan provisions are clear – residential development is to be located within urban areas, on complying rural lots, and lifestyle lots, in farm parks, or in Rural-Residential areas.

Other relevant matters

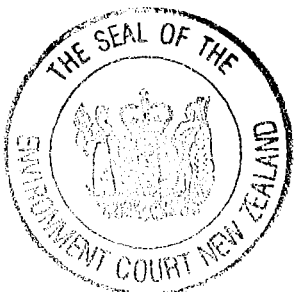
Precedent and Plan Integrity

[113] We must now consider whether issues of precedent or plan integrity arise. The essence of the approach to such matters is summarised by the High Court in *Rodney District Council v Gould*:²⁸

²⁶ MB Lawson, Opening submissions, paragraph 39.

²⁷ MB Lawson, Opening submissions, paragraph 69.

²⁸ *Rodney District Council v Gould* [2006] NZRMA 217 at paragraph [102].

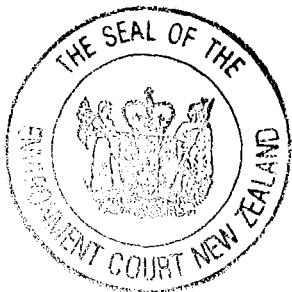


It is to be observed that on this approach, it is where the circumstances of a particular case lack any evident unusual quality that granting consent may give rise to concerns about public confidence in the consistent application of the rules in the District Plan. Conversely, where the circumstances of a particular case can be seen as having some unusual quality, the constraints of what is now s 105(2A)(b) may be overcome. In an appropriate case the Environment Court can decide that there are aspects of a proposal which take it outside the generality of cases, so that the case may be seen as exceptional, and if it can be said that the proposal is not contrary to the objectives and policies of the plan, it will not be necessary also to consider and make findings, on the issues of public confidence in the administration of the District Plan and District Plan integrity. Concerns about precedent, about coherence, about like cases being treated alike are all legitimate matters able to be taken into account, as the recent discussion of Baragwanath J in *Murphy v Rodney District Council* [2004] 3 NZLR 421 again emphasises. But if a case is truly exceptional, and can properly be said to be not contrary to the objectives and policies of a District Plan, such concerns may be mitigated, may not even exist.

[114] Mr Lawson argues that the Council's evidence falls short of establishing that there will be a deluge of indistinguishable applications should the application be granted. He acknowledged that, at best, the evidence of Mr Sutton identified similarly sized sites, but he has not visited the sites and has simply conducted a desktop GIS search. Mr Casey submitted that the Council's evidence identified 490, nearly 500 rural zoned lots of a similar size to the Stones. He acknowledged that, while this is largely a desktop exercise, it demonstrates that sites of between 4 and 6.5ha in the Rural Zone are hardly an unusual occurrence.

[115] At the hearing, Mr Lawson introduced into evidence a number of subdivision consents issued by the Council in respect of other properties. It is difficult for us to assess the significance which we were being asked to place on the Council decisions referred to. None of those decisions were referred to by Mr Holder in his evidence. We take it they were being provided to us to demonstrate the Council's approach to such matters and raise issues as to consistency.

[116] In closing submissions Mr Lawson, with regard to those decisions, stated that it was noticeable that the approach being taken to this case was not the approach taken by the Hastings District Council in those decisions, and not the approach to non-complying activities taken by Mr McKay in making an application to the Council in respect of 126 Main Road, Clive.²⁹ In response, it was claimed that the Stones' reliance on "consistency" with other consents is a "harbinger of the reliance that would be placed on



²⁹ MB Lawson, Closing submissions, paragraph 18.

a decision of this Court to grant their consent".³⁰

Are there distinguishing features about the Stones' application that separate it from others?

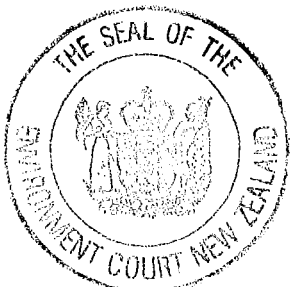
[117] For the Stones, Mr Lawson relies on *Dye v Auckland Regional Council*³¹ and its finding that "in factual terms no two applications are ever likely to be the same; albeit one may be similar to another". He also relies on *Beacham v Hastings District Council*³² where the Court said that:

[24] ...The floodgates argument does tend to be somewhat overused, and needs to be treated with some reserve. The short and inescapable point is that each proposal has to be considered on its own merits. ... Cases such as *Rodney DC v Gould* [2006] NZRMA 217 also make it clear that it is not necessary for a site being considered for a non-complying activity to be truly unique before plan integrity ceases to be a potentially important factor. Nevertheless, as the judgment goes on to say, a decisionmaker in such an application would look to see whether there might be factors which take the particular proposal outside the generality of cases.

[25] Only in the clearest of cases, involving an irreconcilable clash with important provisions, when read overall, of the District Plan and a clear proposition that there will be materially indistinguishable and equally clashing further applications to follow, will it be that plan integrity will be imperilled to the point of dictating that the instant application should be declined.

[118] Mr Lawson submits that the proposal:³³

- Has no effects (including cumulative effects) on the environment that are more than minor;
- Is not contrary to the objectives and policies [of] the PDP;
- Is consistent with the objectives and policies of the PDP when considered as a whole;
- Has affected persons' consent from all affected parties;
- Involves the subdivision of a site of challenging topography;
- Involves a subdivision of a site bisected by not one but two streams;
- Is extensively planted in amenity plantings in an arboretum-type landscape; and
- Allows a valued member of a community to stay in a community that is under pressure due to absentee landowners.



³⁰ ME Casey, Closing submissions, paragraph 11.

³¹ *Dye v Auckland Regional Council* [2002] 1 NZLR 337, paragraph [32].

³² *Beacham v Hastings District Council* EC, 5/10/2009, W075/09, Judge Thompson.

³³ MB Lawson, Opening submissions, paragraph 77.

[119] In short, counsel submits that the proposal should be considered on its merits, and that is what the Act requires if the proposal passes through the gateway test.

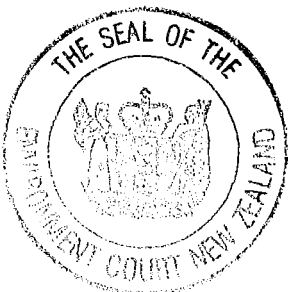
[120] Mr Casey submits that the Stones' proposal is a significant departure from the minimum lot size, and their evidence does not identify any features that distinguish it from numerous other properties where a similar subdivision proposal could be sought. Evidence in support from Mr McKay is to the effect that:³⁴

The subject site is a relatively typical rural site outside the Heretaunga Plains sub-region with no characteristics that mean subdivision might be appropriate for this site but not other similarly-sized sites within the District.

[121] Counsel also submits that the PDP has only recently been prepared and should be seen as reflecting the community's aspirations for the rural resources of the district. He argues that the Court should be reluctant to authorise a subdivision which undermines the integrity of the PDP and acts counter to the community's expectations.

[122] We agree. The PDP has recently been prepared and should be respected as containing the most recent statement of the community's aspirations for its district. To grant consent may give rise to concerns about public confidence in the consistent application of the rules in the PDP.

[123] For completeness, we observe that we do not consider the matters raised by Mr Lawson set this proposal apart from others that may follow or are sufficiently distinctive to place this proposal into the category of unique or distinguishable. We consider the proposal is contrary to the objectives and policies. We consider that in a rural environment, it is likely that other proposals could be located on sites of challenging topography, have less than minor adverse effects, obtain consents from neighbours and would allow the owners to stay in their communities. However, we record that the Stones' proposal to undertake, in conjunction with the Regional Council, erosion control works on their property is a matter of some moment and is an initiative for which they should be commended. Mr Stone confirmed in response to questions from the Court that "the plan is to do the first lot of this current year" and "Next year I'll do the other side of the driveway."³⁵ There was no evidence to suggest that the work will not proceed if the appeal is refused.



³⁴ PA McKay, Evidence, paragraph [106]

³⁵ Transcript, page 35.

HPUDS

[124] Earlier in this decision we explained how the PDP refers to both HPUDS 2010 and a 2017 version. We consider that both versions of HPUDS are relevant as the PDP makes it clear that HPUDS, along with other Strategies form a part of the Council's decision-making.³⁶

[125] We note that Mr Holder, in answer to questions, did not accept the Strategy's findings that there is an excess of lifestyle sites in the Rural Zones.³⁷ However, as we have already outlined, the HPUDS has clearly provided an information base on which the Council has relied in making decisions on the direction to be taken in the PDP. The PDP as it relates to the Rural Zone is operative. We consider, therefore, that it is appropriate to rely on the statements made in the PDP to the effect that there is sufficient supply of lifestyle sites to meet the needs of the district through to 2045.³⁸ We note Mr Lawson's submissions in closing to the effect that HPUDS, in referring to lifestyle sites, states that sufficient supplies *should* be available to meet demand and that the conclusion relies on ongoing subdivision to create new lots.³⁹ We see no difficulty with that given that the Strategy makes it clear that regional and district planning documents might require a review over the longer term to revisit policies based on 2010 HPUDS initial conclusions. And that further review of actual and potential supply during programmed reviews of the Strategy is recommended.⁴⁰

Part 2

[126] Finally, there is the matter of Part 2 to which all the matters we are obliged to have regard under s 104 must be subject. The recent Court of Appeal decision in *RJ Davidson v Marlborough District Council*⁴¹ finds that there is no need for separate resort to Part 2 where the plan has been competently prepared under the Act, as it would not add anything to the Court's evaluative exercise. The Court held:

[74] ... If it is clear that a plan has been prepared having regard to pt 2, and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s 104(1) should be to implement those policies in evaluating a resource consent application. Reference to pt 2 in such a case

³⁶ PDP, Part A, s1.1.5.2, S 3 and various other references in Parts A and B.

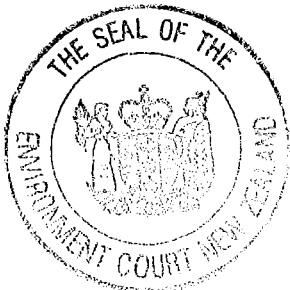
³⁷ Transcript, page 63.

³⁸ For example: Explanations to Policy RZP2 and RZP14.

³⁹ HPUDS2017, page 17, paragraph 2.14(n) and page 35, paragraph 4.3.3.

⁴⁰ HPUDS 2017, page 36 under heading *Rural Residential*.

⁴¹ *RJ Davidson v Marlborough District Council* [2018] 3 NZLR 283.



would likely not add anything. It could not justify an outcome contrary to the thrust of the policies. Equally if it appears the plan has not been prepared in a manner that appropriately reflects the provisions of pt 2, that will be a case where the consent authority will be required to give emphasis to pt 2.

[75] If a plan that has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words "subject to Part 2" in s 104(1), the statement of the Act's purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8.

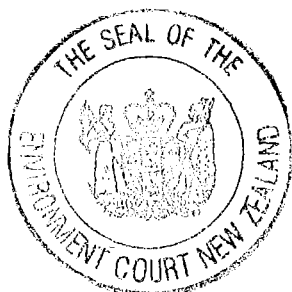
[127] While counsel for the Stones went into some detail in providing an analysis of Part 2, we do not consider that we need to undertake a similar analysis. We find that the PDP has a coherent set of policies designed to achieve clear environmental outcomes. We have identified those policies earlier in this decision and provided our views of them. Further, the PDP has only recently been made operative and we understand there to be no challenge to the competency of the plan.

[128] Finally, we respond to the submission that in terms of s 5, the proposal is a development of natural and physical resources which will ensure the applicants and the community, in which they live, can provide for their social and economic wellbeing, and for their health and safety. We agree that the proposal will provide for the applicants' wellbeing but note that would be the case for all applicants.

Section 290A RMA – Council's decision

[129] As set out at the beginning of our decision, the Council's decision was a decision on an objection. The reasons for rejecting the objection related to the PDP provisions and matters of precedent and plan integrity. The aspects of the reasons with which we disagree relate to two matters. First, the finding that the subdivision would diminish the productive nature of the land. We have found that the subdivision will not change the productive potential of the land. Second, the finding that amalgamation with adjoining sites is a feasible option. We do not consider that to be feasible in this case.

[130] In all the circumstances, we do not consider that it is appropriate to allow the relief sought in the appeal, and therefore refuse the appeal. Costs shall be reserved.



Result

[131] The Court determines the following:

- (a) **The appeal is refused.**
- (b) **Costs are reserved. Any application for costs must be made within 10 working days of receipt of this decision and the party against whom costs are sought must respond within a further five working days.**

For the Court:



MJL Dickey
Environment Judge

