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# RESOURCE CONSENT HEARING WITH INDEPENDENT COMMISSIONER

## Open Agenda

**RM230061 - 68 Franklin Road, Napier**

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Meeting Date: Friday 13 December 2024

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Time: 9.00am

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Venue: Large Exhibition Hall  
War Memorial Centre  
Marine Parade  
Napier

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Members      **Independent Chair** - Rob Van Voorthuysen  
                  **Independent Commissioner** - Richard Blakey  
                  **Elected Member Commissioner** - Deputy Mayor Brosnan

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Officer Responsible      Team Leader Resource Consents (Nick McCool)

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Administrator      Governance Advisor Governance Team and Regulatory  
Administration

## WHAT HAPPENS AT A HEARING

### Cross Examination

No cross examination by the applicant or submitters is allowed at the hearing. Only the hearing commissioners are able to ask questions of the applicant or submitters. Attendees may suggest questions to the commissioners and they will decide whether or not to ask them.

### The Hearing Procedure

The usual hearing procedure is:

- The chairperson will introduce the commissioners and will briefly outline the hearing procedure. The Chairperson may then call upon the parties present to introduce themselves. The Chairperson is addressed as Madam Chair or Mr Chairman.
- The applicant will be called upon to present their case. They may be represented by legal counsel or consultants and call witnesses in support of the application. The hearing panel may ask questions of the speakers.
- Submitters (for and against the application) are then called upon to speak. Submitters' active participation in the hearing process is completed after the presentation of their evidence so ensure you tell the hearing panel everything you want them to know during your presentation time. Submitters may be represented by legal counsel or consultants and may call witnesses on their behalf. The hearing panel may then question each speaker.
  - o Late submissions: The council officer's report will identify submissions received outside of the submission period. At the hearing, late submitters may be asked to address the panel on why their submission should be accepted. Late submitters can speak only if the hearing panel accepts the late submission.
  - o Should you wish to present written evidence in support of your submission please ensure you provide the number of copies indicated.
- Council Officers will then have the opportunity to clarify their position and provide any comments based on what they have heard at the hearing.
- The applicant or their representative then has the right to summarise the application and reply to matters raised. Hearing panel members may further question the applicant. The applicants reply may be provided in writing after the hearing has adjourned.
- The chairperson will outline the next steps in the process and adjourn or close the hearing.
- If adjourned the hearing panel will decide when they have enough information to make a decision and close the hearing. The hearings advisor will contact you once the hearing is closed.
- Decisions are usually available within 15 working days of the hearing closing.

### Please note

- that the hearing will be audio video recorded for administrative purposes.
- catering is not provided at the hearing.

# ORDER OF BUSINESS

## Apologies

## Agenda items

- 1 RM230061 - 68 Franklin Road, Napier - Section 42A Report.....4

# AGENDA ITEMS

## 1. RM230061 - 68 FRANKLIN ROAD, NAPIER - SECTION 42A REPORT

<i>Type of Report:</i>	Legal
<i>Legal Reference:</i>	Resource Management Act 1991
<i>Document ID:</i>	1813745
<i>Reporting Officer/s &amp; Unit:</i>	Nick McCool, Team Leader Resource Consents

### 1.1 Purpose of Report

This is a covering report relating to a resource consent application made by Jack Brownlie Investments Limited to undertake a residential development located at 68 Franklin Road, Bay View (RM230061).

The reporting Consultant Planner's (Alison Francis) Section 42A report is attached to this covering report and contains the details regarding this application.

### Officer's Recommendation

That the Hearings Commissioners:

Make a decision following the hearing of an application for resource consent under the Resource Management Act 1991

### 1.2 Attachments

Att No.	Title	Page No.
	Section 42A Report (Doc Id 1813958)	7
1	Attachment 1 - Application documents and drawings NOT ATTACHED - Can be viewed on the website (Under separate cover 1)	-
2	Attachment 2 - Technical Ecological Review - Final (Doc Id 1813850)	75
2	Attachment 2 - Specialist Review of Site Contamination - T + T (Doc Id 1814018)	79
2	Attachment 2 - Specialist Review of Coastal Hazard of EcoNomos - T+T (Doc Id 1814017)	87
2	Attachment 2 - Wayfinder Landscape Assessment (Doc Id 1814019)	91
2	Attachment 2 - Ecological Specialist Report - Tonkin and Taylor (Doc Id 1814020)	98
3	Attachment 3 -Notification Report (Doc Id 1813956)	102
4	Attachment 4 - Map of Submitters (Doc Id 1813852)	133

5	Attachment 5 - D Pilkington #1 (Doc Id 1813978) <b>(Under separate cover 1)</b> S Stothart (Doc Id 1813979) D Aranui (Doc Id 1813980) N Smith (Doc Id 1813981) B Lawson (Doc Id 1813982) M Arnold Doc Id 1813983) R Hollyman Doc Id 1813984) D Longdon Doc Id 1813985) R Ball (Doc Id 1813986) Rosie Longdon Doc Id 1813987) T Ackroyd (Doc Id 1813988) J Phillips (Doc Id 1813989) T Coleman (Doc Id 1813990) B Daniel (Doc Id 1813991) S Harvey (Doc Id 1813992) P Greening (Doc Id 1813993) A Greenhalgh (Doc Id 1813994) J St Clair (Doc Id 1813995) Kiwirail (Doc Id 1813996) V Maunsell (Doc Id 1813997) W Munro (Doc Id 1813998) L Buxton (Doc Id 1813999) A Busby (Doc Id 1814000) A Petersen (Doc Id 1814001) D Donoghue (Doc Id 1814002) P Musson (Doc Id 1814003) Patricia Wilson (Doc Id 1814004)	
6	Attachment 6 - Submission Summary Table (Doc Id 1813848)	137
7	Attachment 7 - Draft Conditions to be circulated at a later date	148
8	Attachment 8 - Avifauna Management Plan (Doc Id 1813872)	149
8	Attachment 8 - RMS230061 Update Engineering Drawings (Doc Id 1813874) <b>(Under separate cover 2)</b>	

# Report on an application for resource consent under the Resource Management Act 1991 (RMA)



## Non-complying activity

**To:** Independent Hearing Commissioners  
**From:** Alison Francis, Consultant Planner  
**Hearing date:** 13 December 2024

### Note:

- This is not the decision on the application.
- This report sets out the advice and recommendation of the reporting planner.
- This report has yet to be considered by the independent hearing commissioners delegated by Napier City Council to decide this resource consent application.
- The decision will be made by the independent hearing commissioners only after they have considered the application and heard from the applicant, submitters and council officers.

## 1. Application description

**Application number:** RMS230061  
**Applicant:** Jack Brownlie Investments Limited  
**Site address:** 68 Franklin Road, Bay View, Napier  
**Lodgement date:** 21 August 2023  
**Notification date:** 31 July 2024  
**Submission period ended:** 28 August 2024  
**Number of submissions received:** 2 in support  
1 neutral  
24 in opposition

## 2. Locality Plan



Source: Napier City Council GIS

## 3. Application documents

The list of application documents and drawings is set out in **attachment 1** of this report.

## 4. Adequacy of information

The information submitted by the applicant is sufficiently comprehensive to enable the consideration of the following matters on an informed basis:

- The nature and scope of the proposed activity that the applicant is seeking resource consent for.
- The extent and scale of the actual and potential effects on the environment.
- Those persons and / or customary rights holders who may be adversely affected.
- The requirements of the relevant legislation.

The processing of this application has proceeded as follows:

- 21/08/2023: Application was lodged
- 08/09/2023: Day 14: Applicant was advised that we would be seeking peer reviews for some of the reports under s92(2). Pursuant to s88C(3)&(4), the clock is on hold until the authority receives the report.
- 20/11/2023: First s92 went out to the applicant.
- 06/12/2023: Second s92 went out.
- 14/05/2024: All information now received from applicant as CIA was sent through.
- 07/06/2024: Final peer review received, application off hold.

## 5. Qualifications and/or experience

I hold a Bachelor and Master of Planning from the University of Auckland, which I obtained in 2004 and 2006 respectively.

I have 20 years of planning and resource management experience. My experience has included working as a Senior Planner for Councils, a Team Leader and Consent Manager and most recently a Planning Consultant.

I am a Full member of the New Zealand Planning Institute.

## 6. Report and assessment methodology

The application is appropriately detailed and comprehensive and include a number of expert assessments. Accordingly, no undue repetition of descriptions or assessments from the application is made in this report.

I have made a separate and independent assessment of the proposal, with the review of technical aspects by independent experts engaged by the council, as needed.

Where there is agreement on any descriptions or assessments in the application material, this is identified in this report.

Where professional opinions differ, or extra assessment and / or consideration is needed for any reason, the relevant points of difference of approach, assessment, or conclusions are detailed. Also – the implications for any professional difference in findings in the overall recommendation is provided.

The assessment in this report also relies on reviews and advice from the following specialists:

- Mr S Bradshaw, Manager Infrastructure Development - Napier City Council.
- Ms M McBain, Landscape Designer - Wayfinder
- Mr J Markham, Ecologist - Tonkin and Taylor
- Mr J Clarke, Coastal Hazard Specialist - Tonkin and Taylor
- Ms S Newall, Contaminated Land Specialist - HAIL Environmental

These assessments are included in **attachment 2** of this report.

**This report is prepared by:**

Alison Francis, Consultant Planner, Resource  
Consents

Signed:



Date:

Date: 21 November 2024

**Reviewed and approved for release by:**

Nick McCool, Team Leader Resource Consents

Signed:



Date:

Date: 21 November 2024

## 7. Executive summary

Jack Brownlie Investments Limited has applied to the council for resource consent to:

Undertake a three-stage subdivision of Lot 2 DP 22640 into 59 Lots. The applicant summaries the application as such:

- The residential allotments range in size from 800m<sup>2</sup> to 1,398m<sup>2</sup>.
- The subdivision introduces a cul-de-sac road that steps back from the coastal edge in a similar manner to Le Quesne Road to the North (Lot 63). The road is proposed to be vested with Napier City Council. The majority of lots have frontage to this new road, except for the four southernmost lots which have access from an access lot (Lot 64).
- One open space lot is proposed (Lot 60), this runs along the coastal side of the properties between the edge of Lots 19-48 and the beach.
- Two pedestrian entrance strips are provided from the road to the open space lot (between Lots 31 and 32 and Lots 45 and 46).
- A coastal hazard zone runs across Lots 19-48 providing restrictions to building development. A restrictive covenant is proposed to buildings in this area (in accordance with the District Plan rules).
- A 7m coastal landscaped buffer is proposed along the coastal edge. This is to be planted with regenerative native species and a restrictive covenant is proposed.
- A 4m building setback and 1.8m acoustic fence is proposed for lots along the railway corridor. This prevents dwellings locating within the setback and is to be secured by consent notice on the title.
- Land along the coastal frontage for pedestrian and cycle access is provided and is to be vested with the Napier City Council as public reserve (Lot 60).

- Lots 61 and 62 provide an 8m wide pedestrian access to the beach. Both lots will be vested with Napier City Council as public reserve.
- The development will be serviced by a new wastewater pipe that will be installed within a dis-used oil pipeline that is owned by the Council. Wastewater will be pumped from the site via a new pump station, to the existing Bay View Transfer Pump Station and pumping main.
- A stormwater network will be installed on site, this will be vested in Council. Stormwater will be piped and discharged via a concrete box culvert to the beach. The applicant has not yet applied for the necessary consent for discharge from the Hawke's Bay Regional Council.
- Water reticulation will be installed on site and vested to Council.

## 8. The proposal, site and locality description

Mark Vinall of Tattico has provided a description of the proposal and subject site on pages 10-15 of the Assessment of Environmental Effects (AEE) titled: 68 Franklin Road Bay View, Napier, 59 Lot Subdivision, Application for Resource Consent and Assessment of Environmental Effects.

Having undertaken a site visit on 15 May 2024, I concur with that description of the site and confirm that the:

- The site is a long, linear site that runs parallel to the coast for a length of approximately 1.1km. For the first approx. 430m a paper road (Le Quesne Road) runs along the eastern boundary between the site and the coast, and a narrow public reserve is located next to the paper road beside the beach.
- There is vehicle access into the site from the northern access point, a locked gate and dilapidated fences help to keep vehicles out. There is no or minimal fencing along the eastern boundary.
- The Napier-Gisborne railway line runs along the western boundary, separating the site from nearby residential development.
- The site is a HAIL site given its previous occupation by the Bay View railway station, including buildings and railway sidings.
- The site is vacant and largely flat, with small undulations due to the underlying sandy soil. The site is vegetated with scrub and has no vegetation of note.
- There are multiple sections where nearby residents or the public have cut through the site to the beach, this is evidenced by a series of ad-hoc paths.
- The surrounding environment is residential, with established residential settlements located to the north and west. To the south an enclave of newer houses has been established at Mer Place.
- The site is approximately 15 minutes' drive from the centre of Napier.

## 9. Background

The subject site has had a long history of past subdivision consents. All previous subdivision consents have lapsed, hence this application for a new subdivision proposal.

Subdivision consent to create a three-stage development into 59 lots, undertake earthworks and construct infrastructure	Current	RMS230061
S127 on RMS07123 <ul style="list-style-type: none"> <li>to enable 61 lots to connect to the NCC sewers in Lot 2 via sewer main to be laid within a disused oil pipeline to a point of connection to the Bay View Transfer Pump Station.</li> </ul>	Granted on 3.11.2017	RMS07123
Subdivision consent to create 73 fully services lots with areas >800m <sup>2</sup>	Granted by Hearing Commissioner on 12.06.2018 to Fore World Developments Limited (across Lot 1 DP22640 and 2 DP 22640 – 66 & 68 Franklin Rd, Bay View, Napier). This application was publicly notified on 15 December 2007 and attracted 29 submissions, with 25 in opposition.	RMS07123
Subdivision consent to create 48 lots	Withdrawn on 5.08.2008 by Fore World Developments Ltd	RMS07075
Subdivision application to subdivide railway land to create sites not viable to farming units in the Rural 2 zone	Granted on 4.06.1991 to Rail Properties [NZRC]	91689SD

The applicant is aware that consent for the discharge of stormwater into the coastal environment will be required by Hawke's Bay Regional Council. At the time of this report, the applicant has not applied for this consent. We do not consider that this land use/subdivision consent needs to be deferred under s 91 until that application is made. The need for regional discharge consent to be acquired in advance of stormwater infrastructure is a matter that can be addressed in the conditions.

## 10. Reasons for the application

Land use consent (s9) RMS230061

Napier City Operative District Plan

*Chapter 34 – Main Rural Zone*

- Rule 34.15(c) Any subdivision (excluding boundary adjustment) that does not comply with the minimum lot size specified in Chapter 66 of this Plan is a **Non-Complying** Activity.

The minimum lot size in the Main Rural Zone is 4 hectares. All proposed lots are between 800m<sup>2</sup> - 1,398m<sup>2</sup>.

While no buildings have been proposed, a general bulk and massing plan has been provided (Attachment C of application) which shows each Lot with a 3m front yard and 1m side and rear yards. The following performance standards are not met:

- 34.21: Density – the maximum density must not exceed one dwelling per site provided the net site area is not less than 2,500m<sup>2</sup>.
- 34.22 Yards – the front yard for all sites is required to be 7.5m and all side and rear yards are 6m. All building platforms will infringe these yard setbacks. A maximum 3m high combined retaining wall and fence will be located along the western boundary of Lots 50-53.
- 24.41 Code of Practice for Subdivision and Land Development – the minimum lot size of 4ha and the design of the road does not meet the standards in the Engineering Code of Practice.

#### *Earthworks 52A.12 Extent Of Earthworks*

For the purpose of assessing the total volume of earthworks allowed as a permitted activity for sites in the above zone, the volume shall be calculated by multiplying the volume threshold (listed in the above table) by the total area of the subject site in hectares, over any 12 month period.

For the importation of fill or removal of cut to or from an offsite location, the volumes of earthworks specified in the above table shall be reduced by 50% in determining the volume permitted in any 12 month period.

The proposal does not comply with permitted activity standards as:

- 52A.12 Extent of earthworks: The proposal exceeds the permitted volume of 100m<sup>3</sup>, with a total cut of 22,265m<sup>3</sup> and fill of 9,288m<sup>3</sup>.
- 52A.15 Excavation: An excavation of greater than 1m will occur along the northern boundary of Lots 50-53 and this is likely to be within 10m of future buildings.
- 52A.10.1 Removal of fill: More than 25m<sup>3</sup> of topsoil, gravel, metal or earth will be removed from the site.

The proposal is considered a **Discretionary** Activity pursuant to Rule 52A.10

#### *Transportation 61.13 General*

Pursuant to Rule 61.11, as the underlying land use consent application is non-complying (and discretionary), the application is considered **Discretionary** and the following performance standards are not being met:

- 61.17: All residential activities that provide onsite vehicle access and car parking shall comply with the following, unless stated by a rule elsewhere in this Plan:
  - b. Vehicle manoeuvring must be provided on the site as follows:
    - ii. On all rural sites.
- 61.19 Vehicle Crossings:

1. All subdivision, use or development of land shall comply with the following vehicle crossing condition:

- b. minimum distance for a new vehicle access from Rail Level Crossings – 30m. The new entrance into the site is within 30m of the adjacent level crossing on Franklin Road.

### *Natural Hazards Chapter 62*

Rule 62.13(a): Land development (including subdivision), other than a prohibited activity, within the coastal hazard area identified on the planning maps is a **Discretionary** Activity.

The site is located within the Coastal Hazard Zone identified on the Napier City Council and Hawke's Bay Hazard Portal maps. This hazard zone runs along the east of the property.

## Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

The applicant applied for an application pursuant to Regulation 10(2) of the NESCS – being a Restricted Discretionary Activity. The applicant provided a DSI (prepared by EAM Consultants, dated May 2023, and an addendum letter dated 22/06/2023) that states as part of the site was historically associated with the Bayview Railway Yard, soil investigations were undertaken.

The result of the investigations was that there is a small exceedance of background soil concentrations in four locations. No soil results exceeded background soil concentrations suitable for residential use and the applicant therefore considers the site suitable for residential development and the works will not pose a risk to human health.

Council's expert, Ms S Newall, from HAIL Environmental, peer reviewed the information provided at the time of the application. She was satisfied with the investigation on site and considers that at best, the NESCS assessment could be updated to be a Controlled Activity pursuant to Reg 5(9) for the following reasons:

- The investigation has shown that part of the site was used for an activity on the HAIL (rail yard), however, the analytical results show that the activity of subdivision (and therefore facilitating a change of use to residential) does not pose a risk to human health, and is therefore a permitted activity in accordance with Reg 8(4).
- The soil disturbance may be within permitted levels, if not, then the activity would be Controlled.

Therefore, the application is to be considered a **Controlled** Activity pursuant to regulation 9(3) of the NESCS.

## Proposed City of Napier District Plan (Proposed District Plan)

The Proposed District Plan has been notified and submissions have now closed. Decision have not yet been made.

The rules of the Rural Production Zone chapter and the rules of the SUB, TRAN, CE and NH chapters of the Proposed District Plan do not have immediate legal effect under s 86B.

Chapter EW – Earthworks does have two rules with immediate legal effect (EW-R2 and EW-R6). However, neither of these rules pertain to this application, and therefore the EW chapter does not need further consideration at this time.

Status of Resource Consents

The reasons for consent are considered together as a **Non-Complying** activity overall.

11. Notification and submissions

Notification background

The application was publicly notified on 31 July 2024 following the determination on notification. All notification matters (under ss95 to 95G) were addressed in the notification determination report (refer **attachment 3**).

Submissions

When the submission period ended, a total of twenty-six (26) submissions were received and one (1) submission was received late after the close of the submission period. A recommendation on the late submissions is addressed below.

A map showing the location of submitters is attached as **attachment 4**.

Of the submissions received:

2 in support

1 neutral

24 opposing

This table is only a summary of the key issues raised in submissions. For the specific details, refer to the full set of submissions, included in **attachment 5** to this report.

This summary of submissions identifies the following:

- the issues raised in submissions in terms of the key issues below
- details any relief sought by the submitter
- whether a submitter wishes to be heard at the hearing.

Summary of submissions

Issues raised:		
1.	Coastal Erosion Risk to subdivision and costs to ratepayer	11
2.	Geotechnical and stability issues	3
3.	Will change the character of the environment	7
4.	Density – too dense for this neighbourhood	7
5.	Loss of pedestrian access to beach	11
6.	Effects on tsunami evacuation routes	4
7.	Loss of value to private property	6

Issues raised:		
8.	Traffic effects – more congestion.	4
9.	Effects on ecology – birds and penguin nesting and seal sightings	8
10.	Proposal not in line with zoning criteria of District Plan	4
11.	Insufficient consultation with iwi	1
12.	Flood risk	1
13.	Height restrictions – privacy issues	1
14.	Earthworks will affect the natural beauty of the site.	1
15.	Dust and noise of construction	1
16.	Old oil pipe fit for purpose for sewer line?	1
17.	Private property security risks	1
18.	Effects on water quality from stormwater runoff	1
19.	Effects on how I can enjoy my private property	3
Relief sought:		
A.	Refuse consent	16
B.	Refuse consent and amend consent with reduced density	2
C.	Refuse consent and amend consent with reinstatement of public access to the beach	3
D.	Refuse consent and Napier City Council to look at land swap with applicant	1
E.	Amend consent with fence to minimise noise, dust and security issues	1
F.	Grant the consent	1

A table summarising the submissions received and whether those persons wish to be heard can be found in **attachment 6** to this report.

## Late submissions

At the start of the hearing, the independent hearing commissioners must decide whether to extend the closing date for submissions. For this decision, the considerations under ss37 and 37A of the RMA in making this decision are:

- the interests of any person who, in the council's opinion, may be directly affected by the waiver;
- the interests of the community in achieving adequate assessment of the effects of the proposal; and
- the council's duty under s21 of the RMA to avoid unreasonable delay.

One submission was received late:

- Submission #27: Ms P Wilson, 1 Le Quesne Road, Bay View. This submission was received within one week of the submission period closing and did not raise any new issues (although traffic issues raised are unique to this submitter given their proximity to the development). The applicant was made aware of this late submission and both the applicant and Council agreed to accept the late submission.

A recommendation on the above late submissions is included in section 20 of this report.

## Amendments to the application following notification

After the submission period ended, the applicant amended the proposal, and / or provided further information on a number of matters. These changes and extra information are included in attachment 1 of this report.

This information forms part of the application and is considered in this report. The amendments are considered to be within the scope of the original application, and therefore re-notification of the application was not required.

The changes to the application are as follows:

- *Avifauna Management Plan*, prepared by Boffa Miskell, dated 4 November 2024;
- *68 Franklin Road Wastewater Disposal, Report J16109.11*, prepared by Johan Ehlers of Infir, dated 24 August 2016;
- Plans updated to include Coastal Exclusion Zone setback.

## Consideration of the application

### 12. Statutory considerations

#### Resource Management Act 1991

In considering any application for resource consent and any submissions received, the council must have regard to the following requirements under s104(1) of the RMA – which are subject to Part 2 (the purpose and principles):

- any actual and potential effects on the environment of allowing the activity;
- any measure proposed to or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity;
- any relevant provisions of national policy statements, New Zealand coastal policy statement; a regional policy statement or proposed regional policy statement; a plan or proposed plan, a national environmental standard (NES), or any other regulations; and
- any other matter the council considers relevant and reasonably necessary to determine the application.

When considering any actual or potential effects, the council may disregard any adverse effects that arise from permitted activities in a NES or a plan (the permitted baseline). The council has discretion whether to apply this permitted baseline.

For a discretionary activity or non-complying activity, the council may grant or refuse consent (under s104B). If it grants the application, it may impose conditions under s108.

As a non-complying activity, it is subject to the 'threshold test' under s104D. The council may only grant consent to a non-complying activity if satisfied that the adverse effects on the environment are minor, or that the activity will not be contrary to the objectives and policies of the relevant plan or proposed plan. If the proposal satisfies either of the limbs of the test then the application only then can be considered for approval, subject to consideration under ss104 and 104B.

Section 106 sets out the circumstances under which a consent authority may grant or refuse to grant a subdivision consent.

Sections 108 and 108AA provide for consent to be granted subject to conditions and sets out the kind of conditions that may be imposed.

### 13. Actual and potential effects on the environment

Sections 104(1)(a) and 104(1)(ab) of the RMA requires the council to have regard to:

- any actual and potential effects on the environment of allowing the activity (including both the positive and the adverse effects); and
- any measure proposed to or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity.

#### Positive effects

The proposal will have the following positive effects:

- The subdivision is designed to provide for medium sized residential lots, increasing the housing supply in Napier;
- All Lots will be connected to the Council's wastewater and water systems;
- The development will be accompanied by landscaping that is appropriate for the coastal environment and provides a buffer between the beach/public space and the development;
- Public access will be formally available through the site along the roads and pathways.

#### Adverse effects

In considering the adverse effects of the proposal, the council:

- may disregard those effects where the plan permits an activity with that effect; and
- must disregard those effects on a person who has provided written approval, and trade competition or the effects of trade competition.

#### Effects that must be disregarded

Any effect on a person who has given written approval to the application.

No persons have given their written approval to this application.

## Effects that may be disregarded

### Permitted baseline assessment

Section 95D(b) states that a decision maker **may** disregard an adverse effect of an activity on the environment if the plan or a national environmental standard permits an activity with that effect. The adverse effects of the permitted activities (ie. permitted baseline) can, at the discretion of the decision maker, be used to compare the adverse effects of the proposed activity.

There are many permitted activities listed in Chapter 34 Main Rural Zone. The applicant has touched on many of these in their assessment.

In this case, I do not consider that there is an appropriate permitted baseline, as any subdivision of land requires a resource consent. Further, the effects of one permitted residential dwelling, supplementary dwelling and associated sheds are so substantially different to the scale of effects of this application, that I do not consider they should be applied as a baseline.

## Assessment

### Receiving environment

The receiving environment beyond the subject site includes permitted activities under the relevant plans, lawfully established activities (via existing use rights or resource consent), and any unimplemented resource consents that are likely to be implemented. The effects of any unimplemented consents on the subject site that are likely to be implemented (and which are not being replaced by the current proposal) also form part of this reasonably foreseeable receiving environment. This is the environment within which the adverse effects of this application must be assessed.

There are some unimplemented resource consents for small residential development on the adjacent sites:

- 66A Franklin Road: New dwelling and supplementary dwelling (RM230156) granted 07/02/2024.
- 66 Franklin Road: Subdivision to subdivide one lot into two (RMS220069) granted 08/07/2024.

The implementation of these resource consents has no impact on the proposed development and the outcome of these consents being implemented will be three new dwellings on sites on Franklin Road.

### Adverse effects

While having regard to the above, the following assessment is done after I have:

- analysed the application (including any proposed mitigation measures);
- visited the site and surrounds;
- reviewed the council's records;
- reviewed the submissions received; and
- taken advice from appropriate experts.

The following adverse effects have been identified.

## Residential and Rural Amenity and Character

My assessment on the Residential and Rural Amenity and Character is largely unchanged from my previous assessment in the s95 notification report. I noted that:

*While the applicant relies heavily on the potential adverse effects from what could happen as of right on the Lot as a Rural Zoned piece of land, at present, the effects from the use of the land are minimal, as it is undeveloped and not inhabited. The lack of access, and proximity to residential dwellings and the coast do limit the possible uses for this piece of land under the current zoning, but the site is one of the largest in the immediate area and should not be discounted from rural use.*

*The applicant further proposes on using the Rural Settlement Zone performance standards to manage the effects of the proposed subdivision. It is noted that the current zone of the subject site is Rural and the proposed zone under the Proposed District Plan is Rural Production Zone. Any use of Rural Settlement Zone standards will be at the discretion of Council and the decision maker, should consent be granted. Further, the Proposed District Plan zones the surrounding residential areas Rural Lifestyle. This has a minimum 5,000m<sup>2</sup> site size in a complying subdivision, rendering any comparison with the proposed neighbouring zone invalid.*

*The applicant has made a submission on the Proposed District Plan (ref 209 Jack Brownlie Investments Limited). This submission requests (amongst other matters) that the proposed zoning of 68 Franklin Road be General Residential or Settlement Zone. This is yet to be determined and will be subject to its own decision-making process. The existing environment surrounding the site may be relevant but not determinative of the rezoning decision. Further, the proposed zoning around the site is Main Rural and Rural Settlement, which is not consistent with the applicants submission.*

*Overall, I do generally agree with the applicant in their assessment of the surrounding residential environment. On all sides, apart from the coast, the site is surrounded by residential land in a medium dense subdivision pattern. These residential properties are wedged between existing rural production land accessed via Main North Road, Franklin Road and Rogers Road. The result in a linear coastal residential suburb, stretching approximately 4.5km along the coast.*

*When viewed in the context of the surrounding rural and residential environment, the proposal for 59 residential dwellings, with Lot sizes of 800m<sup>2</sup> - 1,398m<sup>2</sup> is not at odds with the surrounding subdivision pattern which sees many lots along Rogers Road at approx. 800m<sup>2</sup> - 950m<sup>2</sup>. The newer subdivision at Mer Place to the south has Lots with a minimum Lot size of 800m<sup>2</sup> and this pattern is continued to the north along Le Quesne Road.*

*The site does not have any visual or physical link with the rural zoned land to the west. The location of the Napier – Gisborne railway line physically cuts this site off from sites to the west, along with existing residential development. When standing at the intersection of Franklin and Le Quesne Roads, there is no visual link with the productive land to the west, as this site is coastal in nature, with low scrub and sandy soils. Further, from Rogers Road, or Mer Place, the site is visually obstructed by existing residential properties, apart from one point where Rogers Road abuts the railway line. From this point, the development will be visible across the railway line.*

Following the receipt of submissions, four submitters in opposition included the effects on the rural amenity by the increase in density:

- Submitter No. 22 Mr L Buxton. He notes: *"I am not opposed to the development of this land for rural purposes, eg a plant nursery etc. I am opposed to the level of concentrated housing that is being proposed. I am opposed to this for the reasons of density, the effects it will have on an area of cultural significance, and the environmental impacts it will have."*
- Submitter No. 26 Mr P Musson who notes: *"change character of Bayview going from rural land to residential"*
- Submitter No. 11, Mr T Ackroyd who notes: *"The development is contradictory to the maintenance of intentions and values of a rural zone."*
- Submitter No. 27 Ms P Wilson who notes: *"The rural zoning of the land is a long standing and accepted part of the structure of Bay View that has helped to define the limits of built developments across the area. The ribbons of residential development that project into the rural area are historic patterns of development that have for decades sat comfortably with the surrounding rural land uses. The distinct character of the coastal communities north of Napier are based on this historic form and limitation of further development... this significant scale of development will have unavoidable impact on the character and appearance of the rural and coastal environments."*

The submitter who was in support of the application, submitter No. 24, Mr A Petersen considers that the *"zoning is a planning aberration"*. He provides a background to previous consent applications for this site, but does not provide any further information in his submission as to what the zone should be for this property.

Following on from the matters raised by the submitters, I concur with those submitters who have made the points that the proposal will change the character of the area and that the proposal is not consistent with the underlying zoning. However, for my reasons above, while the property is vacant of built form, the property is surrounded by existing residential development on all sides apart from the coast. Accordingly, I consider the proposed 59 Lots would not be out of character with the surrounding rural/residential environment, and I consider the effects of the subdivision to be **minor** on the surrounding residential character.

### **Landscape Effects**

The applicant refers to the Landscape Visual Assessment (LVA), prepared by Boffa Miskell (dated 18 July 2023) and submitted with the application. The applicant notes in their AEE (s6.4):

*"The site forms part of a modified coastal setting with residential settlement surrounding the site and predominant along the coastal edge of Bay View... Land surrounding the site is zoned Rural Settlement and is characterised by single and double storey dwellings on medium sized sites."*

*The site is assessed as having a **moderate-low degree** of natural character due to the lack of structures and roads and the vegetation cover being predominantly weed species. The site does not demonstrate unique natural character attributes that generate a higher degree of natural character compared to the adjoining coastal edge land uses to the north and south."*

*While the proposed subdivision introduces change to the site... it creates an integrated approach to the natural vegetation and in turn habitat for fauna along the coastal edge. Although the site will become modified with built form, roading and infrastructure associated with residential development, it will be consistent with existing residential development to*

*the north and south. The management of access to the beach and integration of coastal native vegetation, as part of the subdivision, will enhance the management of natural biota and processes for this coastal environment. This will be a significant improvement compared to the typical domestication of the established residential strip along the Bay View coastline.”*

The LVA notes that the scale of the subdivision was reduced following the initial design phase and input by Boffa Miskell. The experts provided a number of recommendations that will be included as conditions of consent, should consent be granted. These include:

- Preparation of a Landscape Management Plan;
- Planting of native and coastal vegetation;
- Height maximums to buildings;
- Material and glazing standards; and
- Fencing standards.

The LVA was peer reviewed on behalf of the Council by Ms M McBain of Wayfinder, memo dated 23/11/2023. Ms McBain is in general agreement with the applicant and their specialists, although she notes that certain types of existing character were not described with as much detail as she would expect, or ascribed values. Her findings are summarised in s2.7 of her memo:

- *Natural character effects;*

*The existing natural character of the site is identified in the LVA as having a moderate degree of natural character, partially because of its undeveloped land use, and exotic weed species. However a more detailed assessment of the sites physical, associative, and perceptual attributes is required. The assessment recognises that the development will introduce a **moderate degree of change** to the site, however the coastline will be enhanced by the provision of beach access and shoreline restoration with native coastal vegetation, thus reducing the overall level of effects to **low**.*

*I agreed (sic) that the proposed development will reduce the site to a **moderate-low degree of natural character**.*

- *Coastal and Rural character effects*

*Both coastal and rural landscape character effects were assessed within the LVA within S.6.2 however it would be clearer if they were assessed separately. Neither the coastal or rural attributes of the site were given a value (eg. moderate – low) to assess the effects of the proposal from. I agree that the existing landscape description provided in the LVA is an accurate account however I consider that the level of value for the existing coastal and rural character is required.*

- *Coastal Character*

*The introduction of dwellings into this landscape is in a pattern similar to the surrounding land use which provides a consistent response to the coastal settlement. The proposal does not detract from a coastal character, rather it consolidates the residential development within the settlement pattern and provides for coastal remediation. I agree that the proposal provides a **low to very low** degree of potential adverse effects on the coastal character.*

## Natural Character

Overall, Ms McBain concludes that the development, with the proposed development and design controls, will have a **low-moderate** adverse effect on the areas landscape character, overtime this will be mitigated by the growth of the native vegetation restoration.

Having visited the site, I concur with Ms McBain that the site has low natural character.

However, I note that the site is bordered on the east by a public reserve that stretches some 400m from the end of Franklin Road to the dog leg of the paper Le Quesne Road, as shown in the picture below. Public access is provided along this reserve and then users of the public reserve are directed down onto the beach. The site provides over 1km of uninhabited, vacant, coastal land and is unusual in the area, given the coastal residential development on either side discussed above. It breaks up that existing coastal residential development and compliments the coastal environment and public reserve by breaking up what would otherwise be a long stretch of development and providing an area of open space. While this site is not technically accessible to the public, the lack of fencing or barriers into the site further provides an attractive coastal setting for users of the beach and public reserve.



Source: Napier City Council GIS

The proposal for 59 residential sites will alter the character and amenity of the site for users of the public beach and reserve area, including the car park at the northern end of the site. An unbroken row of houses will stretch along the coastline, accompanied by all necessary infrastructure that comes with a development of this type, such as the road, streetlights and services. The proposed mitigation measures such as landscaping, setbacks and building materials will soften the appearance, but cannot totally mitigate the effect that this development has on the coastal environment. The development is considerably different to what would be expected in the context of the Rural Zone. Effects cannot be considered in a vacuum and the underlying zone's objectives and policies are relevant, in this instance the underlying zone expects low built development with a focus on retaining a rural character, something that will not be achieved by this proposal.

The landscape experts agree that the site will go from having a moderate degree of naturalness to a moderate-low degree on naturalness, and that this amounts to a low level of landscape effects following the establishment of mitigation. When comparing an open vegetation covered strip to a collection of 59 dwellings, I consider that the change certainly is at the upper end of what could be described as low, even with the proposed mitigation measure recommended by Boffa Miskell.

While a number of submitters commented on the natural coastal character effects (these are discussed below), no submitters specifically commented on the landscape character of the site itself.

The applicant has not been requested to provide any further information on the natural character and I am satisfied that the effects on natural character remain **minor**.

### **Natural Coastal Character**

With regards to Coastal Character, I have considered this separately given the location adjacent to the coast and publicly accessible spaces at the coast and at the end of Franklin Road.

The site affords the coastal environment a large area of open space, vacant of buildings and breaks up the residential development to the south and north. As the site is not developed with any infrastructure that will support development (driveway, road, services etc) I consider that the visual effects on the coastal character arising from the development of the subdivision will be more than minor. Even with the proposed mitigation that will in time help to soften the visual impact of the development, the effect on the adjacent beach, coastal environment and on those who are users of the environment are more than minor.

Ms McBain notes in her memo dated 08/07/2024:

*"The proposed development will change the natural character of the site by introducing built form and infrastructure. However the proposal also introduces a shingle bank shoreline restoration with native coastal vegetation within private lots and within reserve area to the north of the site. This will create an integrated approach to native re-vegetation and in turn provide habitat for fauna. However, the attributes that contribute to the natural character such as the geomorphology, steep gravel banks, dumping of waves, the unbroken line of exposed coastline and views towards Hawke Bay will not be reduced as a result of the proposed development. The proposed change will be of a low degree in this environment resulting in a change from moderate natural character to low-moderate natural character. However, over time this will be mitigated with the growth of the native vegetation restoration.*

## Submissions

The following submitters in opposition made reference to the adverse effects on the natural coastal character by the proposed development:

- Submitter No. 11 Mr T Ackroyd: *Being relatively close to Napier this section of the beach has a remoteness and beauty to be maintained and treasured. This will be lost.*
- Submitter No. 14 Ms B Daniel: *Impact on the overall environment;*
- Submitter No. 15 Mr S Harvey: *Earthworks will mean there is a loss of beauty of the natural environment.*
- Submitter No. 20 Ms V Maunsell: *I am opposed due to the clearance of natural environment in that area. It will affect native species and adversely change the outdoor lifestyle for existing houses in that area.*
- Submitter No. 22 Mr L Buxton: *Napier/Ahuriri area is surrounded by long stretches of coast that stretch away from West Shore towards the north. These areas of coast allow access to the public for walking, swimming, fishing etc. The beauty and character of this bordering stretch of beach defines and shapes Napier, a modern city with a rugged landscape. The proposed development will change the nature of this.*

Overall, the above submitters are concerned with the change in natural coastal character and the loss of this character to the surrounding area should this development proceed.

The applicant has not been requested to provide any further information or technical reporting regarding landscape effects.

## Overall Landscape Character Effects

My opinion is that while I agree with the findings of the experts, when looking at the cumulative effects on the surrounding coastal landscape, along with consideration of what the underlying zoning provides for as of right (the non-fanciful development of one dwelling and associated garages/sheds) I consider the effects on the landscape to be more than minor. The introduction of 59 residential units, all associated infrastructure, planting and people into an environment that is currently sparsely occupied by people and vacant of built structures will result in a **more than minor** effect for users of the surrounding public areas.

I concur with the submitters that there is a value associated to the coastal character presented by this site and while this effect may be mitigated overtime by landscaping, the immediate effects of this proposal will be **more than minor**.

## Ecology

The applicant provides an assessment of ecology in their AEE, section 6.12. The applicant provided an ecological report, prepared by Boffa Miskell, dated 11 July 2023. The applicant notes:

*“The report outlines that the site is highly modified and degraded with majority of the vegetation being exotic weeds. Very few bird species were observed using the habitat within the property boundaries, likely due to a combination of the extensive use of vehicles throughout the site and foreshore and the nearby bird cannons.”*

The applicant makes note of the following recommendations put forward by Boffa Miskell that will be adopted by the applicant in any development in the future:

- Restoring the coastal buffer with native vegetation
- Limited vegetation clearance
- An Avian Management Plan to be developed
- Planting plan to be prepared for the restoration of the coastal landscape strip.

The Council commissioned Mr J Markham from Tonkin and Taylor to peer review this report, Mr Markham provided his comments via email on 19/10/2023 and he notes:

- 1) *The report provides a high-level and partial assessment of the existing ecological environment and identifies some ecological constraints or opportunities that pertain to the site. The scope and context of an ecological values, constraints and opportunities report isn't fit for purpose for resource consent application as an Ecological Impact Assessment (EclA) is required.*
- 2) *An EclA should be provided which uses guidance set out in the Ecological Impact Assessment (EclA) Guidelines (or similar) to determine and quantify ecological values, magnitude of ecological effect and overall level of ecological effect (before and after mitigation, minimisation and management actions being applied) to determine a level of residual ecological effect, which may require offset or compensation actions.*
- 3) *The above EclA should also contain a statutory context relating to the Coastal Policy Statement (specifically policy 11), National Policy Statement for Indigenous Biodiversity, National Policy Statement for Freshwater Management and National Environmental Standards for Freshwater. The above EclA should contain (but not limited to) potential ecological effects from the proposed development on coastal birds, lizards, invertebrates relating to build form, lighting, roading, predation and habitat loss (albeit weedy).*

These points were put to the applicant in a s92 request, dated 06/12/2023. The applicant responded in their response, dated 19/02/2024:

*The Ecological report submitted with the application is not a full Ecological Impact Assessment (EclA), rather it is a report on the ecological values, constraints, and opportunities of the site. As noted below, given the current condition of the site is highly modified and degraded (with the majority of vegetation being exotic weeds), it is considered that full EclA is not required.*

*Clause 2(3)(a) of Schedule 4 of the RMA requires that an assessment of effects includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment. The Ecological report includes a full description of the ecological values of the site and likely impacts of the proposed subdivision including plants and animals. Conditions of consent are offered to mitigate the potential effects on kororā and other bird species using the site for nesting.*

*It is our view that the proposed ecological assessment is appropriate for the site and proposed subdivision activity, and that due to the nature and characteristics of the site, a full EclA is not required.*

No further information was requested of the applicant prior to the notification of this consent. Upon the completion of the submission period, there have been a number of submitters who have commented on the ecology on site:

- Submitter No. 6 Mr M Arnold: *There is also the loss of a possible nesting site for little blue penguins, this should be investigated further.*
- Submitter No. 8 Mr R Longdon: *Blue penguins, New Zealand Dotterels, European Skylarks, and other birdlife are known to nest on or near to the land for which consent is currently being sought. It would be prudent to complete a thorough study be performed to ascertain what wildlife inhabits this land, and what impact development of this land would have on them. This land should be considered for protection rather than development.*
- Submitter No. 10 Ms R Longdon: *Building 59 lots will mean the destruction on bush that many native wildlife use as their habitat. Blue penguins and dotterels are included in this.*
- Submitter No. 13 Ms T Coleman: *This is a nesting areas for blue penguins and where seals come up to rest, yet there is no reserved area for this in the plans. I feel this whole area should be a council reserve.*
- Submitter No. 17 Ms A Greenhalgh: *I am also aware of Little Blue Penguins that nest next to my property. I hope steps are being taken to ensure that they are not impacted.*
- Submitter No. 18 Ms J St Clair: *This morning I came across a seal that was resting on the beach* (note, Ms St Clair refers to the discharge of wastewater being pumped out to the beach, this is not proposed and is not part of the application, the wastewater will be managed via a reticulated network.)
- Submitter No. 20 Ms V Maunsell: *It will affect native species*
- Submitter No. 21 Ms W Munro: *The loss of lifestyle and the precious banded dotterel nesting site are paramount.*
- Submitter No. 25 Ms D Donoghue: (summarised): *I do know that we have Kororā nesting in this area. Residents who resided at 32 Rogers Road have had penguins each year nesting under their house. I have also seen penguins at different areas of the beach adjacent to Rogers Road. Concerns with development are:*
  - *More hazards;*
  - *More people;*
  - *Cats and Dogs (household pets)*
  - *More vehicles – bikes, cars, boats.*

The applicant was requested to address these submissions and have provided an “*Avifauna Management Plan, 68 Franklin Road Subdivision, Prepared for Jack Brownlie Investments Ltd, dated 4 November 2024*”.

This management plan is based on the work previously undertaken by Boffa Miskell for the applicant when preparing the original ‘*Ecological Values, Constraints and Opportunities*’ Report, dated 2023 and the on-site walkover undertaken by the ornithologist on 14 October 2024.

The study undertaken by Boffa Miskell did not identify any indigenous bird species, or nests. However, the area is considered to provide potential nesting and moulting habitat for the following five indigenous bird species:

- Kororā/Little Blue Penguin;
- Tarāpunga/Red-Billed Gull;
- Tōrea Pango/Variable Oystercatcher;
- Banded dotterel/Pohowera;
- New Zealand Pipit/Pīhoihoi.

The Avifauna management plan sets out timing of earthworks and construction and methods for avoiding and mitigating potential effects on any birds that may be nesting or breeding on site. This also includes the requirement for pre-works surveys, exclusion zones and incidental discovery.

The applicant has not provided any proposed draft conditions with this Avifauna Management Plan.

The Council has commissioned Mr J. Markham of Tonkin and Taylor to review this Avifauna Management Plan. Mr Markham comments in his peer review report dated 14 November 2024:

*All submissions have been reviewed from an ecological perspective in relation to avifauna management. Submissions 6, 8, 13, 14, 17, 21, 25 and 27 all raise high level matters relating to avifauna.*

*The common theme through the above submissions is that the ZOI and adjacent areas is used for nesting and a general concern what impact the proposed development will have on future nesting potential (habitat loss, increased predation, increased disturbance).*

*The scope of the avifauna management plan has been limited to construction effects only and therefore only address submitters concerns in part, relating to steps to be implemented to safeguard the key avifauna species that utilise the ZOI during construction.*

*It is considered that submitters concerns relating the permanent impact of the proposed development on avifauna hasn't been addressed through the Avifauna Management Plan and has been identified and raised in point 2 above.*

Mr Markham concludes with:

*The Avifauna Management Plan provides a limited scope associated with construction works only. Based on the limited scope, matters of disagreement above can be rectified by conditions of resource consent requiring avifauna management standards and the Avifauna Management Plan to be certified by NCC prior to any works commencing.*

*It is considered that matters raised in point 2 above and in submissions that related to this point are substantial based on the current proposed development and have not been addressed. If matters raised in point 2 above are not addressed, then it is likely that potential residual effects associated with permanent habitat loss, increased predation, or disturbance (lighting, increased foot or animal traffic) on identified avifauna will occur.*

I have provided this information to the applicant in the lead up to the preparation of this report and conclude that there are outstanding matters with regards to the avifauna management plan and the long-term effects on ecology and habitats that have not been addressed.

This matter will be discussed further at the hearing.

At present, as the effects on ecological habitats of indigenous bird species are unknown, the effects are considered as **more than minor**.

### Cultural Effects

The applicant has commissioned a CIA, this is included in the application materials (Cultural Impact Assessment Report – 68 Franklin Road Bay View, Napier. Prepared by Mana Ahuriri Trust, dated September 2023). This report states that it has been prepared on behalf of the Mana Ahuriri Trust in conjunction with the Maungaharuru-Tangitū Trust.

The report provides a comprehensive history of the site, with reference to the nearby Heipipi landscape. Māori settlement has been present in the area since the 1500's. A nearby battle is described in detail in the CIA and the report notes:

*“There is a possibility given the direct proximity of Heipipi Pā to the proposed subdivision at the coastline that the location of the Taraia and Tunuiarangi historical account may have been at or nearby the direct location of where the proposed subdivision is located. This site could be considered to be a waahi taonga as it is a waahi pakanga or site where former battles have occurred and is certainly considered by Hapū as worthy of protection in a way that accounts for the customary practices of ngā hapū in particular Ngāti Matepū, Ngāi Te Ruruku, and Ngāti Tu”*

The CIA has identified a number of impacts on the environment and people, including the discharge of contaminants to land and water, impacts on ecosystem disturbance and site works. The CIA notes:

*“However, this subdivision also has the potential to enhance mauri if key areas and actions promoted by hapū are adopted in this design, construction, and ongoing protection and maintenance of the development.”*

The report makes a number of Tūtohi (Recommendations) including:

- Further consultation with Maungaharuru-Tangitū Trust regarding the location of the proposed development and the adjacent Coastal Hazard Zone.
- Smart water meters;
- Infrastructure plan;
- Low impact design standards;
- Reporting and documentation of greenhouse gas emissions;
- Written Hapū discovery protocol be developed;
- Landscape plan;
- Avian management plan;
- A number of covenants have been suggested.

The authors of the CIA have indicated that the development has the potential to degrade the Mauri of the site, but also to enhance it if the recommendations are adopted.

Mana Ahuriri (Submitter No. 16) submitted in support of this application, stating:

*“We are a Post Settlement Governance Entity tasked with representing the values and aspirations of Ahuriri hapū. We prepared a cultural impact assessment on behalf of the applicant. Our submission is that the recommendations made in our report are implemented in full.”*

One other submitter, Mr R Ball (Submitter No. 9) who opposes the development also notes:

*In addition there has been insufficient consultation with local Hapū/Iwi (Maungaharuru-Tangitū Trust) who proposes a pause on new developments at risk from coastal hazards.*

I note that Maungaharuru-Tangitū Trust did not submit on this application and have been included as part of the CIA authored by Mana Ahuriri.

The applicant has not provided any information as to how they will incorporate any or all of these recommendations in their application, therefore I have erred on the side of caution and concluded that the potential adverse effects of the proposal as it currently stands on cultural values are **more than minor**.

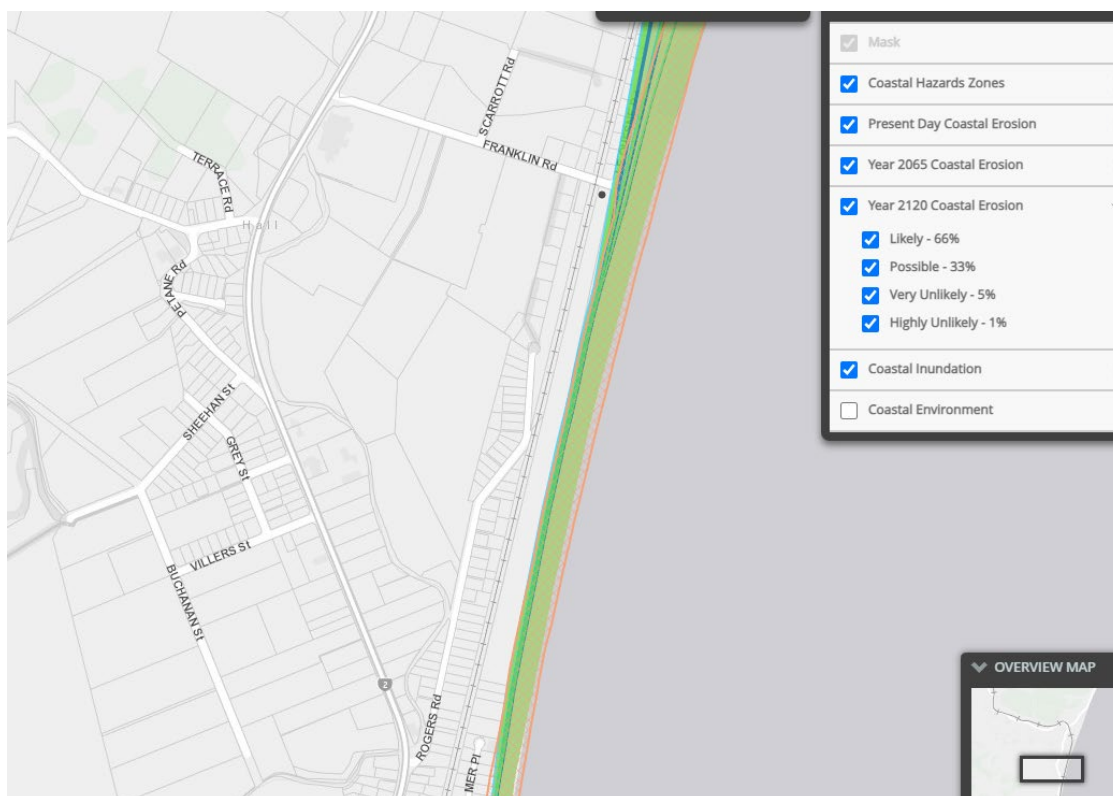
### **Coastal Hazards**

The applicant provided an assessment of the Coastal Hazards, prepared by Eco Nomos Limited, dated July 2023. This assessment was peer reviewed by the Council's consultant experts, Mr T Shand and Mr J Clarke of Tonkin and Taylor, and an email dated 18/12/2023 requested further information from the applicant.

The applicant responded with a letter from Eco Nomos Limited that addressed the request for further information. On 07/06/2024 the team at Tonkin and Taylor provided Council with a memo that supported the Eco Nomos report and subsequent follow-up response.

The report from Eco Nomos Limited is comprehensive and looks at the site and surrounding coastal environment. It considers the history of the site before and after the 1931 Earthquake and includes an analysis of data on the history of the shoreline.

The site is partially covered by the Coastal Hazard Zone, this can be seen on the map below:



Source: Hawke's Bay Hazard Portal

The Eco Nomos Limited report undertook an analysis of the shoreline, the history of the area and the coastal erosion hazard. The report author, Mr J Dahm, provides the following summary:

*"The review of coastal hazards indicates that the 24m coastal hazard setback recommended by the Environment Court in 2006 (which the proposal has been designed in accordance with) is conservative, even taking into account the significantly higher sea-level risk scenario so now required to be considered. On the basis of existing best information, the setback will provide dwellings in the proposed development with the high level of protection from coastal hazard over the next 100 years and probably beyond."*

The Council's consultant Coastal Hazards experts at Tonkin and Taylor have reviewed this report and associated follow up information and make the following statements (letter dated 07/06/2024):

*"The report by EcoNomos Ltd provides a comprehensive site-specific assessment of coastal hazards, following our initial review EcoNomos Ltd have provided clarification on the points we raised, and we are in agreement that the hazard line produced by the analysis is highly unlikely to be exceeded by either erosion or inundation over the next 100 years. We note that the hazard line does cover part of some proposed sections, however it is our understanding that all buildings will be located landward of this line."*

*It is recommended by both EcoNomos Ltd and T&T that the hazard lines produced, and the new inundation information released earlier this year, should be plotted over a map of the proposed development to provide visual clarity for any decision making process. In addition, a Tsunami evacuation plan should be developed for the site."*

Since the close of submissions, the applicant has updated the plans to include the hazard lines, these plans are found in **appendix 1**.

## Submissions

The following submitters in opposition made submissions on coastal hazards:

- Submitter No. 23, Ms A Busby (summarised): *Find it hard to believe the risk of coastal erosion is 5%, given the current problems at Haumoana/Te Awanga are having along with the amount of earth works done at West Shore to protect the existing properties and minimise the current damage. If this development were to proceed the Council and local rate payers will be left with the bill when the same thing happens here. Due to recent event in the Esk Valley with land being built on which in retrospect has been declared by the Council that it should not have been given permission to build there. My property is very sandy/pebbly.*
- Submitter No. 5 Mr B Lawson: *When beach erosion gets to a stage where the properties have to be removed who will be liable for the cost?*
- Submitter No. 7 Ms R Hollyman: *The data collected in this resource consent comes short of 100 years. Bayview has been confirmed as an eroding beach (see the 'Clifton to Tangoio Coastal Hazard Strategy 2120' report for confirmation of this). We should therefore be retreating and not building closer to the shoreline. This would be too short-sited and will end up costing future generations money creating more debt. Just look at the damage Cyclone Gabrielle has cost.*
- Submitter No. 8 Mr R Longdon: Same comments as Ms R Hollyman (submitter No. 7).
- Submitter No. 9 Mr R Ball (summarised): *There is also concern that many of the scientific reports are pre-Cyclone Gabrielle and may not be taking into consideration new information around flooding and coastal erosion. Moreover, the applicant puts forth many arguments around coastal erosion / sea-level rise not being an issue – these are based on IPCC projections which do not take into consideration potential climate tipping points and the climate reporting models that have been 'broken' over the last 15 months. NCC will be accountable for the building of homes when the Future Development Strategy and Coastal Hazards Strategy are adopted, in what is obviously a Coastal Hazard Zone."*
- Submitter No 13 Ms T Coleman: *How much is this going to cost us rate payers to stop these homes into the sea? Going by the 'Clifton to Tangoio Coastal Hazard Strategy 2120' 2120 report, 70% of it. Is this going to be another example where the council gives consent and then rebukes it after the homes become inhabitable after a natural disaster or from coastal erosion.*
- Submitter No 18 M J St Clair: *the close proximity to the sea is problematic, the ground is very unstable there and even our newly built house, which is on similar ground has moved enough over the past 3 years to require intervention.*
- Submitter No 22 Mr L Buxton: *The increased pressure this puts on areas within a hazard area. We have lived here 7 years. We have noticed the coastline shifting and changing in this time. The distance from water's edge to the edge of scrubland has narrowed over this time. In addition, we have seen weather events push up to the bushland. Building this close to a coastline is asking for trouble; expensive trouble. We come from Christchurch, and so are not keen to see vulnerable areas developed with potential for enormous loss later on. If we have continued or increased coastal erosion, tsunami events, storm driven tides, or any other unpredictable environmental event, these*

*proposed developments become an immediate problem. They become a burden on a community in terms of pressure on local emergency services and council services etc. In the earthquakes and in Napier's cyclones, ordinary residents are shown on the news upset and wringing their hands, and the councils look red-faced. The developers are no longer in the picture. We can surely reflect on these moments, and consider these sorts of risks as not being worth it.*

- Submitter No. 12 Mr J Phillips: *It seems insane to build the first row of houses so close to the beach. In rough sea the waves do overtop the bank sometimes in places. The beach is littered with some massive tree trunks pushed right up to the bank showing the power of the waves. And with 1/100 and 1/50 year events happening yearly who knows.*
- Submitter No. 10 Ms R Longdon: Same comments as Ms R Hollyman (submitter No. 7).
- Submitter No. Ms P Wilson: *The development is at odds with the messaging that we have received from Council in relation to the mapped coastal hazards zones, coastal erosion risk and investment and consenting of building improvements within the coastal environment. The shingle ridge of this section of the coast potentially benefits from the migration of beach renourishment gravels deposited on the Westshore beach area. The coastal inundation mapping for Napier and Hastings predicts the exposure of the Westshore residential area to coastal inundation through the effects of vertical downward land movement and sea level rise within the next 100 years. Coastal erosion mapping suggests large losses of land across the Westshore area. If the Westshore area is subject to such significant coastal effects resulting in managed retreat being required from the area, this would likely result in the end of the beach gravel renourishment scheme. With that gravel no longer entering the coastal system, I am concerned that erosion effects may be accelerated on the northern beaches, resulting in greater erosion affecting the development. It would be disappointing for residents to lose their homes and disappointing for ratepayers/taxpayers to fund managed retreat from a development that could have been sensibly prevented in 2024.*

### **Tsunami Risk**

The following submitters in opposition have also raised concerns about the effects the increase in number of people and houses (and cars) will have on the ability of the local population to evacuate in the time of a tsunami hazard:

- Submitter No. 5 Mr B Lawson;
- Submitter No. 7 Ms B Hollyman;
- Submitter No. 8, Mr R Longdon;
- Submitter No. 13 Ms T Coleman;
- Submitter No. 20 Ms V Maunsell;

Submitter No. 24 who submitted in support of the application notes: *The applicant engaged an expert coastal geomorphologist, Jim Dahm of Eco Nomos Ltd, to assess the coastal cell relevant to this site. It is the most in-depth and thorough report I have seen on this coastline. Put simply in Jim Dahm's opinion the beach along the subject site has not been subject to erosion for about 50 years. He also advises that the 2006 CHZ determined by the Environment Court is quite*

*conservative even for the future coastal hazards. A great place to see the extent of the accretion of the Bay View beaches is at the end of Fannin Street. There is a new beach crest forming. The Dahm evidence should be accepted by the Hearings Committee or an independent Commissioner considering this application.*

Coastal hazards, risk from storms and storm surges and erosion are important topics in Hawke's Bay and the local community has identified these as matters of concern in their submissions. Hawke's Bay has suffered greatly from the effects of storms and climate related events in the recent years and the role of Council in protecting future development and residents from these events is critical.

However, as no submitter has provided any expert evidence to refute that of the two specialists who have provided their expert opinion and reports to the application, I have not changed my original assessment, that the risk to this site from coastal hazards are low and the effects are considered to be **minor**.

With regards to tsunami evacuation, a condition of consent requiring the development to create, adopt and maintain a tsunami evacuation plan will be provided in the suite of conditions (should the consent be granted).

## **Traffic**

The applicant provided a Traffic Impact Assessment (TIA), undertaken by Team (dated 3 July 2023) which was included with the application. The TIA undertook an assessment of the existing road network and traffic numbers.

The proposed road will be accessible via a new intersection located at the intersection of Franklin and Le Quesne Roads. Due to the railway line and proximity of existing residential development to the west of that line, no other vehicle access points were seen as possible.

The proposed road does not meet the Engineering Code of Practice for the following reasons:

- Only one footpath on one side of the road is proposed;
- The 13.5m wide road reserve width for the southernmost section of the road (Lots 33-59) is 1.5m less than the Council requirement.

The road is specifically designed for the proposal and will only serve the proposed lots as it is a cul-de-sac. The above departures from the Code of Practice are therefore not expected to result in adverse traffic effects. As for the wider transport network, Franklin Road is considered to be sufficient to handle the increase in traffic from the site and the intersection at Franklin Road and State Highway 2 is appropriate to accommodate the growth in residential dwellings in this location.

Following the close of submissions, the Council's Traffic Development Engineer, Mr D Curson, notes in the engineering memo dated 8 November 2024:

*When considering the need to build a resilient road network, the proposal fails by providing 59 residential dwellings with only one escape route in the event of a Tsunami. A second road connection to Rogers Road would provide a more acceptable solution. The Traffic Impact Assessment prepared by "team" states that alternative vehicular connections were not considered due to the need to provide an additional crossing of the railway line. The Transportation Team's recommendation is that this option is re-visited for implementation.*

*The level of risk associated to a Tsunami event could raise difficult questions in the future as to why Council approved this Development in such a location. If the road was vested, Council would be responsible for re-building this asset with costs likely to be recovered from rate increases across the Napier Community. The Transportation Team's suggestion is that private ownership of the new road is required.*

The risk to Council from the location of this road and the ongoing maintenance issues has been raised previously by Mr Curson. At this time, it is not confirmed if the Council will accept the road as a Council asset.

The following submitters in opposition made submissions relating to traffic:

- Submitter No. 7 Ms R Hollyman: *Building 59x 2 to 3 bedroom lots with 1 to 2 cars per lot plus visitors etc. This would cause a lot more traffic, causing more congestion, damage to roads, noise pollution, and general pollution.*
- Submitter No. 6 Mr M Arnold: *More houses, more noise, more traffic.*
- Submitter No. 8 Mr R Longdon: The same comments as Ms R Hollyman (Submitter No. 7).
- Submitter No. 10 Ms R Longdon: The same comments as Ms R Hollyman (Submitter No. 7).
- Submitter No. 14 Ms B Daniel: *Increased demand on stormwater, roading etc;*
- Submitter No. 27 Ms P Wilson: Ms Wilson made a comprehensive submission on traffic and the potential impacts, summarised bullet points:
  - *Would introduce significant traffic noise and activity opposite my home;*
  - *Traffic would shine headlights directly into house;*
  - *Traffic exiting the development will speed up to exit which will be inconsistent with the existing quiet rural environment;*
  - *TIA identifies trimming of my trees as necessary to obtain suitable forward visibility splays for vehicles turning into the development. There is a large power pole to be considered. I would likely need a replacement boundary fence which may impact on this visibility splay;*
  - *I observe vehicles travelling around the corner at 1 Le Quesne Road faster than the assumed 25km/hr speed limit, I am concerned that these assumptions will lead to false conclusions of visibility and safety;*
  - *TIA suggests cyclists will utilise the grass shoulders on either side of Franklin Road, these are rural grass berms cut at slopes with long grass concealing drains, they are not suited to cyclists;*
  - *Concerns that traffic would try to pass vehicles paused or queuing to make a right hand turn to enter the development. Greater road work would be required to formalise the intersection, either providing for or preventing vehicles passing queued vehicles on the (left) inside of the Franklin Road to Le Quesne Road curve. Will require greater traffic*

*control and road structure to avoid conflict between vehicles and pedestrians and cyclists.*

- Submitter No. 19 Kiwirail Holdings Limited were neutral in their submission and requested the following:
  - *A level crossing safety assessment (LCSIA) needs to be carried out, so the potential risks of the development on the crossing can be fully explored and mitigated as required;*
  - *Recommended a Construction Management Plan be prepared to manage the effect construction traffic may have on the level crossing;*
  - *Acoustic attenuation requirements will be required as a condition of consent and imposed as a consent notice on the allotments so that acoustic attenuation in the dwellings is complied with on an ongoing basis;*
  - *Building setbacks from the railway corridor are proposed at 4m, KiwiRail supports this and would want to see it as a condition of consent;*
  - *Earthworks and stormwater management to ensure that no earthworks or stormwater is discharged into the KiwiRail corridor. A Permit to Enter will be required prior to works commencing.*
  - *The boundary treatment along the western boundary is supported and a condition of consent is requested to secure the installation and retention of the proposed fencing along the full length of the rail corridor for safety reasons.*
- Submitter No. 24 Mr A Petersen submitted in support and notes: *The development is obliged to meet all the Kiwirail requirements as though it is an operational railway. Their requirements have been addressed in terms of setbacks and noise attenuation. This still apparently applies even after the Napier to Gisborne line may never reopen after the destructive impacts of recent severe weather events.*

Following the close of submissions, the applicant has engaged with KiwiRail and undertaken a LCSIA. An updated site plan was provided on 13/11/2024 that shows the recommended works from Stantec's draft LCSIA.

At the time of this report, final comment from KiwiRail on the LCSIA has not been provided by the applicant. Draft conditions of consent have been provided and are included in the set of conditions.

I am satisfied that the effects on the level crossing have been considered and the design of the proposal, subject to final KiwiRail approval, is appropriate.

With regards to Mr Cursons concerns about the vesting of the road, the road, while located in a tsunami hazard zone, is outside of the coastal hazard zone. The road will provide access to all properties that are developed in the subdivision and the location of the road does not increase the tsunami hazard. Napier City Council owns many assets within the tsunami hazard zone and I do not consider that there are sufficient grounds for the Council to refuse to take this road as part of their asset register. Further, the road being owned by Council will provide for greater public access.

I consider that the potential effects listed by Ms P Wilson at 1 Le Quesne Road are not fanciful and could result in a reduced level of amenity and enjoyment of property at Ms Wilsons home. At this time, I do not consider that the applicant has adequately addressed these concerns by Ms Wilson and I consider that effects on Ms Wilson at 1 Le Quesne Road remain **minor**.

## Engineering

### Wastewater:

One of the previous applications made on this site (s127 of RMS07123) included running a new wastewater line through an existing steel oil pipeline in the railway reserve to Ladywood Road. The applicant has once again proposed this as a solution for wastewater. A new wastewater pump station will be built within the development and wastewater will be conveyed to the Bay View Transfer Pump Station.

Discussions with the Council Engineering Department have been ongoing since the application was made. The engineering team requested further information regarding the specifics of the wastewater treatment and the issues at the Bay View Pump Station. Issues identified have been with the operation of the pumpstation, specifically with Hydrogen Sulphide, resulting in odour issues. Options have been explored including the applicant upgrading the dosing unit and installing a low-pressure pump system at the Station. At the time of the s95 notification report, no system has been agreed on between the applicant and the Council.

The following submitters in opposition have made a comment on wastewater:

- Submitter No. 12 Mr J Phillips: *Also how reliable is the old oil pipeline to take sewage away from the site. Or will it come back to bite ratepayers. Our water pipeline sprang a leak, and it is newer than the old oil pipeline.*
- Submitter No. 18 Ms J St Clair: *The sewage system to be used is to pump through the old, unused piping that exists. Will this piping still be fit for purpose given how old it is, and was abandoned previously? We don't need sewage leakage into our local ground for obvious reasons. Given the number of houses being built, there is bound to be extensive pressure put on the sewage system.*
- Submitter No 20 M V Maunsell: *Concerns on the effect it will have on infrastructure. It will create pressure on stormwater and storm water run-off, sewerage and effluent management.*
- Submitter No. 22 Mr L Buxton: *Both construction run off, as well as potential for storm water concerns in the short term future. Long term implications for water quality include potential for storm water and sewerage impacts.*

Submitter No. 24 Mr A Petersen submitted in support and notes (summarised):

- *There are about 400 residential properties have on-site systems that discharge wastewater directly into the gravel strip. Less than 5% have complying systems. This situation is existing ever since those houses were built.*
- *Council has deliberately avoided providing a public system.*
- *Provision of a reticulated scheme has always been a significant hurdle for the development due to upfront costs.*
- *The subject development could fund its fair share of a low-pressure system based on the pro-rata cost per household of the 400 other properties along the coastal strip.*

Following the close of submissions, the Council's Engineering Team, led by Mr S Bradshaw, raised a number of concerns with the applicant, specifically that they did not support the location of the

wastewater pipe in the old oil pipeline and would prefer that a wastewater pipe was run under the KiwiRail corridor into Rogers Road and along Rogers Road and State Highway 2 to the Petane Domain Wastewater Treatment Plant.

A meeting was held between the applicant, agents and experts and the Council team on 11/10/2024. Mr Bradshaw indicated that Council's concerns with the proposed location of the wastewater pipeline is that they do not support the Council infrastructure to be within the KiwiRail alignment and it would be too hard for Council to access and maintain.

The applicant stated that this was how the wastewater had been shown to be managed throughout the process of this application, and furthermore, previous resource consents have been granted for the pipeline to be laid in the old oil pipe. The applicant raised concerns as to the timing of this discussion, it was not raised in any previous engineering memo or s92 request for further information.

Upon the conclusion of this meeting, Mr Bradshaw conferred with the Engineering team at NCC and has confirmed that NCC will accept the location of the wastewater pipe within the oil pipeline.

In his memo dated 08/11/2024, Mr Bradshaw states:

*"NCC's wastewater network, from the existing Bayview pumpstation to the treatment plant has a pipe network more than 14km via several other lift stations. The result wastewater received at the treatment plant has septicity issues and challenges. I agree with the Applicant that mitigation is required at Bayview Pumpstation, however, request that specific design is undertaken to confirm the appropriate approach that has a holistic consideration to the problem.*

*The Applicant has proposed a gravity network with a central pump station that will be vested. It is my opinion that a low pressure pump system will be more suitable and better align with NCC existing infrastructure."*

Mr Bradshaw confirmed in section 6 of his report:

*"The site has several infrastructure constraints and engineering concerns. The expert advice provided by the Applicant confirms the site is serviceable with some infrastructure upgrades required to NCC's existing assets. I agree that the site is serviceable, and the detail of the design can be worked through at subsequent stages such as Engineering Approval. Engineering concerns can be addressed by applying conditions to protect dwellings from the potential of flooding."*

As the site can be serviced, and all matters managed through conditions that require Engineering Plan Approval, I consider that the effects on the Council's network to be less than minor.

#### Stormwater:

The applicant is proposing to install a new stormwater network that will be vested with Council. Stormwater will be piped through the system to discharge to the beach through a new concrete box culvert outfall (consent from HBRC has not been applied for at this time).

The following submissions were received in opposition on stormwater:

- Submitter No. 12 Mr J Phillips: *how can we be assured storm water flows won't impact on the houses below them in Rogers Road?*
- Submitter No. 14 Ms B Daniel: *Increased demand on stormwater, roading etc;*

- Submitter No. 20 M V Maunsell: *Concerns on the effect it will have on infrastructure. It will create pressure on stormwater and storm water run-off, sewerage and effluent management.*
- Submitter No. 22 Mr L Buxton: *Both construction run off, as well as potential for storm water concerns in the short term future. Long term implications for water quality include potential for storm water and sewerage impacts.*
- Submitter No. 26 Mr P Musson: *Raising stormwater issues.*

Submitter No. 24 Mr A Petersen submitter in support of stormwater:

- *Stormwater runoff is a significant issue in Bay View on any development on the lower land on the western side of the rail corridor as it has adverse effects on the Ahuriri Estuary. On the elevated seaward side of the railway corridor the stormwater can be discharged to sea. In fact, the permeability of the gravel barrier was assessed for Foreworld by Takis Koutsos – a highly regarded stormwater engineer. I helped him carry out a soakage test that proved the permeability was so great that an option was just to let the stormwater from impermeable surfaces to be directly discharged into the ground.*

*In summary, stormwater runoff can be discharged to ground or by pipe to sea – similar to Mer Place and Westshore.*

Following the close of submissions, the Council's Engineering Team, led by Mr Bradshaw, provided comment back to the applicant, and stormwater was another topic of discussion at the meeting held on 11/10/2024. Mr Bradshaw raised concerns regarding the effects of storm surge and sea level rise on pluvial flooding and the ability of the stormwater discharge to work effectively. Further, since the application was lodged, the Council's requirements for stormwater in new developments have increased and a hydrological and hydraulic model would be required.

Mr Bradshaw notes in his memo dated 08/11/2024:

*Primary stormwater management is proposed through a pipe network discharging directly to the coast via a concrete box culvert. The proposed network, as noted above, provides the overland flow and has been considered to cater the 1 in 50 year storm event. I have been informed by Council that there are issues with the existing gravity stormwater outlets in the district. As such, I propose a condition to have specific engineering design undertaken on the stormwater outlet.*

*The INFIR Servicing Report for Resource Consent dated 9 August 2023, states on page 13:*

- *The ECoP requires that for new roads, ponding on roadways shall be limited to 300mm above the grate of catchpits for a storm having a 2% probability of occurring annually.*

*I was unable to determine where areas of the site would be subject to such ponding. To prevent this causing an issue to potential dwellings in the future, it is proposed that floor levels shall be a minimum of 0.5m above the greater of any ponded water in a 1 in 50 year storm.*

*The INFIR Stormwater Servicing report dated 6 December 2018, on page 3 has the rainfall intensity table. These are not in accordance with the Code of Practice and general industry approach that uses the most recent rainfall data from NIWA HIRDS.*

*I acknowledge the report is dated and recommend an update is undertaken with the relevant data.*

*There was no detail provided by the Applicant on Stormwater Treatment. I acknowledge that a subsequent consent will be required from Hawkes Bay Regional Council for stormwater discharge, which I understand will consider treatment. However, given the coastal environment and direct discharge to the coast I would expect to see a treatment philosophy provided. Furthermore, it is standard practice to mitigate runoff from the site back to pre-development. I note that no consideration is given to attenuation and shall be considered as part of the treatment philosophy.*

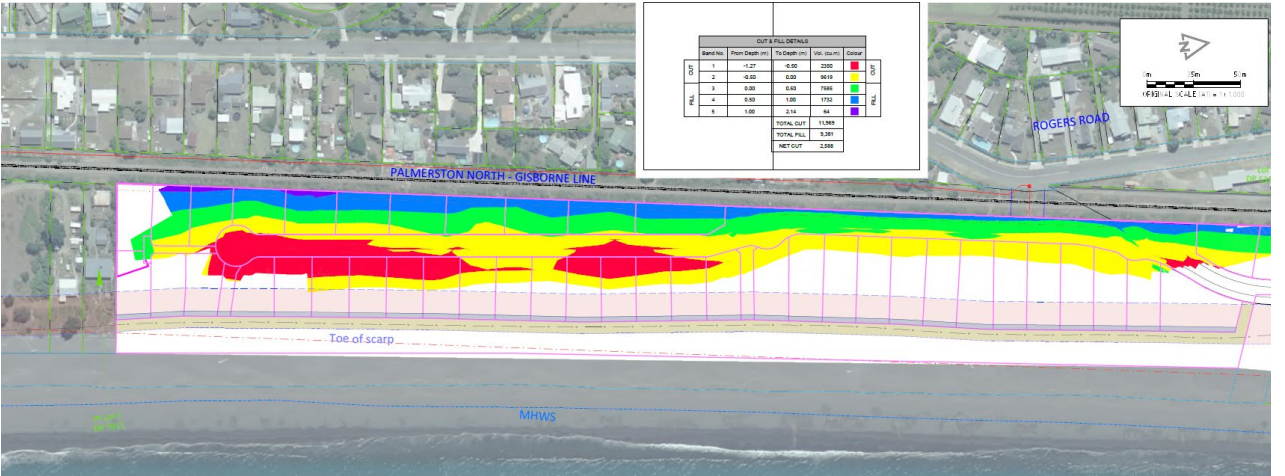
The applicant has not provided any further information at this time to address the treatment philosophy or development attenuation. At this time, I consider that the effects have not been properly addressed by the applicant to the satisfaction of the Council's Engineering Department and therefore they effects may be **more than minor**. If the applicant is able to address Mr Bradshaw's concerns prior to the hearing, this effects assessment may be altered.

Water and Firefighting Requirements:

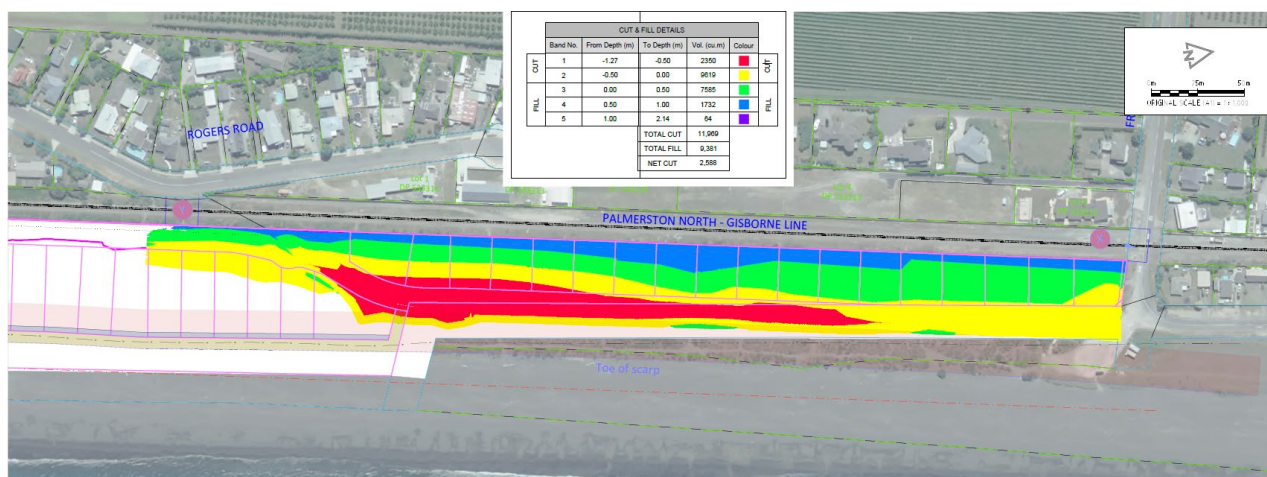
The applicant proposes to install new supply mains within the development. These mains will be vested with Council. Fire hydrants will be installed to ensure compliance with the New Zealand Fire Service Firefighting Code of Practice. Council's Engineering Department are satisfied with this proposal and have no further comments. The effect on Council's network will be less than minor.

**Earthworks**

Due to the contour of the site and sandy topsoil, bulk earthworks are proposed. Earthworks will consist of a total of 22,265m³ cut and 9,288m³ fill. The applicant has provided a cut and fill plan that shows the cut occurring through the centre of the site and the fill occurring along the western boundary to level the site:



Southern half of site, red is the deepest cut (max 0.75m depth) to the purple is the largest fill (up to 1.14m)



Northern half of the site, the key is the same as the figure above.

These earthworks are considerable, and have the potential to create adverse effects on the surrounding environment through dust, noise and visual effects. Given the coastal environment, the risk of dust being blown from the site by offshore winds is possible, this can be managed through appropriate on site measures. All noise is temporary and there is no reason to consider that any noise generated will not be within the Council's specified limits. The applicant has proposed an Erosion and Sediment Control Plan will be prepared and this can be conditioned at the time of the decision, should this application be granted.

Should the consent be granted, a suite of conditions to manage the erosion and sediment effects that arise from earthworks will be required, these will include, but not be limited to:

- Erosion and sediment control measures;
- Dust control measures;
- Noise control measures;
- Traffic management.

The following submitters in opposition made comments on earthworks:

- Submitter No. 15 Mr S Harvey: *Earthwork will mean there is a loss of the beauty of the natural environment. Dust and noise of construction.*
- Submitter No. 17 Ms A Greenhalgh: *A large area is being disturbed which will create noise and dust next to my property. I think steps need to be taken to ensure hours of work are appropriate, and also that I am not detrimentally impacted by the dust. I operate an Air BnB from my property and it will have a negative impact on the business if there is too much noise or dust.*

Mr Bradshaw notes in his memo dated 08/11/2024:

*Preliminary earthwork design proposes the highest portion of the gravel hump be cut in the order of 1.3m depth and placed as fill across the western portion of the site up to approximately 2.2m in depth. The western boundary of the site will generally be retained to support the proposed fill placement, with a height of approximately 1.2m proposed. All proposed lots are shown sloping towards the proposed road that will service the site. Overland flow from the roads is directed to four outlet points that are proposed through the gravel hump to the coast.*

While there will be noticeable visual effects from earthworks, these effects are considered to be temporary and can be wholly contained within the subject site. The earthworks are not altering the landform considerably and are required to facilitate the development.

Overall, the effects from earthworks on the wider environment will be **minor**.

### Contaminated Land

The applicant applied for a Restricted Discretionary resource consent under the NESCS for the disturbance of land, due to a recognised HAIL use on the site.

The Council's expert, Ms S Newall from HAIL Environmental, has questioned if the application will be Restricted Discretionary, as the part of the site that is affected by contaminated soils is small and the proposed earthworks to remediate may be within the permitted activity levels.

To ensure that the appropriate conditions are placed on the site at the time of the consent decision, should the consent be granted, the application will continue to include an assessment under the NESCS and an appropriate Remediation Action Plan will be required prior to earthworks.

There were no submissions on contaminated land.

Overall, the effects on human health from this proposal are considered to be **less than minor**.

### Summary of Effects

Following the submission period and information provided by the applicant with regards to KiwiRail and servicing, I consider that the following effects are:

- Residential and Rural Character and Amenity: Minor
- Natural Coastal Character and Amenity: More than minor
- Ecology: More than minor
- Cultural Effects: More than minor
- Coastal Hazards: Minor
- Traffic: Minor, specifically on Ms P Wilson at 1 Le Quesne Road.
- Wastewater: Minor
- Stormwater: More than minor in the absence of information from the applicant.
- Earthworks: Minor
- Contaminated Land: Less than minor.

Together I consider that the adverse effects of the proposal are **more than minor**.

### Measures proposed to compensate or offset adverse effects

- Landscaping

The applicant, in their '*Assessment of Landscape Effects*' dated 18 July 2023 provides a number of recommended landscape conditions (section 7.1), these include:

- A landscape management plan;
  - Vegetation to be managed in perpetuity;
  - Height limits on all buildings and structures;
  - No supplementary/minor units;
  - Reflective values for roofs and walls and joinery;
  - No mirror glazing is permitted;
  - Limits on earthwork levels;
  - Fencing;
  - Design recommendations, materials and colour palette and lighting recommendations.
- Ecological recommendations

The applicant, in the '*Avifauna Management Plan*' dated 4 November 2024 include a number of recommendations including

- Pre-works surveys;
- Exclusion zones;
- Incidental discovery protocols.

## Summary

### Actual and potential effects conclusion

In summary, my opinion is that overall the proposal is an over-development of the site. The effects on transport, waste water servicing and infrastructure will be minor. The potential effects on ecology and cultural effects can be managed by way of conditions of consent.

The effects on the proposed increase in traffic, noise, nuisance and affect to the quality of life for the resident at 1 Le Quesne Road has not been suitably addressed and I consider the effects on this resident to be minor.

The effects on the coastal environment remain more than minor. This site is an important break in the surrounding residential development for local residents and submitters. The submitters value the openness of this piece of land and the proposed development of 59 residential units, all associated infrastructure, buildings and eventual landscaping results in an effect on the environment that is more than minor.

The long term effects on the ecological habitats of some indigenous bird species has not been considered in the material provided to Council to date. At this time, there is no avifauna management plan, or suggested conditions of consent, that will mitigate the adverse effects on these habitats. Moreover, these effects have not yet been identified and therefore, at this time, the effects are considered to be more than minor.

The applicant has not yet been able to provide a set of draft conditions from Mana Ahuriri (submitter 16) that confirms that all the matters raised in the Cultural Impact Assessment will be resolved. At this time, the effects on cultural values remains more than minor.

The necessary information to confirm that stormwater will be managed to pre-development levels and a treatment management plan have not yet been provided to assist the Council's Engineering Department in their assessment. At this time, I consider the potential effects on stormwater to be more than minor.

Overall, the proposal will result in **more than minor** effects.

## 14. Relevant statutory documents - s104(1)(b)

### National Environmental Standard – s104(1)(b)(i)

The following standards are in force as regulations:

- **National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health**

The applicant did apply under an “avoidance of doubt” for a Discretionary activity consent due to the disturbance of soil where an activity has been described as HAIL. The site has had a historic use as part of the Bay View Railway station and sidings.

The Council had the application peer reviewed by a SQEP – Ms S. Newall of HAIL Environmental who considered that the site should be considered under Reg 5(9) of the NESCS as ‘Land not covered’ which states:

*“These regulations do not apply to a piece of land... about which a DSI exists that demonstrates that any contaminants in or on the piece of land are at, or below, background concentrations.”*

Ms Newall states that the applicant's SQEP should have made that declaration and therefore contended that no application for consent is required under the NESCS.

Due to the low levels of contaminants in the soil and the substantial earthworks that will be required on the site, it is my view that no further assessment under the NESCS is required. The NESCS has been appropriately considered through this process and should consent be granted, there are no specific conditions that will relate to contaminated land.

### National Policy Statement – s104(1)(b)(iii)

These national policy statements are in place:

- **National Policy Statement on Urban Development**

The applicant has provided an assessment against the NPS-UD noting:

*“The Council's planning framework support urban consolidation and limits residential expansion in areas of limited infrastructure provisions and capacity. Although the subdivision is proposed on land zoned rural, it is located within the Napier urban limit and forms part of a ribbon of residential development along the coast of Bay View. The application makes efficient and sustainable use of land not suited for productive activities. The subdivision can be adequately*

*serviced with connections to reticulated utility networks. The proposed subdivision if consistent with, and gives effects to, the National Policy Statement for Urban Development.”*

I do not agree with the above statement. The applicant is correct that the site is within the “Urban Limit” as specified on the Council’s Planning Maps, however, there is no justification in this application as to whether these new residential lots are needed or necessary in this part of Napier. The site is not within close proximity to employment, education or community services. The Operative District Plan zones this site Main Rural, and the Proposed District Plan zones it Rural Production. The steer from the Operative and Proposed District Plans is that there is not a demand for housing in this location.

As the Proposed District Plan is currently being heard by the Hearings Panel, and the landowner has made a submission to change the zoning of this site, it would be more appropriate for the development to occur in that manner. A change to the planned zoning would require full consideration of the policies of the NPS-UD and the applicant would be required to demonstrate to Council that this development would contribute to a well-functioning urban environment (Policy 8).

This application for a resource consent for subdivision and development does not fulfil the objectives and policies of the NPS-UD.

- **National Policy Statement for Freshwater Management**

The applicant has made an assessment against the NPSFM, stating:

*“The proposed subdivision will safeguard the life supporting capacity of the freshwater catchments and the ocean (as the ultimate receiving environment) as appropriate silt and sediment control measures will be implemented during the enabling works. Further, the proposed discharge of wastewater will be undertaken in a manner that protects the environment, cultural values, public health, and amenity and avoids significant adverse effects on groundwater, surface water quality and the coastal environment. No stormwater will flow towards the Ahuriri Estuary.”*

I concur with the above statement and note that there are no freshwater bodies or wetlands in the vicinity of the site.

The proposal is consistent with the NPSFM.

## **New Zealand Coastal Policy Statement 2010 (NZCPS) – s104(1)(b)(iv)**

The purpose of the NZCPS is to state policies in order to achieve the purpose of the RMA in relation to the coastal environment of New Zealand.

The relevant objectives and policies of the NZCPS have been included in the applicants assessment. I will provide the objective and policy, followed by the applicants assessment and then my response.

### **Objective 1**

*To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:*

- maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;*
- protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and*
- maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.*

This Objective is relevant to the following Policy:

***Policy 1 Extent and characteristics of the coastal environment***

- 1) Recognise that the extent and characteristics of the coastal environment vary from region to region and locality to locality; and the issues that arise may have different effects in different localities.*
- 2) Recognise that the coastal environment includes:*
  - a) the coastal marine area;*
  - b) islands within the coastal marine area;*
  - c) areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;*
  - d) areas at risk from coastal hazards;*
  - e) coastal vegetation and the habitat of indigenous coastal species including migratory birds;*
  - f) elements and features that contribute to the natural character, landscape, visual qualities or amenity values;*
  - g) items of cultural and historic heritage in the coastal marine area or on the coast;*
  - h) inter-related coastal marine and terrestrial systems, including the intertidal*
  - i) zone; and*
  - j) physical resources and built facilities, including infrastructure, that have modified the coastal environment.*

The applicant provides a detailed description of the site, specifically:

*Over the northernmost (approximately 430 m) length, the seaward boundary of the property lies variously 35-50 m inland from the seaward toe of the gravel barrier, this distance decreasing with distance south of Franklin Road. In this area, the property is separated from the open coast by an unformed section of Le Quesne Road and a narrow Council reserve. Over the remaining*

*length, the property directly abuts the open coast; with the seaward boundary of the property typically lying on the active beach, 12-15 m seaward of the toe of bank.*

*The landward boundary of the property lies directly seaward of the railway line and is typically located 70-90m inland from the seaward toe of the raised barrier, with the width increasing from north to south.*

*The seaward face of the raised gravel barrier is gently sloping and densely vegetated, with some low vegetation extending 2-4 m out on to the beach. The seaward toe of the raised gravel barrier is also the landward edge of the active beach. The active beach seaward of the raised barrier is a mixed sand and gravel beach, composed entirely of inter-mixed sand and gravel throughout its profile, largely very fine gravels, granules, and coarse sand.*

Having visited the site and reading the expert reports provided with the application, I conclude with this description. This site is within the coastal environment and assessment under the NZCPS is relevant.

## **Objective 2**

*To preserve the natural character of the coastal environment and protect natural features and landscape values through:*

- *recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;*
- *identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and*
- *encouraging restoration of the coastal environment.*

With relevant Policies:

## **Policy 13 Preservation of natural character**

- 1) *To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*
  - a) *avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*
  - b) *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;*
- 2) *Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*
  - a) *natural elements, processes and patterns;*
  - b) *biophysical, ecological, geological and geomorphological aspects;*
  - c) *natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
  - d) *the natural movement of water and sediment;*
  - e) *the natural darkness of the night sky;*
  - f) *places or areas that are wild or scenic;*

- g) a range of natural character from pristine to modified; and*
- h) experiential attributes, including the sounds and smell of the sea; and their context or setting.*

#### **Policy 14 Restoration of natural character**

*Promote restoration or rehabilitation of the natural character of the coastal environment, including by:*

- a) identifying areas and opportunities for restoration or rehabilitation;*
- b) providing policies, rules and other methods directed at restoration or rehabilitation in regional policy statements, and plans;*
- c) where practicable, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include:*
  - i. restoring indigenous habitats and ecosystems, using local genetic stock where practicable; or*
  - ii. encouraging natural regeneration of indigenous species, recognising the need for effective weed and animal pest management; or*
  - iii. creating or enhancing habitat for indigenous species; or*
  - iv. rehabilitating dunes and other natural coastal features or processes, including saline wetlands and intertidal saltmarsh; or*
  - v. restoring and protecting riparian and intertidal margins; or*
  - vi. reducing or eliminating discharges of contaminants; or*
  - vii. removing redundant structures and materials that have been assessed to have minimal heritage or amenity values and when the removal is authorised by required permits, including an archaeological authority under the Historic Places Act 1993; or*
  - viii. restoring cultural landscape features; or*
  - ix. redesign of structures that interfere with ecosystem processes.*

#### **Policy 15 Natural features and natural landscapes**

*To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:*

- a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and*
- b) avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;*

The applicant states that:

*The subdivision is proposed within a modified coastal environment. The site and its surrounds are not identified as being outstanding natural features or landscape.*

*The proposal has been assessed in the Landscape and Visual Assessment report to have positive effects on the quality of the natural environment. The retention of the sensitive features within the site being the coastal beach interface, enhancement of the natural systems through inclusion of native vegetation cover and lot placement and development, are all measures that contribute to integration with the coastal settlement and coastal landscape.*

*Whilst a change to the existing landscape character the subdivision integrates and responds appropriately to the features of the site and ensure that the coastal character of the area is maintained.*

*Restoration of the coastal edge through regenerative planting enhances the natural character of this part of the Bay View coastal environment.*

I concur that the site has been considered in the Landscape and Visual Assessment as not being outstanding and I agree the site is within a modified coastal environment.

Turning specifically to Policy 14 that seeks to promote the restoration or rehabilitation of the natural character of the coastal environment. Policy points (a), (b) and (c) encourage the restoration of habitats and ecosystems, weed and pest management and in the case of (c)(iii) creating or enhancing habitat for indigenous species.

I therefore do not agree with the point made by the applicant that the “*restoration of the coastal edge through regenerative planting enhances the natural character of this part of the Bay View coastal environment*”. The restoration of the coastal edge could occur without the subdivision. This site is over 1km of unbroken, undeveloped coastal edge and the proposed subdivision will be a heavy modification of this landscape. The regenerative planting proposed will help to mitigate the visual effects of the subdivision and development, but I do not consider that the regenerative planting proposed meets the above policies.

The proposal is inconsistent with Policy 14.

### **Objective 3**

*To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:*

- *recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources;*
- *promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act;*
- *incorporating mātauranga Māori into sustainable management practices; and*
- *recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua.*

### **Policy 2 The Treaty of Waitangi, tangata whenua and Māori heritage**

*In taking account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment...*

At the time of the application, the applicant did not have a completed CIA. During the process of the application, the applicant provided a CIA ‘*Cultural Impact Assessment Report - 68 Franklin*

*Road Bay View, Napier. Proposed 59 Lot Subdivision by Jack Brownlie Investments Ltd'*  
prepared by Mana Ahuriri Trust (MAT) dated September 2023.

This CIA provides a thorough and important history of the relationship of Hapū with this site and the surrounding coastline. The CIA is supportive of the proposal as long as a number of matters are addressed by the applicant, with regards to the NZCPS, these matters include:

- Management of wastewater with an infrastructure management plan that sets out how the wastewater infrastructure will be maintained and managed to avoid adverse effects on the coast;
- Stormwater, at the time of the CIA, this was an issue that had not been resolved. The CIA considers that the proposal for stormwater management 'falls short of expectations in the protection and enhancement of mauri.' At the time of this report, the stormwater management and design has not been confirmed to be accepted by mana whenua;
- Coastal Hazards, the CIA specifically instructs the applicant to continue discussions with Maungaharuru-Tangitū Trust, this trust has stated that they do not wish to see any new developed in areas that are flood prone and/or at risk from coastal hazards. At the time of this report it is unclear where this discussion has progressed to;
- Landscape, the CIA is supportive of the proposed landscaping and landscaping management plan;
- The CIA is supportive of the potential to improve ecosystem health and the mauri of the whenua through landscaping, however there are concerns about the mauri of existing flora and fauna, especially the kororā. The CIA requests an avian management plan, which has now been completed and forms part of the application materials;

The CIA then requests a number of consent conditions. At the time of this report, it is unclear how many of these conditions will be put forward by the applicant.

I am satisfied that to date tangata whenua have been involved in the consultation and the applicant maintains a relationship with tangata whenua as the application progresses.

#### **Objective 4**

*To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:*

- *recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy;*
- *maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and*
- *recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland.*

#### **Policy 18 Public open space**

*Recognise the need for public open space within and adjacent to the coastal marine area, for public use and appreciation including active and passive recreation, and provide for such public open space, including by:*

- a) ensuring that the location and treatment of public open space is compatible with the natural character, natural features and landscapes, and amenity values of the coastal environment;*
- b) taking account of future need for public open space within and adjacent to the coastal marine area, including in and close to cities, towns and other settlements;*
- c) maintaining and enhancing walking access linkages between public open space areas in the coastal environment;*
- d) considering the likely impact of coastal processes and climate change so as not to compromise the ability of future generations to have access to public open space; and*
- e) recognising the important role that esplanade reserves and strips can have in contributing to meeting public open space needs.*

#### **Policy 19 Walking access**

- 1) Recognise the public expectation of and need for walking access to and along the coast that is practical, free of charge and safe for pedestrian use.*
- 2) Maintain and enhance public walking access to, along and adjacent to the coastal marine area, including by:*
  - a) identifying how information on where the public have walking access will be made publicly available;*
  - b) avoiding, remedying or mitigating any loss of public walking access resulting from subdivision, use, or development;*

The applicant states:

*The public open space and recreation qualities of the coastal environment in this locality will be enhanced by setting aside land along the coastal edge to be vested with Council for pedestrian and cycle access. This will have positive effects on the recreation values of the coast and beach and provide space for the public to use and enjoy. Landward of this access, regeneration of native coastal planting is proposed to enhance the natural character of the coastal area.*

I concur with the above statement. Currently there is public access from the car park at the end of Le Quesne Road, down to the beach. The development will allow for a public walkway along the coastal edge of the development, as well as up into the development and along the road. At present there is informal and unconsented access through the development, with residents crossing the railway line and private property to get to the beach. The proposal will formalise and improve public access to the coast.

The proposal is consistent with the above objective and policies.

#### **Objective 5**

*To ensure that coastal hazard risks taking account of climate change, are managed by:*

- *locating new development away from areas prone to such risks;*
- *considering responses, including managed retreat, for existing development in this situation; and*
- *protecting or restoring natural defences to coastal hazards.*

**Policy 24 Identification of coastal hazards**

- 1) *Identify areas in the coastal environment that are potentially affected by coastal hazards (including tsunami), giving priority to the identification of areas at high risk of being affected. Hazard risks, over at least 100 years, are to be assessed having regard to:*
  - a) *physical drivers and processes that cause coastal change including sea level rise;*
  - b) *short-term and long-term natural dynamic fluctuations of erosion and accretion;*
  - c) *geomorphological character;*
  - d) *the potential for inundation of the coastal environment, taking into account potential sources, inundation pathways and overland extent;*
  - e) *cumulative effects of sea level rise, storm surge and wave height under storm conditions;*
  - f) *influences that humans have had or are having on the coast;*
  - g) *the extent and permanence of built development; and*
  - h) *the effects of climate change on:*
    - i. *matters (a) to (g) above;*
    - ii. *storm frequency, intensity and surges; and*
    - iii. *coastal sediment dynamics;*

*taking into account national guidance and the best available information on the likely effects of climate change on the region or district.*

**Policy 25 Subdivision, use, and development in areas of coastal hazard risk**

*In areas potentially affected by coastal hazards over at least the next 100 years:*

- a) *avoid increasing the risk of social, environmental and economic harm from coastal hazards;*
- b) *avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;*
- c) *encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events;*
- d) *encourage the location of infrastructure away from areas of hazard risk where practicable;*
- e) *discourage hard protection structures and promote the use of alternatives to them, including natural defences; and*

*f) consider the potential effects of tsunamis and how to avoid or mitigate them.*

The applicant states in their assessment:

*The subdivision layout and building setback has been designed to take account of coastal hazard zone in the Napier District Plan. Analysis of the coastal hazard risks including climate change and sea-level rise, coastal erosion, storm surge and waves overtopping land, and tsunami has been undertaken.*

*The review of coastal hazards indicates that the 24 m coastal hazard setback zone recommended by the Environment Court in 2006 (which the proposal has been designed in accordance with) is conservative, even taking into account the significantly higher sea-level rise scenarios now required to be considered. On the basis of existing best information, the setback will provide dwellings in the proposed development with a high level of protection from coastal hazards over the next 100 years and probably beyond.*

*The proposed subdivision is not at risk from tsunami events with average recurrence intervals of less than 100-200 years.*

As previously stated in this report, as two coastal experts have provided their assessment that this site is not at risk to coastal erosion or storm surge (given the proposed set back out of the coastal hazard zone), the dwellings will not likely be at risk of coastal hazards over the next 100 years.

I do not concur with the applicants comment about the tsunami risk, this site is within the tsunami evacuation zone identified by Hawke's Bay Emergency Management and at the time of a long or strong earthquake, residents will be advised to evacuate the site.

The risk to the safety of other residents through the increase in the number of people and vehicles from this subdivision on their ability to evacuate in a tsunami has been the focus of some of the submissions. There is no way to avoid or mitigate the potential effects of tsunami on this subdivision, other than ensuring there is a tsunami evacuation plan in place for the subdivision and the surrounding community.

The proposal is not consistent with Policy 25(f).

## **Objective 6**

*To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:*

- *the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;*
- *some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;*
- *functionally some uses and developments can only be located on the coast or in the coastal marine area;*
- *the coastal environment contains renewable energy resources of significant value;*
- *the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;*

- *the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;*
- *the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected; and*
- *historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.*

#### **Policy 6 Activities in the coastal environment**

- 1) *In relation to the coastal environment:*
  - a) *recognise that the provision of infrastructure, the supply and transport of energy including the generation and transmission of electricity, and the extraction of minerals are activities important to the social, economic and cultural well-being of people and communities;*
  - b) *consider the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth without compromising the other values of the coastal environment;*
  - c) *encourage the consolidation of existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement and urban growth;*
  - d) *recognise tangata whenua needs for papakāinga, marae and associated developments and make appropriate provision for them;*
  - e) *consider where and how built development on land should be controlled so that it does not compromise activities of national or regional importance that have a functional need to locate and operate in the coastal marine area;*
  - f) *consider where development that maintains the character of the existing built environment should be encouraged, and where development resulting in a change in character would be acceptable;*
  - g) *take into account the potential of renewable resources in the coastal environment, such as energy from wind, waves, currents and tides, to meet the reasonably foreseeable needs of future generations;*
  - h) *consider how adverse visual impacts of development can be avoided in areas sensitive to such effects, such as headlands and prominent ridgelines, and as far as practicable and reasonable apply controls or conditions to avoid those effects;*
  - i) *set back development from the coastal marine area and other water bodies, where practicable and reasonable, to protect the natural character, open space, public access and amenity values of the coastal environment; and*
  - j) *where appropriate, buffer areas and sites of significant indigenous biological diversity, or historic heritage value.*
- 2) *Additionally, in relation to the coastal marine area:*
  - a) *recognise potential contributions to the social, economic and cultural wellbeing of people and communities from use and development of the coastal marine area,*

*including the potential for renewable marine energy to contribute to meeting the energy needs of future generations:*

- b) recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;*

The applicant has made the following assessment:

*The proposal provides for the social wellbeing of the community by providing additional vacant lots for housing in a popular area of Napier for residential living.*

*The subdivision makes efficient use of vacant land not suited to productive rural activities. The increase in residential properties along this coast are confined and contained by surrounding residential subdivision. The approach to the subdivision is sensitive to the coastal environment and in turn it is considered the adverse landscape effects on the coastal character is of a very low degree.*

*Future residential development will be setback from the coast and design measures will ensure that the impacts of development on the coastal environment are minimised. Public access to the coast is preserved with the vesting of land for this purpose along the coastal edge.*

I concur with the statement about public access to the coast, however, do not agree with the applicants statement regarding the approach to the sensitivity of the coastline. As previously stated, this site is 1km of unbroken, vacant coastal edge and the applicant proposes to use the entire length for housing. Apart from the pedestrian access alongside and through the site on the road, no other land has been kept aside as vacant coastal edge land.

I consider this part of Objective 6 to be important in its wording:

- *the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;*

Some level of development is likely appropriate on this site, but presently, the proposed subdivision is well outside of the appropriate limits set by the Operative and Proposed District Plans (which would not even allow the site to be subdivided into two lots). The location of the site is not within a Greenfield Growth Area as identified in the District Plan, so while there is undeniably a surrounding pattern of coastal residential development, this site is not earmarked for development of this scale. The process through which this development is sought has not allowed for the appropriate consideration of whether housing in this location is required to meet the needs of Napier's housing, this is done through the District Plan or a private plan change activity.

I do not consider the proposal to be consistent with the above objective and policy.

Further policies that are considered relevant to this assessment:

***Policy 11 Indigenous biological diversity (biodiversity)***

*To protect indigenous biological diversity in the coastal environment:*

- a) avoid adverse effects of activities on:*
- i. indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;*

- ii. *taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;*
  - iii. *indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;*
  - iv. *habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;*
  - v. *areas containing nationally significant examples of indigenous community types; and*
  - vi. *areas set aside for full or partial protection of indigenous biological diversity under other legislation; and*
- b) *avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on:*
- i. *areas of predominantly indigenous vegetation in the coastal environment;*
  - ii. *habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;*
  - iii. *indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;*
  - iv. *habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;*
  - v. *habitats, including areas and routes, important to migratory species; and*
  - vi. *ecological corridors, and areas important for linking or maintaining biological values identified under this policy.*

The applicant states:

*The current condition of the proposed site is highly modified and degraded with majority of the vegetation being exotic weeds. There are very few bird species using the habitat within the property boundaries, although multiple bird species were observed in the area including southern-black backed gulls, red-billed gulls and swallows. There are no known threatened species or plants located on the site.*

*The ecological value of the site will be enhanced through the weed-management and restoration planting of a coastal buffer setback of 7m. The proposal is appropriate from an ecological perspective and will enhance ecological corridors and support indigenous ecosystems.*

*Weed management, avian and vegetation management plans will ensure that the proposed activity will remedy and mitigate potential adverse effects on the coastal environment.*

Since this assessment, the applicant has also provided an Avifauna Management Plan. I generally concur with the assessment and I am satisfied that through the implementation of consent conditions requiring compliance with the Avifauna Management Plan, indigenous biodiversity can be protected.

**Policy 20 Vehicle access**

1. *Control use of vehicles, apart from emergency vehicles, on beaches, foreshore, seabed and adjacent public land where...*

The applicant states:

*There is an existing paper road parallel to the foreshore which connects to Franklin and Le Quesne Roads. The proposed subdivision does not alter existing vehicle access to the back, noting that the control of vehicles on roads is a jurisdiction of the Council as road controlling authority.*

I concur with this assessment and consider that the proposal does not increase the risk or access to the beach by vehicles.

**Policy 21 Enhancement of water quality**

*Where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing uses, such as aquaculture, shellfish gathering, and cultural activities, give priority to improving that quality by:*

- a) *identifying such areas of coastal water and water bodies and including them in plans;*
- b) *including provisions in plans to address improving water quality in the areas identified above;*
- c) *where practicable, restoring water quality to at least a state that can support such activities and ecosystems and natural habitats;*
- d) *requiring that stock are excluded from the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in the coastal environment, within a prescribed time frame; and*
- e) *engaging with tangata whenua to identify areas of coastal waters where they have particular interest, for example in cultural sites, wāhi tapu, other taonga, and values such as mauri, and remedying, or, where remediation is not practicable, mitigating adverse effects on these areas and values.*

**Policy 22 Sedimentation**

- 1) *Assess and monitor sedimentation levels and impacts on the coastal environment.*
- 2) *Require that subdivision, use, or development will not result in a significant increase in sedimentation in the coastal marine area, or other coastal water.*
- 3) *Control the impacts of vegetation removal on sedimentation including the impacts of harvesting plantation forestry.*
- 4) *Reduce sediment loadings in runoff and in stormwater systems through controls on land use activities.*

**Policy 23 Discharge of contaminants**

- 1) *In managing discharges to water in the coastal environment, have particular regard to:*
  - a) *the sensitivity of the receiving environment;*

- b) *the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and*
  - c) *the capacity of the receiving environment to assimilate the contaminants; and:*
  - d) *avoid significant adverse effects on ecosystems and habitats after reasonable mixing;*
  - e) *use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and*
  - f) *minimise adverse effects on the life-supporting capacity of water within a mixing zone.*
- 4) *In managing discharges of stormwater take steps to avoid adverse effects of stormwater discharge to water in the coastal environment, on a catchment by catchment basis, by:*
- a) *avoiding where practicable and otherwise remedying cross contamination of sewage and stormwater systems;*
  - b) *reducing contaminant and sediment loadings in stormwater at source, through contaminant treatment and by controls on land use activities;*
  - c) *promoting integrated management of catchments and stormwater networks; and*
  - d) *promoting design options that reduce flows to stormwater reticulation systems at source.*

The applicant states:

*The proposed application incorporates best practice erosion and sediment control measures to prevent sedimentation of coastal waters. Stormwater devices are proposed to improve the quality of stormwater discharged to the coast.*

*A new stormwater network is proposed for the development to vest with the Napier City Council. Stormwater from the primary piped system will discharge to the beach through a new concrete box culvert outfall. The primary system will be designed to cope for events up to the 1 in 10-year event without surcharging to above finished ground levels. The road formation will have flush concrete nibs and surface runoff will be directed to non-standard sumps within the berms before being discharged to the coast.*

*The proposal is not expected to create adverse effects in terms of discharges of contaminants, which can be managed so adverse effects are less than minor.*

*The applicant is engaging with tangata whenua in relation to the subdivision proposal and has commissioned a cultural impact assessment.*

At this time I do not consider that enough information has been provided for this assessment to be undertaken. Primarily, the role of consenting the discharge of stormwater into the coastal environment will be that of Hawke's Bay Regional Council, and this application for stormwater discharge has not yet been made.

In the interim, it is important to note that both NCC and Mana Whenua have indicated that they do not have enough information to inform their assessment on the effects of stormwater and consider that more work is required to design the stormwater management system and attenuation on site.

I consider that the proposal is not consistent with the above policies.

The relevant provisions of the NZCPS have been considered and it is concluded that the proposal is **inconsistent with the NZCPS** because:

- The proposal is inconsistent with Policy 14. Regenerative planting has been proposed, however, this is only along the front strip of the site, in an effort to mitigate the effects of the proposed subdivision. I consider that the proposal does not seek to restore or rehabilitate the natural character of the coastal environment, rather, the planting proposed will somewhat but not wholly mitigate the overall effects of the subdivision and development.
- The proposal is not consistent with Policy 25(f) as the risk of tsunami cannot be avoided or mitigated.
- The proposal is not consistent with Objective 6 and Policy 6(b) as the rate and location of the proposed built development is not provided for in the Operative or Proposed District Plan. The proposal is not development within "appropriate limits" as defined by these District Plans.
- An assessment against Policies 21-23 cannot be completed given concerns the Council and Mana Whenua have raised about the proposed stormwater design and the potential effects.

### Regional Policy Statement – s104(1)(b)(v)

The **Hawke's Bay Regional Resource Management Plan** incorporates the Regional Policy Statement. The purpose of this Plan is to set a policy framework for managing resource use activities in an integrated manner across the Hawke's Bay Region. Management of the coastal marine area and wider coastal environment is addressed in the HBRC Coastal Environment Plan.

The following Objectives and Policies are relevant to this proposal:

#### ***OBJ LW1: Integrated management of fresh water and land use and development***

#### ***OBJ LW3: Tāngata whenua values in management of land use and development and freshwater***

*Fresh water and the effects of land use and development are managed in an integrated and sustainable manner...*

The proposal does not have an impact on fresh water. Erosion and sediment control measures will protect the stormwater network from adverse effects from the proposed earthworks. Further, if the consent is granted, it will be based on the requirement of a stormwater system that addresses the concerns of the Council and Mana Whenua.

#### ***OBJ UD1: Urban Form***

*Establish compact, and strongly connected urban form throughout the Region.*

The consideration of this as an urban expansion, when the land is zoned for rural purposes and on the coast is a method employed by the applicant. The resulting built environment is unknown at this time as the proposal to adopt the performance standards of the Rural Settlement Zone (being the closest "residential" zone to the property) is not confirmed given the proposed District Plan is recommending a change to Rural Lifestyle Zone, which has a slightly more onerous set of performance standards (including a requirement for a minimum Lot size of 2,500m<sup>2</sup>). At this

time, the range of housing choice and the resulting character and identity of this place is unknown.

It is acknowledged that the site will be serviced for wastewater, which is a positive attribute of this proposal.

***OBJ 4, OBJ 5, OBJ 7, OBJ 8, OBJ 31 and OBJ 34:***

The proposed subdivision will occupy a vacant, unbroken strip of over 1km of coastal land. No land is provided for public use apart from the strip of land along the front of the site, which is required for a setback to mitigate the effects of coastal hazards.

The applicant has engaged with mana whenua and their response has not yet been finalised at the time of this report.

While the area of the site that will be developed is not considered to be at risk of natural hazards, the site sits within the tsunami hazard zone.

The scale and intensity of the subdivision is considered to be inappropriate for the natural character of this coastal environment.

Overall, the proposal is **not** consistent with the Objectives and Policies of the HBRC Regional Resource Management Plan.

The **Hawke's Bay Regional Coastal Environmental Plan** assist the Regional Council in promoting the sustainable management of natural and physical resources of the Hawke's Bay coastal environment. The Regional Coastal Environment Plan sets out the issues relating to protection and enhancement of the coast, water quality, controls on activities and structures and coastal hazards.

The relevant Objectives and Policies are identified by the applicant as:

***Objective 2.1 and policies 2.1, 2.3, 2.4, 2.9, and 2.11.***

***Objective 5.1 and policy 5.1.***

***Objective 6.1 and policy 6.1.***

***Objective 8.1 and policy 8.1.***

***Objectives 15.1, 15.2, 15.3***

***Objectives 16.1, 16.2, 16.3 and 16.4.***

I concur with the objectives and policies selected for consideration.

As with the assessment against the NZCPS and the HBRC RRMP, the same assessment matters are relevant to this proposal, being the loss of a considerable stretch of coastal land to development that is of an inappropriate intensity and scale. Matters such as the effects of stormwater and the long term effect on ecological habitat have not yet been identified and are not considered to be mitigated.

The protection of public access along the front of and within the subdivision is acknowledged.

The subdivision has been designed to mitigate the risk of coastal hazards such as erosion and storm surge by requiring a setback for the future dwellings, and this is shown on the scheme plan.

Overall, the proposal is not consistent with objectives and policies of the HBRC Regional Coastal Environment Plan.

## Plan or Proposed Plan – section 104(1)(b)(vi)

### Napier City Operative District Plan

#### Relevant objectives and policies and issues

Issue 33.1.9 outlines the history behind the zoning in Bay View (and other constrained areas in Napier), it reads:

*In recognition of the fact that the 'rural' standard infrastructural services could not support additional residential intensification in areas of high water tables and heavy ground conditions, only the core residential parts of Jervoistown (and also Bay View and Meeanee) were zoned Rural Settlement while the remaining parts were zoned Main Rural. The intension for this was to allow normal, albeit limited, residential development to occur in the Rural Settlement Zone but to severely limit any further residential intensification in the area.*

#### Chapter 33 – Rural Environments Objectives, Policies, Methods etc.

The following Objectives and Policies are relevant to this application:

#### **Objective 33.2 – Inappropriate Subdivision, Use and Development**

*To protect the City's outstanding natural features, significant landscapes, and its rural land from the adverse effects of inappropriate subdivision, use and development of land.*

#### **Policies: 33.2.1, 33.2.2, 33.2.6, 33.2.8 and 33.2.11**

The applicant has made an assessment against the above objectives and policies. I concur with the applicant that the HBRC Regional Classification for this site is LUC 7, therefore, the site is not considered to be suitable for horticultural or productive plants.

When considering the "rural character" it has been established that the site does not enhance or add to the rural character given it's separation from nearby rural sites by surrounding residential development. At present the site is not used for any rural land use.

The site is not identified in the HPUDS strategy and it is not currently identified on the Hawke's Bay Future Regional Development Strategy. The site is within the current urban limit, and subdivision at some scale may be considered appropriate.

The proposal is not inconsistent with the above objectives and policies.

#### **Objective 33.3 – Rural Character and Amenity**

*To maintain and enhance the character and amenity values of the rural environment.*

#### **Policies 33.3.1 and 33.3.4**

The applicant has considered that as the site is not currently used for a rural purpose, and is disconnected from other rural land, it does not display any "intrinsic rural character or amenity". I concur that the site is separate from other nearby rural land uses. However, I consider that the size of the site is large enough that it could be used for a rural purpose and the lack of activity on the site to date does not discount the site from this assessment.

The site is bordered on all sides by residential activity, to the south the lots are larger than proposed on this development and sparsely occupied, to the north the subdivision pattern is not as dense as the proposal given that there are only houses to the west of Le Quesne Road and to the west the residential area is separated from the site by the railway corridor.

At present, a complying Lot size subdivision would not be possible, the site is just short of the required 8ha to provide for two 4ha lots. At this time, the lot could accommodate one dwelling, supplementary dwelling or visitor accommodation and other ancillary buildings such as garages and sheds. The proposal is for 59 residential lots, each accommodated with a house and it is acceptable to consider that other features such as garages, pools, fencing and landscaping would all be present on site.

While I acknowledge that the location of the site, surrounded by rural residential development and lacking in productive land use makes a subdivision and residential development an appropriate development opportunity, I consider the scale and intensity of the proposed land use to be significantly more than what could reasonably be expected on this site. The number and scale of residential dwellings is not what is envisaged in the Main Rural zone.

Overall, the proposal is **not** consistent with the above Objective and Policies.

#### **Objective 33.4 - Residential and Rural Residential Development**

*To enable residential and rural residential development in a manner that avoids, remedies or mitigates adverse effects on the environment and the rural character of the environment.*

#### **Policies: 33.4.1, 33.4.3, 33.4.5, 33.4.6, 33.4.7, 33.4.8, 33.4.9 and 33.4.10**

The proposal will not affect the long term sustainability and development of natural and physical resources in the rural environment and is separated from other rural uses due to the existing surrounding residential development.

It is unclear how the proposal will meet policy 33.4.8 as the underlying zone rules require large yard setbacks (7.5m front yard and 6m side yards) which would result in development being untenable on the proposed sites. The applicant has suggested a condition of consent that all development is to be undertaken in accordance with the Rural Settlement Zone of the Napier District Plan). However, similar restrictions apply, with a 6m front yard setback required, this will be especially difficult for those sites that are adjacent to the KiwiRail corridor to comply with given their required 4m setback from the KiwiRail corridor. The potential restriction on building and the effects on amenity and character for future residents has not thoroughly been explored by the applicant, the proposal is not consistent with Policy 33.4.8.

Further, the proposal is not consistent with Policy 33.4.9, as the proposed subdivision is not within an identified "residential greenfield growth area" identified in Appendix 35, and therefore the policy is clear – residential and rural residential subdivision and development is to be avoided.

Overall, the proposal is **not** consistent with Policies in Objective 33.4.

#### **Objective 33.5 - Services and Infrastructure**

*To enable the use and development of services and infrastructure in a manner which avoids, remedies or mitigates adverse effects on the environment.*

#### **Policy 33.5.4**

The applicant has provided a servicing solution for wastewater, with a wastewater line run through and old oil pipeline to be connected at the Petane Wastewater Treatment plant. No specific plans have been provided for this pipeline at this time.

The proposed stormwater design has not provided the adequate details for Council to confirm that it will avoid, remedy or mitigate adverse effects on natural and physical resources.

At this time, the proposal is **not** consistent with Policy 33.5.4.

### **Objective 33.6 - Cumulative Effects**

*To ensure that the cumulative adverse effects of subdivision, use and development of land on rural resources are recognised, and avoided, remedied or mitigated.*

### **Policies 33.6.1 and 33.6.2**

There are no effects on the Rural resources and the site can be fully serviced. There are no cumulative effects that need to be considered. The proposal is consistent with the above objective and policies.

### **Chapter 41 – Open Space Objectives, Policies, Methods etc.**

**Objective 41.2** – *To ensure that public access to and along the coastal, estuarine and river areas is maintained and enhanced while protecting the natural character and environment of the coast, estuary or river.*

### **Policies 41.2.1, 41.2.2, 41.2.3 and 41.2.5**

Public access is currently provided through a public reserve accessed off the car park at the end of Le Quesne Road. This access is maintained and further formalised public access is provided through the subdivision via a path from the road to the coast.

The proposal is consistent with the above objective and policies.

**Objective 41.3**- *To enable the use and development of land for the recreational needs of the community, while ensuring any adverse effects on the environment are avoided, remedied or mitigated.*

### **Policies: 41.3.1, 41.3.2, 41.3.4, 41.3.7 and 41.3.8**

Access to the foreshore and coastal areas are maintained via the existing public reserve at the end of Le Quesne Road. Formalised access through the subdivision is provided. The subdivision is not large enough to provide any reserves and the proximity to the coast negates this need.

The proposal is consistent with the above objectives and policies.

**Objective 41.4** – *To preserve, provide for, maintain and enhance, the character, amenity, cultural, heritage and natural values and ecosystems, associated with open space environments.*

### **Policies 41.4.1, 41.4.5, 41.4.8, 41.4.9 and 41.4.11**

The subdivision does not preserve, maintain or enhance the natural character of the coastal environment. The subdivision introduces a significant number of new dwellings adjacent to the coastal environment. The proposal is not consistent with policy 41.4.1.

The proposed landscaping is considered to be appropriate for the coastal environment.

Overall, the proposal is **not** consistent with the above objective and policies.

### **Chapter 52a – Earthworks**

**Objective 52A.3** – *to enable earthworks within Napier City while ensuring that the life-supporting capacity of soils and eco-systems are safeguarded and adverse effects on outstanding natural features and significant landscapes, historic heritage values and human health and safety are avoided, remedied or mitigated.*

**Policies: 52A.3.1, 52A.3.4, 52A.3.5**

**Objective 52A.4** – *Minimise the hazard and environmental effects of earthworks.*

#### **Policy 52A.4.1**

The proposed earthworks are significant, the earthworks involve cuts down to a depth of 1.5m and fill up to 1.5m along the western boundary. Generally the site is reasonably flat and the effects of earthworks can be wholly contained within the subject site.

The earthworks will not result in a significant change to the landform nor result in potential adverse impacts on neighbouring properties. Earthworks will be managed by an earthworks management plan and the adverse effects are minor.

Overall, the proposal is consistent with the above objectives and policies.

### **Chapter 61 – Transportation**

**Objective 61.3** – *To maintain a safe and efficient transport network that meets the needs of the community and the future growth of Napier without creating significant adverse effects.*

**Policy: 61.3.3**

**Objective 61.4** – *To maintain an integrated transportation network (road, rail, sea and air) while avoiding, remedying or mitigating any adverse effects on the environment.*

**Policy: 61.4.4**

**Objective: 61.5** – *To encourage alternative means of safe transport to reduce the effects of vehicle based transport systems.*

**Policy: 61.5.1**

**61.5.1:** *Encourage and provision of a system of new walkways to link with the existing walkways, to provide opportunities for energy efficient recreation.*

The proposed road and vehicle access has been designed to meet KiwiRail's standards for level crossings and a Level Crossing Safety Impact Assessment has been carried out and provided to KiwiRail for comment. At this time, we have not had the final confirmation from KiwiRail that they are accepting of this assessment.

The Council's Traffic Development Engineer, Mr D Curson, has concerns that the position of the road, and lack of thoroughfare through the proposal to Rogers Road could lead to safety and hazard impacts in the time of a tsunami.

At this time, the proposal is not consistent with the above objectives and policies.

## **Chapter 62 – Natural Hazards**

**Objective 62.3** – *To manage the effects of natural hazards on land uses throughout the City.*

### **Policies:**

**62.3.1:** *Identify natural hazards that may have a potential impact on the City.*

**62.3.2:** *Collect and collate information on natural hazard that have the potential to impact upon the natural and physical resources of the City and make such information publicly available.*

**62.3.4:** *Control the subdivision, use and development of land to ensure that risks to the community are avoided, remedied or mitigated.*

**62.3.5:** *Ensure that practical protection methods are considered.*

**Objective 62.4:** *To control the effects of land uses and development on areas subject to natural hazards throughout the City.*

### **Policies**

**62.4.1:** *Direct development away from areas known to be subject to natural hazards.*

Natural hazards such as coastal erosion, storm surge, pluvial flooding and tsunamis are all recognised on this site. The applicant has provided a setback for the houses from the edge of the Coastal Hazard Zone and this, along with a minimum finished floor level that will be required, mitigates the risk of coastal erosion to the dwellings. The area of the site to be developed is not known to be subject to natural hazards.

The proposal is consistent with the above objectives and policies.

### **Conclusion:**

Overall, the proposal is inconsistent with the following objectives and policies in the Operative District Plan:

- Objective 33.3 – Rural Character and Amenity, Policies 33.3.1 and 33.3.4.
- Objective 33.4 - Residential and Rural Residential Development and Policies: 33.4.1, 33.4.3, 33.4.5, 33.4.6, 33.4.7, 33.4.8, 33.4.9 and 33.4.10.
- Objective 33.5 - Services and Infrastructure and Policy 33.5.4
- Objective 41.4 – To preserve, provide for, maintain and enhance, the character, amenity, cultural, heritage and natural values and ecosystems, associated with open space environments and Policies 41.4.1, 41.4.5, 41.4.8, 41.4.9 and 41.4.11.
- Transportation Objectives 61.3, 61.4 and 61.5 and Policies 61.3.3, 61.4.4 and 61.5.1.

## **Proposed City of Napier District Plan (Proposed District Plan)**

### **SD – Urban Form and Development**

#### **Objectives**

**SD-UFD-01:** *Compact Urban Form*

**SF-UFD-02:** *Housing supply and choice*

***SF-UFD-09: Infrastructure and land use planning******SD-UFD-10: Quality environment******Policies: SD-UFD-P1, P2, P3, P5.***

The proposal is inconsistent with the desire in the Proposed District Plan for a compact urban form for Napier City. The proposal does not promote intensification on land that is accessible to centres, employment opportunities or public transport.

How the proposal will be adequately serviced for stormwater is unclear at this time.

Overall, the proposal is **not** consistent with the above Objectives and Policies.

***Energy, Infrastructure and Transport – SW Stormwater******Objectives: SW-O1, SW-O3******Policies: SW-P2, P4, P5, P6.***

The Council's Manager Infrastructure Development, Mr Simon Bradshaw, is not satisfied that the application has provided enough information to show a suitable stormwater design solution for the development.

The applicant has not provided a final set of conditions from Mana Whenua in relation to their recommendations in the Cultural Impact Assessment.

The proposal is **not** consistent with the above objectives and policies.

***Energy, Infrastructure and Transport – TPT Transport******TPT-O1: Safe and efficient integrated transportation network******TPT-O4: Resilience******TPT-O5: Environmental and amenity values******TPT-O6: Road/rail crossings******Policies: TPT-P4, P6 and P8***

The Council's Traffic Development Engineer, Mr D Curson, is not satisfied that the proposed road layout will provide a safe and efficient transport network and would be a risk to Council to accept the road into their network.

The applicant has not yet provided feedback from KiwiRail that they are accepting of the level crossing safety assessment.

At this time, the proposal is **not** consistent with the above objective and policies.

***Hazards and Risks – NH Natural Hazards***

At the time of this report, this chapter has not been completed and is not included in the PDP.

***Subdivision – SUB******Objectives: SUB-O1, SUB-O2, SUB-O3, SUB-O4, SUB-O5, SUB-O6 and SUB-O7******Policies SUB-P1 – P5, P8 – P12, P15 and P20***

The proposal does not result in a subdivision that meets the relevant zone rules of the District Plan, therefore the proposal is inconsistent with SUB-O1.

The proposal is not consistent with SUB-P1 as the subdivision pattern does not reflect the underlying Rural Productive Zone and does not support the function of this zone. The applicant proposes to adopt the performance standards of the current neighbouring zoning, being the Rural Settlement Zone. It is important to note that if the practice of adopting the neighbouring zone performance standards is adopted by the decision makers, the current proposed neighbouring zone in the Proposed District Plan is Rural Lifestyle Zone, this zone has the following performance standards that are incompatible with development on this proposed subdivision:

- Minimum net site area for one dwelling: 2,500m<sup>2</sup>
- Front yard: 7.5m
- Side and rear yards: 6m
- Building coverage: 10% of 1,000m<sup>2</sup>, whichever is lesser.

With these proposed performance standards, development on any proposed Lot would not be possible without a resource consent. This brings into question the appropriateness of this application being made at the time of the Proposed District Plan process and also the appropriateness of adopting the neighbouring zones performance standards.

The proposal will result in a public walkway and road that might be vested in Council, providing public access along the coast and through the subdivision, meeting Objective SUB-O3 and SUB-P5.

The applicant is communicating with mana whenua and a Cultural Impact Assessment was provided. No final comments have been provided at this time.

The proposal is not considered to increase the risk to people from natural hazards, meeting SUB-O5.

The land is not highly productive and the proposal is unlikely to result in reverse sensitivity effects, meeting SUB-O6.

Not all infrastructure will be provided to meet the Engineering Code of Practice, the proposal is inconsistent with SUB-P9.

Finally, the proposal is inconsistent with SUB-P20 which seeks to avoid the fragmentation of and/or creation of allotments for residential and rural lifestyle activities in this zone.

Overall, the proposal is **not** consistent with the objectives and policies of this chapter.

### ***General District-Wide Matters – CE Coastal Environment.***

#### ***Objectives: CE-O1 – CE-O6***

#### ***Policies: CE-P1 – P6, P8, P10 – P11.***

The effects on the coastal environment are widely discussed in this report. Overall, I consider the proposed subdivision to be of an intensity and scale that is detrimental to the coastal environment. The proposal is not consistent with CE-P2.

The proposal cannot confirm that the effects on biodiversity and natural habitats can be avoided and mitigated, therefore the proposal is not consistent with CE-P3, CE-P4 and CE-P5.

The proposal is not consistent with CE-P8 as the subdivision does not result in the reinstatement of natural character along this site.

Pedestrian access is provided along the front of the proposal into the coastal environment, meeting Policy CE-P11.

Overall, the proposal is not consistent with the above objectives and policies.

### ***General District-Wide Matters – EW Earthworks***

***Objectives: EW-O1, EW-O3***

***Policies: EW-P1 – P6***

I am satisfied that the earthworks will not substantially change the landform. Conditions that require the management of the earthworks through sediment control and erosion protection on site, will ensure the effects can be mitigated.

An accidental discovery protocol condition will be included in the condition set if this consent is granted, meeting EW-P6.

The proposal is consistent with the objective and policies of the EW chapter.

### ***Rural Zones – RPROZ Rural Production Zone***

***Objectives: RPROZ-O2 – RPROZ-O5.***

***Policies: RPROZ-P2 – RPROZ-P7.***

While the site is not highly productive land, the Proposed District Plan recognises the importance of other rural land, through the inclusion of RPROZ-O2 which protects versatile soil for other rural land uses. The proposal to subdivide and develop this piece of land into housing is not consistent with this Objective. RPROZ-P2(d) also seeks to avoid activities that are incompatible with primary production activities.

The proposal to subdivide and develop is akin to a plan change by stealth, whereby, if the zone was appropriately changed through a plan change process, the consideration of whether this level of development is appropriate on this site would be made. At present, I consider that this proposal is 'ad hoc urbanisation' and therefore the proposal does not meet RPROZ-O3.

Overall, the proposal is **not** with the above Objectives and Policies of the Proposed District Plan.

### **Weighting**

As the outcomes are the same under both the operative and proposed plan frameworks, no weighting is required.

### **Conclusion**

In accordance with an assessment under s104(1)(b) of the RMA the proposal is not consistent with the relevant statutory documents.

## 15. Any other matter – section 104(1)(c)

Section 104(1)(c) requires that any other matter the consent authority considers relevant and reasonably necessary to determine an application be considered.

In this case the Council has not yet considered what the Financial Contributions/Developer Contributions will be to facilitate this development.

### Submissions

All of the submissions received by the council in the processing of this application have been reviewed and considered in the overall assessment of effects in this report. The council's specialists have also reviewed the relevant submissions as required and incorporated comments into their assessments accordingly. Many of these submissions raised similar issues and have been dealt with generically in the body of this report. Those that have raised specific resource management matters and points of clarification have been specifically addressed in the assessment of actual and potential effects contained in section 13 of this report.

I note that there are some submissions that raise the following matters that cannot be considered:

- **Loss of access to the beach through the site.**

Submitters 1, 2, 3, 4, 5, 13, 14, 15, 18, 21, 22 and 23 submitted on this point.

This is not a consideration for this resource consent and should not be considered further by the hearings panel. The site is privately owned land and any access through the site is currently un-official. Further, some of the access across the site traverses the KiwiRail corridor. This has health and safety implications and is not supported by KiwiRail.

No further assessment of this submission point is required.

- **Devaluation of property values and loss of views.**

Submitters 5, 7, 8, 10, 15 and 23 submitted on this point.

The hearings panel cannot consider the possible effects on house prices by this proposal and there is no protection of views afforded to any land owner.

No further assessment of these submissions points is required.

## 16. Particular restrictions for non-complying activities – s104D

Under s104D a non-complying activity can only be granted provided it passes at least one of the tests of either s104D(1)(a) or s104D(1)(b).

If an application fails both tests of s104D then it cannot be granted.

### Section 104D conclusion

The proposal is unable to satisfy the threshold test of s104D because the adverse effects proposed to be avoided, remedied or mitigated are more than minor when taken as a whole and the proposal is considered to be contrary to the objectives and policies of:

- National Policy Statement on Urban Development
- New Zealand Coastal Policy Statement 2010 (NZCPS) – s104(1)(b)(iv)
- Hawke's Bay Regional Resource Management Plan
- Hawke's Bay Regional Coastal Environmental Plan
- Napier City Operative District Plan
- Napier City Proposed District Plan

Specifically:

- The proposal is inconsistent with the NZCPS as the applicant relies on the development to justify the restoration of the coastal edge. In my opinion, this site could be remediated and restored to a more suitable natural coastal edge without the development. This site is over 1km of unbroken, undeveloped coastal edge and the proposed subdivision will be a heavy modification of this landscape. The site is within the tsunami hazard zone and there is no ability to mitigate this risk. The ongoing risk and effects to indigenous biodiversity on this coast is currently unknown and there is not enough information to manage this potential risk.
- The proposal is not consistent with the NPS-UD in that it does not justify the need for this level of density in this development and the proposed houses are not close to any community facilities or amenities, employment or education opportunities. The approach in applying for this development by way of a resource consent, and not a plan change, limits the Council's ability to assess the suitability of this development in this location with regards to the growth and housing supply assessments.
- The final urban form is at this time unknown given the underlying zone performance standards are at odds with supporting urban development. The applicant has suggested the proposal be developed in line with a neighbouring zone that is due to change through the adoption of the future proposed District Plan. The timing of the proposed District Plan process results in an unknown future zoning of surrounding rural residential land.
- The effects from the proposed density of development on the natural coastal environment are considered to be more than minor. While it is correct that there are residential developments to the north and south of this site along the coast, the density and effects of these developments are tempered by larger setbacks or larger lot sizes. I consider this proposal to be an over-development of the site that is not consistent with the relevant objectives and policies of the underlying zone.
- Currently, the effects on the natural environment and ecology from the proposed development, including stormwater design, are unknown and not supported by the Council's Development Engineering team.
- Cultural values and effects have not yet been considered to be managed through proposed conditions as the final submission and consultation with mana whenua is incomplete.

Therefore, the resource consent cannot be granted under s104D.

## 17. Other relevant RMA sections

### Refusal of subdivision consent in certain circumstances – s106

Resource consent could be granted to the subdivision as pursuant to s106:

- The land and structures on the land, will not be subject to significant risk from natural hazards, which includes – but is not limited to – material damage by erosion, falling debris, subsidence, slippage or inundation from any source; and
- Sufficient provision has been made for legal and physical access to each allotment created by the subdivision.

### Conditions of resource consents – ss108, 108AA and 220

Although I have recommended that resource consent be declined, I have included recommended in **appendix 7** for completeness. The conditions reflect standard council conditions, conditions offered by the applicant and those inherent in the application. The conditions are not a complete set, as a number of technical memos and offered conditions were not available at the time of writing this report. A complete set will be provided prior to the hearing.

### Lapsing of resource consents – s125

Under s125, if a resource consent is not given effect to within five years of the date of the commencement (or any other time as specified) it lapses automatically unless the council has granted an extension. In this case, five years is not considered appropriate because:

- The scale of the development, specifically the works required to install the necessary infrastructure on site, along with the staged nature of the development would mean it is unlikely the development could be finished in 5 years.

Accordingly, **ten (10) years** is considered an appropriate period for the consent holder to implement the consent.

## 18. Consideration of Part 2 (Purpose and Principles)

### Purpose

Section 5 identifies the purpose of the RMA as the sustainable management of natural and physical resources. This means managing the use of natural and physical resources in a way that enables people and communities to provide for their social, cultural and economic well-being while sustaining those resources for future generations, protecting the life supporting capacity of ecosystems, and avoiding, remedying or mitigating adverse effects on the environment.

### Principles

Section 6 sets out a number of matters of national importance which need to be recognised and provided for. These include the protection of outstanding natural features

and landscapes, the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and the protection of historic heritage.

Section 7 identifies a number of “other matters” to be given particular regard by the council in considering an application for resource consent. These include the efficient use of natural and physical resources, and the maintenance and enhancement of amenity values.

Section 8 requires the council to take into account the principles of the Treaty of Waitangi.

## Assessment

Any consideration of an application under s104(1) of the RMA is subject to Part 2. The Court of Appeal in *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 has held that, in considering a resource consent application, the statutory language in section 104 plainly contemplates direct consideration of Part 2 matters, when it is appropriate to do so. Further, the Court considered that where a plan has been competently prepared under the RMA it may be that in many cases there will be no need for the Council to refer to Part 2. However, if there is doubt that a plan has been “competently prepared” under the RMA, then it will be appropriate and necessary to have regard to Part 2. That is the implication of the words “subject to Part 2” in s104(1) of the RMA.

In the context of this non-complying activity application for subdivision and land use, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects, and I find that there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.

## 19. Conclusion

Overall, the proposal is not considered suitable for the subject site. The underlying zone does not support a development of this scale and intensity, and the location of the site within the coastal environment results in a number of effects that are considered to be more than minor. The proposal is not consistent with a number of statutory documents.

## 20. Recommendation

### Recommendation on the late submissions

Under s37 and s37A of the RMA I recommend that the following late submission is accepted:

- Submission No. 27: Ms P. Wilson

The reason for this recommendation is:

- Ms Wilson submitted within one week of the submissions closing, her submission is relevant to the proposal and the applicant accepts the inclusion of the late submission.

## Recommendation on the application for resource consent

Subject to new or contrary evidence being presented at the hearing, I recommend that under sections 104, 104D, 106, and Part 2, resource consent is **REFUSED** to the subdivision and land use application to undertake a three-stage subdivision of Lot 2 DP 22640 into 59 Lots. Including a new road, an open space lot, two pedestrian entrance lots, a 7m coastal landscaped buffer, relevant earthworks, installation of services for potable water, stormwater and waste water and landscaping.

To assist the independent hearing commissioners if it is determined on the evidence to grant consent subject to conditions, draft recommended conditions have been included at **attachment 7**.

The reasons for this recommendation are:

- In terms of section 104(1)(a) of the RMA, the adverse environmental effects associated with the proposal are more than minor and will be inappropriate taking into account the zoning of the land and proximity to the coastal environment. The adverse effects of the proposed subdivision and development in relation to the coastal environment will be more than minor. The adverse effects in relation to effects from stormwater, the effects on indigenous biodiversity, cultural effects and effects on the transportation network are considered to be more than minor.

Furthermore, the proposed development exceeds what could be expected within this zone with regards to subdivision density and development.

- In terms of section 104(1)(b) of the RMA, overall the application is contrary to the objectives and policies of the NPS-UD, NZCPS, RRMP, RCEP, NCC Operative and Proposed District Plans. The activity is of a density and scale that is not anticipated in the rural zone and is above what could be considered an appropriate level of development.
- The proposal is not consistent with the sustainable management purpose of the Act or with its principles as included at Part 1. The proposal will result in adverse effects on the environment, in particular in relation to coastal natural character and effects on neighbouring properties. The proposal is not an efficient use of the natural and physical land resource and the proposed residential development is not supported by way of the underlying zoning. The proposal will not maintain and enhance the amenity values or the quality of the local environment in a manner that is consistent with Part 2 of the RMA.

Attachment 1: Application documents and drawings

Attachment 2: Specialist Reviews

Attachment 3: Notification Determination Report

Attachment 4: Map showing submitters

Attachment 5: Copies of submissions received

Attachment 6: Submissions summary table

Attachment 7: Draft conditions





14 November 2024  
Job No: 1092615

Napier City Council  
215 Hastings Street  
Napier South  
Napier 4110

Attention: Alison Francis

Dear Alison

## **68 Franklin Road, Bay View Napier - Resource Consent Application (RMS230061)**

### **Technical Ecological Review**

Tonkin & Taylor Ltd (T+T) has been engaged by Napier City Council (NCC) to provide a technical ecological review of the following documents:

- Application for Resource Consent: S230061 – Subdivision – 68 Franklin Road, Napier – Request for Further Information. Prepared by Tattico, dated 4 November 2024. [specific ecological matters only].
- Avifauna Management Plan – 68 Franklin Road Subdivision Prepared for Jack Brownlie Investments Ltd – Revision 2. Prepared by Boffa Miskell, dated 4 November 2024.
- Submissions relevant to avifauna matters received by Napier City Council.

The section 92 response (Tattico, 2024) cross references to the Avifauna Management Plan, therefore the below technical ecological review is based on the Avifauna Management Plan provided through the section 92 response and relevant submissions.

This letter has been prepared in accordance with T+T's letter of engagement dated 20 October 2023 and subsequent variation dated 13 November 2024.

### **1 Technical ecological review of the Avifauna management plan**

- 1 Section 1, the scope is outlined with reference to the Ecological Values, Constraints and Opportunities Report (Boffa Miskell, 2023) as a supporting document which recommended the need for an Avifauna Management Plan. The projects Zone Of Influence (ZOI) has been identified and a statement made that direct or indirect effects on identified avifauna may occur within this area. Not all direct or indirect effects on identified avifauna have been addressed – see point 2 below.
- 2 Section 1, a statement has been made limiting the scope of the management plan to addressing construction effect on nesting avifauna only. We consider that the limited scope doesn't account for permanent habitat loss, increased predation, or disturbance (lighting, increased foot or animal traffic) associated with the proposed development (along the coastal edge of lots 19 to 48 – noting a reserve is proposed in front of lots 1 to 18) and management

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actions which would address to safeguard potential future nesting of identified avifauna (habitat restoration, artificial nesting, predator control, lighting standards). This is a matter of disagreement.

- 3 Section 2, this is a glossary – no comment needed or provided.
- 4 Section 3, a detailed overview of the existing environment, avifauna habitats and identification of key avifauna species has been provided. No matters of disagreement.
- 5 Section 3, a statement has been made regarding no evidence of penguins being found within the ZOI based on a survey which was undertaken with caveat stating that the survey was not comprehensive. A conservative approach has been taken to assume that penguins may utilise the exotic shrubland onsite for nesting and moulting based on known habitat near the ZOI. A conservative approach is further supported by information provided within submissions that state penguins have been observed utilising adjacent properties. No matters of disagreement.
- 6 Section 3, Table 2, provides detailed information of the key avifauna species identified (penguin, red billed gull, variable oystercatcher, banded dotterel and New Zealand pipit). It is considered that this table provides sufficient information and there are no matters of disagreement.
- 7 Section 4, avoidance where practicable of the key avifauna species identified breeding and moulting seasons has been stated which allows enabling and construction works to be undertaken in April and May of any one year. A statement has been made that no handling of birds or and nests will be undertaken due to a Department of Conservation Wildlife Permit no being obtained. This is standard best practice and there are no matters of disagreement.
- 8 Section 4, pre works surveys for key avifauna species that have been identified will be undertaken. Survey methodology for red billed gull, variable oystercatcher, banded dotterel and New Zealand pipit are all standard best practice and there are no matters of disagreement.
- 9 Section 4, pre works surveys for penguin state the use of a certified detector dog and handler which is standard best practice. A statement has been made that if certified detector dog and handler is unavailable that an observational survey by a suitably qualified experienced person can be undertaken. Due to the cryptic and burrow nesting habitat of penguins there is a risk that observational surveys will miss individual penguins. It is recommended that a certified detector dog and handler should be used and that only observational survey by a suitably qualified experienced person should be used where habitat can be searched with confidence or burrow checks using a camera. This is a matter of disagreement.
- 10 Section 4, exclusion zones around active nests have been stated for all key avifauna species identified. These exclusion zones are standard but relate to physical works only. Noise (excessive or long duration) can also influence nesting birds and may result birds becoming distressed and or nests being abandoned. Decibel standards and methodologies should be applied which may extend exclusion zones depending on the level of noise and duration or reduce exclusion zones if mitigation measures such as temporary noise walls are put in place. This is a matter of disagreement.
- 11 Section 5, a methodology for incidental discoveries during works have been provided. These are considered suitable with no matters of disagreement.
- 12 Section 6, the monitoring methodology is focused on nest failure, chicks successfully fledging or non-breeding, or non-moulting birds leaving on their own accord. There is no mention of monitoring moulting penguins or what happens during monitoring if birds become distressed. Further information is needed to provide a link to the adaptive management framework in Section 9. This is a matter of disagreement.

- 13 Section 7, the statement provided regarding the injury or death of bird is sufficient with no matters of disagreement.
- 14 Section 8, pre works survey and nesting monitoring reporting will be undertaken and provided to NCC within five days of survey or monitoring being conducted. It is considered that annual compliance reporting should also be provided and that all monitoring and compliance reporting is subject to NCC approval. This is a matter of disagreement.
- 15 Section 9, a statement regarding adaptive management and a high-level process has been provided. The urgent or emergency response under the direction of a suitable qualified experience professional is considered sufficient, however all other responses should be discussed and agreed in writing with NCC prior to Avifauna Management Plan being updated for certification and implemented. It is considered appropriate that the avifauna management plan is updated and re certified for any permanent changes. This is a matter of disagreement.

## 2 Technical ecological review of submissions

All submissions have been reviewed from an ecological perspective in relation to avifauna management. Submissions 8, 9, 11, 12, 15, 18, 21 and 27 all raise high level matters relating to avifauna.

The common theme through the above submissions is that the ZOI and adjacent areas is used for nesting and a general concern what impact the proposed development will have on future nesting potential (habitat loss, increased predation, increased disturbance).

The scope of the avifauna management plan has been limited to construction effects only and therefore only address submitters concerns in part, relating to steps to be implemented to safeguard the key avifauna species that unitise the ZOI during construction.

It is considered that submitters concerns relating the permanent impact of the proposed development on avifauna hasn't been addressed through the Avifauna Management Plan and has been identified and raised in point 2 above.

## 3 Summary

The Avifauna Management Plan provides a limited scope associated with construction works only. Based on the limited scope, matters of disagreement above can be rectified by conditions of resource consent requiring avifauna management standards and the Avifauna Management Plan to be certified by NCC prior to any works commencing.

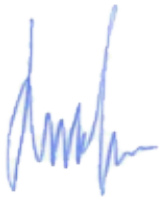
It is considered that matters raised in point 2 above and in submissions that related to this point are substantial based on the current proposed development and have not been addressed. If matters raised in point 2 above are not addressed, then it is likely that potential residual effects associated with permanent habitat loss, increased predation, or disturbance (lighting, increased foot or animal traffic) on identified avifauna will occur.

## Applicability

This report has been prepared for the exclusive use of our client Napier City Council, with respect to the particular brief given to us and it may not be relied upon in other contexts or for any other purpose, or by any person other than our client, without our prior written agreement.

We understand and agree that this report will be used by Napier City Council (NCC) in undertaking its regulatory functions in connection with the proposed development at Franklin Road, Bay View.

Yours sincerely



Josh Markham  
Principal Ecologist

Report approved by: Dean C. Miller – Project Director.

14-Nov-24

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**From:** [Planning Mailbox](#)  
**To:** [Nicola North](#)  
**Subject:** FW: Request for peer review of contaminated soil report: 68 Franklin Road, Bayview  
**Date:** Tuesday, July 23, 2024 9:08:31 AM  
**Attachments:** [image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)

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**From:** Sarah Newall <[snewall@hailenvironmental.co.nz](mailto:snewall@hailenvironmental.co.nz)>  
**Sent:** Thursday, 9 November 2023 4:23 PM  
**To:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>  
**Cc:** Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>  
**Subject:** Re: Request for peer review of contaminated soil report: 68 Franklin Road, Bayview

Caution: This email originated from outside Napier City Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Hi Alison,

Sorry for not getting this through late last week as I'd indicated.

I'll flag straight away that contamination does not appear to be a major issue at this site and I'm more-or-less satisfied with how it's been investigated. However, there are a couple of things worth mentioning.

I know the overall activity status for the application is non-complying, but let's put that aside for a second and look at the NES-CS in isolation, because that matters when thinking ahead to conditions.....if required.

The PSI/DSI doesn't address NES-CS applicability or activity status, but the AEE assesses the NES-CS activity status as restricted discretionary 'because there may be contamination above background levels'. There are a couple of issues with this assessment:

- 'Contamination above background levels' would make a controlled activity. Contamination would have to be *above the relevant soil contaminant standards* (SCS) to be RD, and the results are not showing that (the one arsenic result that *was* above the SCS was removed in a small remedial exercise). Further, my take on the 5 zinc results that were slightly above background, are that they're actually close enough to background to not be considered statistically significant.
- The words 'may be' suggest a just-in-case-we-missed-something approach, in which case the PSI/DSI would be considered incomplete, which would make it a discretionary activity. It's not clear whether this is where they're coming from or not though, I should think not.
- Section 6.11 of the AEE concludes by stating 'overall, the site is assessed as being suitable for residential use based on the above analysis, any potential adverse effects associated with land contamination will be less than minor', which I agree with, but which doesn't really match the assessment that NES-CS consent is required as an RD activity. RD under the NES-CS typically means there's a problem that needs dealing with – not the case here.

The way I see it, this site is actually a strong contender for a Reg 5(9) 'Land not covered' assessment: *These regulations do not apply to a piece of land....about which a DSI exists that demonstrates that any contaminants in or on the piece of land are at, or below, background concentrations.* I don't know why EAM didn't make that assessment or recommendation.

If council (or the applicant for some reason) isn't keen on Reg 5(9), then the next level of assessment would be:

- Subdivision: The investigation has shown that part of the site was used for an activity on the HAIL (rail yard), however the analytical results show that the activity of subdivision (and therefore facilitating a change of use to residential) does not pose a risk to human health, and is therefore a permitted activity in accordance with Reg 8(4).
- Soil disturbance:
  - To be able to assess NES-CS applicability for soil disturbance, there has to be a defined 'piece of land' – that is, the area that's been subject to the HAIL use. No piece of land has been defined, and without it (and without proposed earthworks area/volume within the piece of land), it's not possible to assess whether the activity of soil disturbance can be completed as a permitted activity (per Reg 8(3)), unless it fails on other PA criteria (such as time).
  - If soil disturbance doesn't meet the PA criteria, then it would be controlled.

I get that arguing over activity status is a bit moot, as the whole thing is non-complying. But it does matter for conditions. I'm not sure what conditions would even be useful here – except the standard ones about offsite disposal to an appropriate site (there definitely should not be the requirement to send to landfill, this stuff is clean. And really, if geotechnically suitable, it should be encouraged to re-use the material on site), and accidental discovery. But those 2 things don't need to be NES-CS conditions – they can be *earthworks* conditions. So there isn't really anything to require – meaning RD really isn't the right NES-CS activity status! Controlled (for soil disturbance) at worst!

In terms of how (or even if!) you go back to the applicant about this (does it really matter?), we might need to chat about. It's not often applicants have council say to them 'you probably don't actually need this (part of the) consent'.

So perhaps let me know when you've had a chance to digest and we can have a chat.

Kind regards  
Sarah

Sarah Newall | Site Contamination Specialist, Director | 021 414 699  
Hawke's Bay, New Zealand | [www.hailenvironmental.co.nz](http://www.hailenvironmental.co.nz)





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**From:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>  
**Date:** Wednesday, 25 October 2023 at 8:45 PM  
**To:** Sarah Newall <[snewall@hailenvironmental.co.nz](mailto:snewall@hailenvironmental.co.nz)>  
**Cc:** Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>  
**Subject:** RE: Request for peer review of contaminated soil report: 68 Franklin Road, Bayview

Hi Sarah

Thanks for your patience, we were waiting to hear from Tonkin and Taylor who are going to do some other reviews and it was a bit of a long time coming.

The applicant has now agreed to the peer review as you have set out below. Can you please advise the timeframe so I can keep the applicant in the loop.

As discussed below, please liaise with Kathryn Hunt (cc'd into this email) to sort out the invoicing, you'll invoice the Council who will pass it along to the applicant.

Regards

**Alison Francis MNZPI**

Director | Bay Planning

m. 022 170 8108

e. [alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)

w. [bayplanning.co.nz](http://bayplanning.co.nz)



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**From:** Sarah Newall <[snewall@hailenvironmental.co.nz](mailto:snewall@hailenvironmental.co.nz)>  
**Sent:** Tuesday, October 3, 2023 1:00 PM  
**To:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>  
**Cc:** Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>

**Subject:** Re: Request for peer review of contaminated soil report: 68 Franklin Road, Bayview

Hi Alison,

I'm so sorry, I thought I was doing a good job of keeping on top of emails while I was away – clearly not!

You've probably dealt with this this by now, let me know if not. What you proposed sounds good, but hopefully we won't need all that time.

Will you let me know when to get going?

Thanks  
Sarah

**Sarah Newall** | Site Contamination Specialist, Director | 021 414 699  
Hawke's Bay, New Zealand | [www.hailenvironmental.co.nz](http://www.hailenvironmental.co.nz)



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**From:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>

**Date:** Wednesday, 20 September 2023 at 2:31 PM

**To:** Sarah Newall <[snewall@hailenvironmental.co.nz](mailto:snewall@hailenvironmental.co.nz)>

**Cc:** Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>

**Subject:** RE: Request for peer review of contaminated soil report: 68 Franklin Road, Bayview

Hi Sarah

Hope you are well and Scotland is sunny – you're missing out on a Spring into SPRING here! It's something else.

Anyway, I digress

Have you been able to have a look at this for us and provide a quote? From you previous email you noted:

*Typically, we tend to allow up to 4 hours for an initial review and provision of s.92 comments/questions (should they be required). The time required tends to depend on the size and complexity of the site, and the quality of the reporting.*

*Our hourly rate for review/s.92 comments/condition wording is \$230 + GST, rising to \$270 + GST for evidence/hearing type work.*

If you want, I can go to the applicant with this information unless you'd like to update it? If not, **I'll say approx. 4-5 hours at \$230+gst.**

Cheers  
Alison

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**From:** Alison Francis  
**Sent:** Monday, September 11, 2023 4:32 PM  
**To:** Sarah Newall <[snewall@hailenvironmental.co.nz](mailto:snewall@hailenvironmental.co.nz)>  
**Cc:** Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>  
**Subject:** RE: Request for peer review of contaminated soil report: 68 Franklin Road, Bayview

Hi Sarah

Thanks for your help with this application, I have put all of the information that was submitted in this folder:

 [RMS230061 68 Franklin Road Application](#)

Please have a look at it, you'll find the DSI as well as an addendum report in there along with the application, which should be the first pdf on the list and then the plans will be second.

Once you've had a quick review, please can you send me and include Kathryn Hunt in the email (cc'd to this email) your quote, which we will then confirm with the applicant before progressing. Once we have that confirmed, we will give you the green light to undertake the peer review and we'll work out timeframes at that point.

Kathryn will also liaise with you to get you set up on the NCC suppliers panel, I saw her today and she said this shouldn't be a problem

Any questions, please do not hesitate to be in touch.

Regards

**Alison Francis MNZPI**  
Director | Bay Planning  
m. 022 170 8108  
e. [alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)

w. [bayplanning.co.nz](http://bayplanning.co.nz)



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**From:** Sarah Newall <[snewall@hailenvironmental.co.nz](mailto:snewall@hailenvironmental.co.nz)>

**Sent:** Wednesday, September 6, 2023 4:28 PM

**To:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>

**Cc:** Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>

**Subject:** Re: Request for peer review of contaminated soil report: 68 Franklin Road, Bayview

Hi Alison,

Thanks for the email, happy to help with this.

We support many TAs and Regional Councils around the country with similar peer review services, so this is definitely in our wheelhouse.

Typically, we tend to allow up to 4 hours for an initial review and provision of s.92 comments/questions (should they be required). The time required tends to depend on the size and complexity of the site, and the quality of the reporting.

Our hourly rate for review/s.92 comments/condition wording is \$230 + GST, rising to \$270 + GST for evidence/hearing type work.

As you know, I will be out of the country from 13 September to 2 October, during which time I'll be trying to not do too much work!! We will make this happen for you though, so just let me know your timeframes and we'll work to those.

We do not currently have a contract for technical peer review services with NCC, however it's easy enough for me to send one through if you like. I can make it a 'call off' type arrangement, which is what we have with all the other council clients, so if other projects come up, we don't need new contracts each time.

Kind regards  
Sarah

**Sarah Newall** | Site Contamination Specialist | 021 414 699  
Hawke's Bay, New Zealand | [www.hailenvironmental.co.nz](http://www.hailenvironmental.co.nz)



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**From:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>

**Date:** Wednesday, 6 September 2023 at 4:02 PM

**To:** Sarah Newall <[snewall@hailenvironmental.co.nz](mailto:snewall@hailenvironmental.co.nz)>

**Cc:** Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>

**Subject:** Request for peer review of contaminated soil report: 68 Franklin Road, Bayview

Hi Sarah

I am working on behalf of Napier City Council and am processing a consent application for a subdivision application. This is an application for 59 lots in the Rural Zone, all lots below the minimum lot size. It is adjacent to the Kiwirail Designation and partly within the Council's Coastal Hazard Zone. A road to be vested in Council will be built. Wastewater will be managed via a connection to the Bay View Transfer Pump Station and a new pump station will be built at 68 Franklin Road which will receive and convey the flows via the existing dis-used oil pipeline in the railway reserve. Stormwater pipes will be constructed and vested with Council.

Reasons for consent have been identified as density, earthworks and subdivision of land within the coastal hazard area. I suspect there will be others, but we'll look at that when they come along. Also, an RD activity pursuant to Regulation 10 of the NES-CS. Overall, the activity status is **Non-Complying**.

The PSI and DSI have been completed by EAM and includes a RAP, but no suggested conditions of consent (should the consent be granted) have been supplied. Also, given the history of the site and its use by Kiwirail, I'm keen to ensure that the information provided by EAM is appropriate and correct.

Can you please quote for the following services:

1. An initial peer review of the application, specifically looking at the EAM DSI (and one addendum) and provide comments/questions that will be included in a s92. Can you also provide a timeframe for how long this will take.

Following the receipt of the s92, there will likely be further work required to assess the information, along with the possibility of appearing at a hearing (should the application be notified) and writing evidence. We'll come to that when needed, for now, it would be good to get a quote for the peer

review, as the applicant will be paying for this service and we will pass this along to them.

Let me know what information you require now to prepare this quote and we'll send it through.

Regards

**Alison Francis MNZPI**

Director | Bay Planning

m. 022 170 8108

e. [alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)

w. [bayplanning.co.nz](http://bayplanning.co.nz)





7 June 2024  
Job No: 1092615.0000

Napier City Council  
215 Hastings St  
Napier South  
Napier 4110

Attention: Alison Francis

Dear Alison

## Consent compliance review Franklin Road Development: Coastal Hazard Assessment

As requested, this letter sets out a summary of Tonkin & Taylor Ltd.'s (T+T) compliance review of a coastal hazard assessment, conducted by EcoNomos, for 68 Franklin Road, Bay View. Two documents were provided for comment, a coastal hazard assessment and a response to our initial review as set out below:

- Coastal hazard assessment: EcoNomos Ltd (2023). 68 Franklin Road, Bay View: Coastal Hazards Assessment, produced for Jack Brownlie Investments, dated 13 July 2023 (Reference: RMS230061 - Coastal Hazard Report.pdf).
- Response to review comments: EcoNomos Ltd (2024) A letter titled, Response to T+T review and queries, dated 21 February 2024 (Reference: 210224 - Eco Nomos Response to Peer Review.pdf).

### 1 T+T initial review

The review was carried out by Dr Tom Shand (Principal Coastal Engineer), with the conclusions technically reviewed by Richard Reinen-Hamill (Natural Hazards Director), and submitted to you via e-mail on the 18 December 2023. The contents of the email are reproduced below:

*Overall this report by Eco Nomos provides a comprehensive site-specific assessment of coastal hazards for 68 Franklin Road ('the site'). We have the following comments and requests for further information:*

- *Section 2 – Data and Information is comprehensive, no comments.*
- *Section 3 – Site description is comprehensive, no comments.*
- *Section 4 – Analysis of profiles is generally robust, though colouring surveys from oldest to newest would make interpretation by the reader much easier along with excursion plots at specific contours. Reference to profiles to the south having accreted since the 70s and this pattern extending north over time is noted but such changes are not certain enough to incorporate. Erosion trends to the north are noted and linked to the Esk river. Given the latest profiles were Dec 2022, did the flooding during ex-TC Gabrielle have any affect on the*

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shorelines to the south of the Esk mouth and in front of 'the site' (i.e. beyond anything observed/noted in the profile record? We know that profiles have not been surveyed or analysed during this time and so this question is qualitative.

- **Section 5 – Erosion Hazard**

- We agree with the general form of Equation 1 and the probabilistic approach employed
- Overall we agree with the proposed upper estimate erosion hazard value of 24m.

We note the following:

- The approach of utilising the toe of bank as a baseline is in agreement with T+T (2015), though it is generally outside of the area affected by coastal processes and is unlikely to move until the shore face in front responds
- The DS component decreases over time as the toe of the bank is assumed to erode upwards and landwards but the crest of the bank is not assumed to build upwards. I don't quite follow this and it may be more precautionary to retain the current DS value.
- The LT values appear to be based on changes at toe of the bank, however these are generally unaffected by coastal processes. It may be more robust to base these values (including deriving upper and lower limits) on changes further down the profile where coastal processes are affecting the position, though it is likely that the LT is still generally stable as per the T+T (2015) assessment.
- While the shorelines to the south may be accreting at the profile location, it would be hard to justify including this until it becomes apparent at the site (particularly with the sites to the north experiencing erosion) and values should be based on the profiles fronting this site only.
- I appreciate the argument that inclusion of VLM together with historic SLR should have resulted in retreat which is not apparent in data (though it would be more likely to be apparent in changes on the shore face rather than at the toe of bank), however, this may be masked in other processes. It would be usual to include VLM and discount the assessed response from historic LT trends to compensate – though this is more difficult on a stable to accreting coast. We acknowledge that the VLM has been included in the SSP5-8.5H+ stress test scenario which is likely appropriate for a greenfield development and therefore consider this included if the values from this scenario are adopted.
- SLR response is based on the beach slope which is the maximum value used by T+T (2015) and likely to result in the smallest retreat values. Could you add comment on the appropriateness of this value compared to other definitions, i.e. the Inner Hallermeier depth of closure, in this environment, recognising the complexity of this mixed sand gravel setting
- The upper limit erosion hazard estimate is based on high SLR scenario + VLM but given this is greenfield development would seem appropriate. The values are slightly less than T+T (2015) who found a P5% value of 28m for profile HB17 but they included a ST component which this assessment has argued against including.
- Mapping of this line on the proposed development would be useful.
- **Section 6.1 – Coastal storm inundation.** While we generally agree with the findings, if wave run up were to overtop the berm during a very high SLR scenario (as may be appropriate for a greenfield development), would the run up extend landward of the erosion hazard extent i.e. 24m from the baseline which we assume development would be sited behind?

- *Section 6.2 Tsunami. While the probability of waves affecting the site may be low, the risk to life is high. Evacuation routes to safe points outside of the yellow evacuation zone have been identified and we agree are likely able to be reached before the time of wave impact, even for locally generated tsunami. Some less able residents may need to evacuate by vehicle but given the low traffic this should be possible. This is a risk that should be communicated with eventual residents and evacuation plans developed for the community.*

## 2 EcoNomos Ltd Response

EcoNomos Ltd provided clarification and justification for the methods employed in relation to the points raised by T+T. Following review we consider these to satisfactorily address our initial review findings and we have no further comments on the response.

We note that while we are in agreement with EcoNomos in terms of the extent of the potential coastal erosion hazard over the next 100 years this does not mean the development is not at risk. The upper estimate of potential erosion setback does result in erosion of around half of the land on the most exposed sections. It is our understanding that any buildings on these sections are to be located landward of the potential erosion hazard zone with the expectation that erosion of the seaward portion of the section may occur at some point in the next 100 years.

Following our review EcoNomos Ltd and T+T are both in agreement that it would be useful to map the hazard lines produced by EcoNomos Ltd on a map that includes the new roads, section boundaries and roading to aid with visual interpretation of the risks. This would also act as a guide to ensure designated building footprints are outside of the hazard zone. We are also in agreement that a Tsunami evacuation plan should be required.

## 3 New coastal inundation hazard data

Following the initial review conducted by EcoNomos Ltd new coastal inundation hazard data<sup>1</sup> has been released and adopted by the council on their on-line hazard portal. Having reviewed the data the landward inundation extent does not exceed the coastal hazard zone set out in the Economos report. However, the new inundation hazard data is only calculated out to the year 2100 (1% AEP storm combined with the SSP5 8.5M sea level rise scenario). Consideration of the potential hazard over 100 years (to be consistent with the EcoNomos assessment) and an allowance for additional sea level would push the extent closer too, or potentially beyond, the hazard line adopted by EcoNomos. This modelling was not carried out as part of the new assessment, but should it exceed the line it would only represent a low probability risk at the end of the developments design life and as stated by EcoNomos, could be mitigated:

*"The coastal inundation assessment indicates that wave overtopping is not likely to occur over the next 100 years for the sea-level rise scenarios from current national guidelines. However, if wave overtopping were to happen in the longer-term future (e.g. due to a very high future sea-level rise scenario), it would be relatively simple to manage by raising the elevation of the barrier crest – an approach commonly used overseas on gravel barriers."*

<sup>1</sup> T+T (2023). Coastal Inundation: Tangoio to Clifton. Report prepared for Hawke's Bay Regional Council; Hastings District Council; Napier City Council. Ref: 1019664 v4

## 4 Summary

The report by EcoNomos Ltd provides a comprehensive site-specific assessment of coastal hazards, following our initial review EcoNomos Ltd have provided clarification on the points we raised, and we are in agreement that the hazard line produced by the analysis is highly unlikely to be exceeded by either erosion or inundation over the next 100 years. We note that the hazard line does cover part of some proposed sections, however it is our understanding that all buildings will be located landward of this line.

It is recommended by both EcoNomos and T+T that the hazard lines produced, and the new inundation information released earlier this year, should be plotted over a map of the proposed development to provide visual clarity for any decision making process. In addition a Tsunami evacuation plan should be developed for the site.

## 5 Applicability

This report has been prepared for the exclusive use of our client Napier City Council, with respect to the particular brief given to us and it may not be relied upon in other contexts or for any other purpose, or by any person other than our client, without our prior written agreement.

We understand and agree that this report will be used by Napier City Council in undertaking its regulatory functions in connection with the proposed development at Franklin Road, Bay View.

Tonkin & Taylor Ltd

Report prepared by:

Technical review by:



Jonathan Clarke  
Principal Coastal Engineer



Dr Tom Shand  
Technical Director

Authorised for Tonkin & Taylor Ltd by:



Josh Markham  
Project Director

7-Jun-24

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Landscape Planning &amp; Strategy

## MEMO

**To:** Alison Francis  
**From:** Megan McBain  
**Project:** 68 Franklin Road Subdivision  
**Subject:** RFI for Peer Review  
**Date:** 4 July 2024

I recently undertook a Peer Review of the Assessment of Landscape Effects (LVA) by Boffa Miskell Ltd (BML). While the landscape character and level of effects was not always clearly identified, and analysis of the Statutory provisions was brief, it was apparent that the assessment was sufficient enough to qualify the reports conclusions.

I concluded that the LVA was undertaken with an appropriate methodology, it considered both the proposal and site context in sufficient detail and provided an assessment of effects. I concurred that the overall landscape effects for the proposed subdivision, with the recommended landscape conditions as mitigation, would be low, which can be considered as less than minor.

I have been requested to provide an addendum to provide my own assessment on the gaps that were identified within the BML report, review the scale of analysis and methodology statement included as an appendix.

### Methodology

The BML assessment methodology is consistent with the technical guidelines of Te Tangi a te Manu<sup>1</sup> and references other guidance notes and guidelines. The methodology adopts an assessment rating scale<sup>2</sup> where the nature of effect is assessed and quantified, (from very low to very high) it is then translated in terms of RMA terminology. Assessing the level of effect requires professional judgement based on expertise, and experience. The table generally acknowledges that low and very low adverse effects generally equate to 'less than minor' and high and very high effects generally equate to significant.

---

<sup>1</sup> Te Tangi a te Manu: Aotearoa New Zealand Landscape Assessment Guidelines, Tuia Pito Ora New Zealand Institute of Landscape Architects, July 2022.

<sup>2</sup> Seven point level of effect scale. Te Tangi a te Manu Pg.151.



						SIGNIFICANT	
LESS THAN MINOR		MINOR		MORE THAN MINOR			
VERY LOW	LOW	LOW-MOD	MODERATE	MOD-HIGH	HIGH	VERY HIGH	

It is important to note that a change in a landscape (or view of a landscape) does not, of itself, necessarily constitute an adverse landscape effect. Landscapes are dynamic and constantly changing in subtle and more dramatic transformational ways, these changes are both natural and human induced.

Landscape, and consequent visual, impacts result from natural or induced change in the components, character or quality of the landscape. Usually these are the result of landform or vegetation modification or the introduction of new structures, facilities or activities into the landscape. Landscape effects arise when such change affects the values of that landscape either in beneficial or adverse ways.

The landscape effects generated by any particular proposal can, therefore, be perceived as:

- ▶ Positive (beneficial), contributing to the visual character and quality of the environment.
- ▶ Negative (adverse), detracting from existing character and quality of environment; or
- ▶ Neutral (benign), with essentially no effect on existing character or quality of environment.

The degree to which landscape effects are generated by a development depends on a number of factors, these include:

- ▶ The degree to which the proposal contrasts, or is consistent, with the qualities of the surrounding landscape.
- ▶ The proportion of the proposal that is visible, determined by the observer’s position relative to the objects viewed.
- ▶ The distance and foreground context within which the proposal is viewed.
- ▶ The area or extent of visual catchment from which the proposal is visible.
- ▶ The number of viewers, their location and situation (static, or moving) in relation to the view.
- ▶ The backdrop and context within which the proposal is viewed.
- ▶ The predictable and likely known future character of the locality.
- ▶ The quality of the resultant landscape, its aesthetic values and contribution to the wider landscape character to the area.

When assessing a landscape change it is important to recognise that both the nature and level of effects may change over time. I concur with the scale and methodology undertaken in the BML report.

Statutory Context

The BML report refers to a number of policy documents including the Resource Management Act 1991 (RMA), NZ Coastal Policy Statement 2010 (NZCPS), Regional Policy Statement and Plans and the Operative Napier District Plan (NODP). The NODP Objectives and Policies listed give effect to the higher order policy documents, however considering



the subject site sits within the Coastal Environment, the relevant Objectives and Policies of the NZCPS could be listed here.

### **Policy 13**

- (1) To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:*
- (a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and*
  - (b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;*
- including by:*
- (c) assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character; and*
  - (d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.*
- (2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:*
- (a) natural elements, processes and patterns;*
  - (b) biophysical, ecological, geological and geomorphological aspects;*
  - (c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;*
  - (d) the natural movement of water and sediment;*
  - (e) the natural darkness of the night sky*
  - (f) places or areas that are wild or scenic;*
  - (g) a range of natural character from pristine to modified; and*
  - (h) experiential attributes, including the sounds and smell of the sea; and their context or setting.*

### **Landscape Assessment**

My peer review identified that a description of the landscape character would have been helpful to understand what the attributes and value rating is before assessing the effects of the development. I have undertaken an assessment to identify and quantify the rural, coastal and natural character values below.

#### **Coastal Settlement Character**

The BML report provides an accurate description of the wider landscape context. This includes a description of the raised gravel barrier and beach, the band of horticultural plains (mainly apple and citrus orchards and vineyards), backdropped by the Bay View Hills. The Bay View township and wider coastal settlement sits either at the foot of the hills or along the gravel barrier.

The existing coastal settlement extends approximately 1.6km north of the subject site with the railway line as the western boundary to the productive rural plains and SH2 beyond. Similarly settlement extends approximately 2.7km to the south. The railway line dissects the settlement and SH2 is the western boundary to the productive plains.

The area is comprised of low density development comprising of fenced 600-800m<sup>2</sup> lots with dwellings of primarily single story and some two story dwellings. Roads are mostly not kerbed which adds to the low density coastal



character however the presence of powerlines, street lights and street trees are all attributes of urban settlement. Rogers Road, adjacent to the subject site, is kerbed and also provides a sealed footpath. Various patterns of cul-de-sacs, rail crossings and planned pedestrian access to the coastal edge are also attributes found in urban settlements. The existing landscape character therefore is one of coastal settlement. The overall quality of built form, and the lack of control over building materials, fencing, colour and vegetation has resulted in the site having a **low-moderate** coastal settlement character.

### Rural Character

Rural character is commonly associated with large lot sizes and rural land practices such as grazing, cropping, orchards or vineyards. Rural attributes such as post and rail or wire fencing, minimal built form or horticultural structures such as shade houses are rural qualities. The presence of shelter belts, linear rows of crops or trees and unsealed access tracks are all attributes of the rural environment which are found to the west of the existing coastal settlement, SH2 and the railway line as boundaries identified above.

Apart from the presence of some dilapidated fencing, these rural attributes are not found within the subject site. The existing site is undeveloped with a predominance of exotic, domesticated species such as wild fennel, broom and Indian fig cactus. The site is comprised of a raised gravel dune with informal vehicle walking tracks from backing properties that extend over the railway line. The site character is of an undeveloped, neglected nature that has been used as an extension to the beach reserve. While zoned as Main Rural, the site itself does not encompass rural characteristics, therefore in my opinion the existing site has a **very low** degree of rural character.

### Natural Character

The subject site sits within the Coastal Environment therefore an assessment of natural character was required in the BML assessment. Natural character can be assessed through the of biotic, abiotic and experiential qualities of a site.

Biotic – The site is located on a raised gravel barrier uplifted in the 1931 earthquake. This geomorphology is the main contributor to natural character. Vegetation is largely exotic and domesticated including various invasive species however there are some native rush species along the shoreline and dune system. The extensive use of vehicles through the site, and the neighbouring cannons have resulted in few fauna species present.

Abiotic – The coastal processes and shingle barrier provide a level of natural character to the site however the sites modifications and neglected nature, along with the surrounding coastal settlement and railway line reduce the level of natural character.

Experiential – The spits do not confirm to the ideals of sandy beaches of swimming and unwinding in a peaceful environment. The presence of informal pedestrian and vehicle tracks show that the site is used for active recreation such as motorbikes, 4 wheelers and surf casting. The unrelenting dumping of the waves and the sound of surf on shingle, steep gravel slopes and unsafe swimming status is loud, powerful and unforgiving. The unbroken line of exposed coastline and views to Hawke Bay all add to the experiential qualities of the site.

Therefore I concur with the BML assessment and the Draft 2019 Landscape Study by Isthmus, that the site has a **moderate** degree of natural character.

### Landscape Effects

With the sites character, values and attributes identified, the effect the proposal will have on the existing environment can now be assessed.



### Coastal Settlement Effects

The proposed changes will see the site become modified with built form and roading infrastructure consistent with the pattern of coastal settlement to the north, south and west of the subject site. Pedestrian access has been allowed for as well as the recreational thoroughfare through the reserve. Settlement attributes such as street trees through the development is also proposed to integrate the development into the coastal settlement. The front row of housing are all single story, with two story dwellings proposed at the rear of the site. Setbacks, recession plains, building height restrictions and hard surfaces are recommended to be consistent with the surrounding settlement zone. The proposed development is an anticipated change in the landscape and it is agreed that the effect on coastal character will be to a **low to very low** degree.

### Rural Character Effects

Rural character has been defined as very low with minimal rural character attributes on site. With the surrounding coastal settlement, the anticipated change in this environment is towards development not rural land practices or land cover. The recommended vegetation management zone and post and rail fencing for side boundaries will acknowledge and retain some of the wider rural character through the provision of wide setbacks and the use of rural materials and styles. I agree with the BML assessment whereby the inclusion of residential development on this site, while zoned Main Rural, does not detract from the existing land patterns of urban development amongst rural areas, introduce creep or incremental loss of rural character, rather it consolidates the residential development within the settlement. Therefore the effect on rural character will be **very low**.

### Natural Character Effects

The proposed development will change the natural character of the site by introducing built form and infrastructure. However the proposal also introduces shingle bank shoreline restoration with native coastal vegetation within private lots and within reserve area to the north of the site. This will create an integrated approach to native re-vegetation and in turn provide habitat for fauna. However the attributes that contribute to the natural character such as the geomorphology, steep gravel banks, dumping of waves, the unbroken line of exposed coastline and views towards Hawke Bay will not be reduced as a result of the proposed development. The proposed change will be of a **low** degree in this environment resulting in a change from moderate natural character to **low-moderate** natural character. However over time, this will be mitigated with the growth of the native vegetation restoration.

### Statutory Effects

Analysis of the Napier Operative District Plan was thorough and the proposal is found to be consistent with the conclusions and recommendations of the Draft 2019 Landscape Study by Isthmus. The same analysis of the NZCPS has been undertaken in a manner consistent with the BML assessment.

NZCPS – Policy 13	Compliance	Assessment of Landscape Effects
<i>To preserve the natural character of the coastal environment and to protect it from inappropriate subdivision, use, and development:</i>		
<i>(a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character;</i>	Yes	Not identified as an area with outstanding natural character.



<i>(b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment; including by</i>		
<i>(c) assessing the natural character of the coastal environment of the region or district, by mapping or otherwise identifying at least areas of high natural character;</i>	Yes	Natural character of the site was assessed and identified as moderate not high. This aligns with the BML Report and the Draft 2019 Landscape Study by Isthmus.
<i>(d) ensuring that regional policy statements, and plans, identify areas where preserving natural character requires objectives, policies and rules, and include those provisions.</i>	Yes	
<i>(2) Recognise that natural character is not the same as natural features and landscapes or amenity values and may include matters such as:</i>		
<i>(a) natural elements, processes and patterns;</i>	Yes	Natural processes on the beach reserve will not be altered by the proposed development.
<i>(b) biophysical, ecological, geological and geomorphological aspects;</i>	Yes	The geological value of the gravel spits have been recognised and building setbacks provided. Ecological restoration is proposed along the gravel dunes and beach reserve.
<i>(c) natural landforms such as headlands, peninsulas, cliffs, dunes, wetlands, reefs, freshwater springs and surf breaks;</i>	Yes	Gravel dunes are protected and enhanced through native restoration and controlled pedestrian thoroughfare.
<i>(d) the natural movement of water and sediment;</i>	Yes	The natural processes of water movement and sediment are not effected by the proposed development.
<i>(e) the natural darkness of the night sky;</i>	Yes	The area is not recognised as having dark sky value.
<i>(f) places or areas that are wild or scenic;</i>	Yes	The attributes that make the spits wild or scenic will be retained as they are outside the subject site. These include the dumping waves, long stretches of linear course



		gravel, uninterrupted views of the horizon and Hawke Bay.
<i>(g) a range of natural character from pristine to modified; and</i>	Yes	The natural character of the site was assessed and identified as moderate not high.
<i>(h) experiential attributes, including the sounds and smell of the sea; and their context or setting.</i>	Yes	The experiential values of the spits were identified and will be retained as they are outside of the subject site. Proposed single story dwellings are set back from the spits and the existing gravel dune topography will prevent any experiential change such as being overlooked.

### Conclusion

In my Peer Review dated 23<sup>rd</sup> November 2023, I concluded that while the landscape character and level of effects were not always clearly identified, and analysis of the Statutory provisions were limited, it was apparent that the assessment was sufficient to qualify the conclusions found in the LVA.

Upon request I have undertaken an assessment on the above gaps that were identified in the BML report. The analysis has confirmed that the overall effects of the proposed subdivision, with the recommended landscape conditions as mitigation, will be **low**, which can be considered **less than minor**.

The design recommendations including materials and colour, hard surfaces, lighting and utilities, warrants the addition of conditions to be included should the consent be granted. The reliance of 3-5 years before the effects are reduced to low, emphasizes the recommendations 7.1 to 7.2 as conditions of consent.

Should you require any further information, please do not hesitate to contact me.

Megan McBain  
Partner | NZILA Registered Landscape Architect

**From:** [Josh Markham](#)  
**To:** [Alison Francis](#)  
**Cc:** [Jonathan Clarke](#)  
**Subject:** RE: Council Review  
**Date:** Thursday, 19 October 2023 12:51:31 pm  
**Attachments:** [image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image001.png](#)  
[image002.png](#)

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Hi Alison

Apologies for the delay in this and contract coming your way also.

To understand the context of the application, I have reviewed the following documents:

- 68 Franklin Rd, Ecological Values, Constraints and Opportunities, R2, dated 11 July 2023. Prepared for Jack Brownlie Investments Ltd.
- 68 Franklin Road Bay View Napier 59 Lot Subdivision – Application for Resource Consent and Assessment of Environmental Effects, dated August 2023. Prepared by Tattico Limited.
- Attachment N – New Zealand Coastal Policy Statement Assessment.
- 68 Franklin Road Subdivision, Assessment of Landscape Effects, R1 dated 18 July 2023. Prepared for Jack Brownlie Investments Ltd.

Please find below comments which pertain to a technical review of the above Ecological Values, Constraints and Opportunities Report in the context of the resource consent application:

1. The report provides a high-level and partial assessment of the existing ecological environment and identifies some ecological constraints or opportunities that pertain to the site. The scope and context of an ecological values, constraints and opportunities report isn't fit for purpose for resource consent application as an Ecological Impact Assessment (EcIA) is required.
2. An EcIA should be provided which uses guidance set out in the Ecological Impact Assessment (EcIA) Guidelines (or similar) to determine and quantify ecological values, magnitude of ecological effect and overall level of ecological effect (before and after mitigation, minimisation and management actions being applied) to determine a level of residual ecological effect, which may require offset or compensation actions.
3. The above EcIA should also contain a statutory context relating to the Coastal Policy Statement (specifically policy 11), National Policy Statement for Indigenous Biodiversity, National Policy Statement for Freshwater Management and National Environmental Standards for Freshwater. The above EcIA should contain (but not limited to) potential ecological effects from the proposed development on coastal birds, lizards, invertebrates relating to build form, lighting, roading, predation and habitat loss (albeit weedy).

In summary, significant detail is missing for the assessment and quantification of ecological effects in this coastal environment.

I'm more than happy to discuss the above points with you or the applicant and please note that further technical review comments may result from any future information supplied by the

applicant.

Cheers

Josh

**Josh Markham | Principal Ecologist**

**Tonkin + Taylor - *Exceptional thinking together***

**M [0276251196](tel:0276251196)**

---

**From:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>

**Sent:** Tuesday, October 17, 2023 11:26 AM

**To:** Josh Markham <[JMarkham@tonkintaylor.co.nz](mailto:JMarkham@tonkintaylor.co.nz)>

**Subject:** RE: Council Review

**Importance:** High

Hi Josh

Just checking in, are you able to get something to me soon for this review?

Regards

Alison

---

**From:** Alison Francis

**Sent:** Saturday, September 30, 2023 4:06 PM

**To:** Jonathan Clarke <[JClarke@tonkintaylor.co.nz](mailto:JClarke@tonkintaylor.co.nz)>

**Cc:** Josh Markham <[JMarkham@tonkintaylor.co.nz](mailto:JMarkham@tonkintaylor.co.nz)>; [kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)

**Subject:** RE: Council Review

Hi Jonathan

Just checking in to see how you're progressing with this information, as we would be really keen to get back to the applicant and progress this.

Regards

**Alison Francis MNZPI**

Director | Bay Planning

m. 022 170 8108

e. [alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)

w. [bayplanning.co.nz](http://bayplanning.co.nz)



---

**From:** Alison Francis  
**Sent:** Thursday, September 21, 2023 1:24 PM  
**To:** Jonathan Clarke <[JClarke@tonkintaylor.co.nz](mailto:JClarke@tonkintaylor.co.nz)>  
**Cc:** Josh Markham <[JMarkham@tonkintaylor.co.nz](mailto:JMarkham@tonkintaylor.co.nz)>; [kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)  
**Subject:** RE: Council Review

Sounds great, thanks for the update

---

**From:** Jonathan Clarke <[JClarke@tonkintaylor.co.nz](mailto:JClarke@tonkintaylor.co.nz)>  
**Sent:** Thursday, September 21, 2023 12:57 PM  
**To:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>  
**Cc:** Josh Markham <[JMarkham@tonkintaylor.co.nz](mailto:JMarkham@tonkintaylor.co.nz)>; [kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)  
**Subject:** RE: Council Review


Hi Alison,

Thanks for sending through the supporting documents, we will get you a proposal by Monday (Tomorrow if we have time), including a timeline for completing the work.

Cheers

Jon.

Ngā Mihi | Kind regards,  
**Jonathan Clarke | Principal Coastal Engineer**

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 **Tonkin+Taylor**  
To send me large files you can use my [file drop](#)

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**From:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>  
**Sent:** Wednesday, September 20, 2023 2:28 PM  
**To:** Josh Markham <[JMarkham@tonkintaylor.co.nz](mailto:JMarkham@tonkintaylor.co.nz)>  
**Cc:** Jonathan Clarke <[JClarke@tonkintaylor.co.nz](mailto:JClarke@tonkintaylor.co.nz)>; Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>  
**Subject:** RE: Council Review

Hi both

Hope you are well. Just following up on this email below, are you able to provide a quote?

Regards

**Alison Francis MNZPI**

Director | Bay Planning

m. 022 170 8108

e. [alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)

w. [bayplanning.co.nz](http://bayplanning.co.nz)



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**From:** Alison Francis

**Sent:** Monday, September 11, 2023 4:30 PM

**To:** Josh Markham <[JMarkham@tonkintaylor.co.nz](mailto:JMarkham@tonkintaylor.co.nz)>

**Cc:** Jonathan Clarke <[JClarke@tonkintaylor.co.nz](mailto:JClarke@tonkintaylor.co.nz)>; Kathryn Hunt <[kathrynh@napier.govt.nz](mailto:kathrynh@napier.govt.nz)>

**Subject:** RE: Council Review

Hi Josh and Jonathan

Thanks for your help with this application, I have put all of the information that was submitted in this folder:

 [RMS230061 68 Franklin Road Application](#)

Please have a look at it, you'll find the ecology and the coastal hazards report in there along with the application, which should be the first pdf on the list and then the plans will be second.

Once you've had a quick review, please can you send me and include Kathryn Hunt in the email (cc'd to this email) your quote, which we will then confirm with the applicant before progressing. Once we have that confirmed, we will give you the green light to undertake the peer review and we'll work out timeframes at that point.

Any questions, please do not hesitate to be in touch.

Regards

**Alison Francis MNZPI**

Director | Bay Planning

m. 022 170 8108

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---

**From:** Josh Markham <[JMarkham@tonkintaylor.co.nz](mailto:JMarkham@tonkintaylor.co.nz)>  
**Sent:** Friday, September 8, 2023 2:47 PM  
**To:** Alison Francis <[alison@bayplanning.co.nz](mailto:alison@bayplanning.co.nz)>  
**Cc:** Jonathan Clarke <[JClarke@tonkintaylor.co.nz](mailto:JClarke@tonkintaylor.co.nz)>  
**Subject:** Council Review

Hi Alison

Great catching up on the phone.

Please find my details below.

Jonathan – lets catch up Monday to do a combined scope.

Cheers  
Josh

**Josh Markham | Principal Ecologist**

**Tonkin + Taylor - *Exceptional thinking together***

1 Fanshawe Street, Auckland CBD, Auckland 1010 | PO Box 5271, Victoria Street West, Auckland 1142,  
New Zealand

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**To send me large files** you can use my [file drop](#)

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# S95 Notification Report for an application for resource consent under the Resource Management Act 1991



Non-Complying Activity for a 59 lot subdivision, one vested road, two public access ways, one public reserve with waivers for density, yards, structures in yard, transport and earthworks. NESCS activity to disturb contaminated soil.

## 1. Application description

Application number(s):	RMS230061
Applicant:	Jack Brownlie Investments Limited
Site address:	68 Franklin Road, Bay View, Napier
Legal description:	Lot 2 DP 22640
Site area:	7.92ha
<b>Napier Operative District Plan</b>	
Zoning:	Main Rural
Overlays, controls, special features, designations, etc:	Coastal Hazard Zone, Adjacent to Designation D1 Kiwirail
<b>Napier City Proposed District Plan</b>	
Zoning:	Rural Production Zone
Overlays, controls, special features, designations, etc:	Medium Liquefaction Zone, Adjacent to Designation KRH-1, High Land Transport Noise, Coastal Environment, Area of Interest – Mana Ahuriri. LUC 7.

## 2. Locality Plan



Source: Napier City Council IntraMaps

## 3. The proposal, site and locality description

### Proposal

The proposal is to undertake a three-stage subdivision of Lot 2 DP 22640 into 59 Lots. The applicant summaries the application as such:

- The residential allotments range in size from 800m<sup>2</sup> to 1,398m<sup>2</sup>.
- The subdivision introduces a cul-de-sac road that steps back from the coastal edge in a similar manner to Le Quesne Road to the North (Lot 63). The road is proposed to be vested with Napier City Council. The majority of lots have frontage to this new road, except for the four southernmost lots which have access from an access lot (Lot 64).
- One open space lot is proposed (Lot 60), this runs along the coastal side of the properties between the edge of Lots 19-48 and the beach.
- Two pedestrian entrance strips are provided from the road to the open space lot (between Lots 31 and 32 and Lots 45 and 46).

- A coastal hazard zone runs across Lots 19-48 providing restrictions to building development. A restrictive covenant is proposed to buildings in this area (in accordance with the District Plan rules).
- A 7m coastal landscaped buffer is proposed along the coastal edge. This is to be planted with regenerative native species and a restrictive covenant is proposed.
- A 4m building setback and 1.8m acoustic fence is proposed for lots along the railway corridor. This prevents dwellings locating within the setback and is to be secured by consent notice on the title.
- Land along the coastal frontage for pedestrian and cycle access is provided and is to be vested with the Napier City Council as public reserve (Lot 60).
- Lots 61 and 62 provide an 8m wide pedestrian access to the beach. Both lots will be vested with Napier City Council as public reserve.
- The applicant requests a condition be imposed that requires all landuse and development on the site to be undertaken in accordance with the Rural Settlement Zone of the Napier District Plan (unless the site is rezoned residential).

## Wastewater

The applicant proposes to service the subdivision with a reticulated wastewater system to dispose of the sewage via the existing Bay View Transfer Pump Station and pumping main. The applicant notes:

*“A new pump station at 68 Franklin Road is proposed to receive and convey flows from the development to the Bay View pump station via the existing dis-used oil pipeline (owned by the Council) in the railway reserve to Ladywood Road. The remainder of the alignment from Ladywood Road to the pump station is proposed to be installed using standard open trench methods. This wastewater solution is similar to that approved in the lapsed resource consent and included a gravity system because this has traditionally been the default option. However, a low pressure pumped system is preferred because it will avoid deep gravity mains and sumps. The pump station and the rising main will be designed in accordance with the Council’s engineering standards.”*

Since the receipt of this application, there have been ongoing discussions between the applicant and Council’s Engineering Team to determine the most appropriate solution for wastewater. At this point it has not been agreed, however, it is considered that a solution will be available should this consent be granted. This is discussed in more detail in the body of this report.

## Stormwater

The applicant proposes to install a stormwater network that will be vested with the Council. Stormwater will be piped and discharged via a concrete box culvert to the beach. The application notes the specifics of the system:

- The road carriageway will have flush concrete nibs alternative to the standards non-mountable kerb and channel.
- Surface runoff will be directed to non-standard sumps within the berms and not to typical roadside sumps. This differs from the Napier City Council Engineering Code of Practice for Subdivision and Land Development (ECoP) and dispensation is sought for this departure.

- The site will be shaped to ensure that residential lots fall towards the new subdivision road.
- The roadway will be designed to convey the runoff associated with the 1 in 50-year event without causing ponding of 300mm or more to occur over sump grates. An overland flow path shall also be designed to convey the 1 in 50-year runoff from the new development road to the beach without overtopping.

As with wastewater design above, the Council and the applicant have met and discussed the proposed stormwater solution. At the time of writing this report, a solution has not been agreed upon and this is dialogue will continue throughout the processing of this application. It is assumed a solution will be available.

### Water reticulation

The application notes:

*“Each of the new lots will be serviced by a reticulated water supply connected to an existing, recently upgraded, Napier City Council water main in Franklin Road. The layout within the development will ensure that domestic demand is met. The water pipelines within the subdivision will vest with Council.*

*The New Zealand Fire Fighting Code of Practice sets out the requirements for firefighting purposes. All dwellings will be within 135m of the nearest fire hydrant and a second fire hydrant will be within 270m. Distances are measured along access routes from the fire hydrants to each dwelling. A total of five new fire hydrants are required and will be provided.”*

### Roading

A new road will be built to access the subdivision, with a new intersection with Franklin Road (at the corner of Franklin and Le Quesne). The road will terminate with a cul-de-sac turning head. The road is proposed to be vested in Council.

With regards to specifications and staging, the applicant notes:

*“The road has a proposed road reserve width of 15m narrowing to 13.5m for the last portion of the alignment from Lot 59 south. Three cul-de-sac turning heads are to be provided as the subdivision is progressively developed. Once a subsequent stage of development has been completed, the previously used turning head will be converted into an area that will act as a speed management device with a contrasting paved centre to help suppress excessive speeds along the length of the road and a turning area to avoid the need for public vehicles to have to travel the full length of the road to access the turning head at the southernmost end.*

*The carriageway will consist of two 3.0m traffic lanes to provide a total carriageway width of 6.0m. A 1.5m wide footpath will be provided on the western side of the road in front of lots 1-18, and on the eastern side of the road for the remaining alignment...Landscaping is proposed and street lighting will be installed.”*

The application notes that there are currently no walking or cycling connections available between the site and Gill or Rogers Roads and the proposed scheme plan sets aside land along the coastal edge for the construction of a combine pedestrian and cycle path in the future. This land will be vested with Council.

## Earthworks

Earthworks will be required to prepare the land for development and to ensure that the stormwater system can be effective. Both cut and fill will be required for the site, with retaining along the railway boundary required and shown on the plans provided.

The applicant notes:

*“The proposed earthworks and site contouring will ensure that:*

*Stormwater flows can be directed away from new buildings and ensure that minimum grades can be achieved to prevent ponding over sealed areas.*

*Overland flows from new lots are directed to the proposed new road.*

*The Infrastructure Report details that the following net earthwork volumes specified in the table below, from the existing ground level to finished level, are required.”*

Stage	Area (Ha)	Cut (m <sup>3</sup> )	Fill (m <sup>3</sup> )	Net Volume (m <sup>3</sup> )
1	3.41	6,151	4,322	1,829 Fill
2 and 3	4.51	16,114	4,66	11,148 Fill
Total	7.92	22,265	9,288	12,977 Fill

The earthworks are expected to take between 10-25 weeks and the applicant proposes an Erosion and Sediment Control Plan will be prepared and submitted as part of the consent conditions.

## Consultation

### Tangata Whenua

The applicant states in section 4.1 of the AEE:

*“The applicant is also engaging tangata whenua (Mana Ahuriri Trust, Maungaharuru Tangitu Trust and Te Whanganui ā Orotu). Several hui have been held and the application documents have been provided for review. Following discussion, it has been agreed between the hapu groups that a joint Cultural Impact Assessment will be prepared. Discussions regarding this are ongoing and the CIA will be provided once completed.”*

The applicant has provided a CIA post lodgement of the consent, this is referenced as “Cultural Impact Assessment Report – 68 Franklin Road Bay View, Napier. Proposed 59 Lot Subdivision by Jack Brownlie Investments Ltd” dated September 2023.

This CIA has been produced on behalf of the Mana Ahuriri Trust in conjunction with the Maungaharuru-Tangitū Trust. The CIA states:

*“It is not to be read as a direct or indirect consent of approval for the proposed activity”*

The CIA contains a number of tūtohi (recommendations) that have not been further addressed by the applicant in their application response.

### Kiwirail

As part of the s92 request (dated 20/11/2023) the applicant was requested to provide the written approval from Kiwirail with regards to this proposal. The applicant provided email correspondence between the project manager and Ms S McGuire, dated 28/04/2023. This email correspondence confirms:

- Kiwirail is accepting of a condition of a 4m setback from the railway corridor.
- The applicant proposes to erect a crib retaining wall of 1m to 1.2m high along the boundary of the properties adjacent to the Kiwirail designation. This crib retaining wall will be on the surveyed boundary line. Kiwirail requested civil/earthworks drawings and requested the design was reviewed before providing their support.
- A previously included right for pedestrian access to/from Rogers Road has been deleted from the scheme, with Kiwirail's support.
- Kiwirail have provided a recommended condition of consent pertaining to rail and noise vibration effects, this is in the form of a proposed consent notice that would be placed on future titles requiring future buildings to be to a specific standard to achieve noise and vibration attenuation.

### Site and surrounding environment description

Mark Vinall of Tattico has provided a description of the proposal and subject site on pages 10-15 of the Assessment of Environmental Effects (AEE) titled: 68 Franklin Road Bay View, Napier, 59 Lot Subdivision, Application for Resource Consent and Assessment of Environmental Effects.

Having undertaken a site visit on 15 May 2024, I concur with that description of the proposal and the site and confirm the following points:

- The site is a long, linear site that runs parallel to the coast for a length of approximately 1.1km. For the first approx. 430m a paper road (Le Quesne Road) runs along the eastern boundary between the site and the coast, and a narrow public reserve is located next to the paper road beside the beach.
- There is vehicle access into the site from the northern access point, a locked gate and dilapidated fences help to keep vehicles out. There is no or minimal fencing along the eastern boundary.
- The Napier-Gisborne railway line runs along the western boundary, separating the site from nearby residential development.
- The site is a HAIL site given it's previous occupation by the Bay View railway station, including buildings and railway sidings.
- The site is vacant and largely flat, with small undulations due to the underlying sandy soil. The site is vegetated with scrub and has no vegetation of note.

- There are multiple sections where nearby residents or the public have cut through the site to the beach, this is evidenced by a series of ad-hoc paths.
- The surrounding environment is residential, with established residential settlements located to the north and west. To the south an enclave of newer houses has been established at Mer Place.
- The site is approximately 15 minutes' drive from the centre of Napier.

## 4. Background

### Specialist Input

The proposal has been reviewed and assessed by the following specialists and teams:

- General Engineering, Transport and Environmental Health.  
The Council's Engineering, Transport and Environmental Health team first reviewed this at the time of the consent lodgement. An initial response with questions for the s92 was received on 17/11/2023. This included questions relating to roading, three waters, service connections and development engineering.

These requests were included in a s92 letter sent on 20/11/2023.

Further information from the Engineering Team was received on 04/12/2023 regarding the potential costs to the applicant for Financial Contributions and options for wastewater connections. This was communicated to the applicant. A meeting was held with the applicant and Council's engineers and roading team on 26/03/2024.

At the time of this report, discussions with the applicant and the Council's engineering team are ongoing. All parties are confident that engineering solutions are possible for three waters, roading and environmental health and if the application is granted, these will be reflected in conditions. The cost of implementing the engineering solutions is unclear.

- Parks and landscape.  
The Council's Parks and Reserves department provided initial feedback on the design on 22/11/2023. Mr Tickner (now resigned from Council) raised concerns about the location of the coastal pathway, given that it was on a moving stone dune, it might require retaining by the Council in the future. Mr Tickner provided an alternative route for this pathway, along with other general conditions were the application to be granted.

The applicant, in their s92 response noted this and responded:

*"The applicant considers the proposed public walkway along the beach front to be the most appropriate location for the public access as this connects to existing public access along the foreshore in Bay View. The toe of the scarp is stable and has not been impacted by significant erosion as detailed in the coastal assessment undertaken by Eco Nomos, therefore we do not consider that retaining would be required. We also do not consider that a concrete path is the most appropriate path material given the coastal location and consider that a compacted gravel path is more appropriate surface material for this location. The*

*alternative route suggested by the Council along the public road network remains a viable alternative (except along the ROW and through the southernmost lots).*

No response has been received from the Council's Parks Department and for the purposes of this notification assessment, either option is considered to be suitable.

- The expert Landscape Designer, Ms M McBain of Wayfinder provided her memo on 23/11/2023 in response to the submitted Landscape and Visual Effects report. At this time, Ms McBain does not require further information, although she notes that amenity and character has not been attributed values as she would expect.

To prepare for this notification assessment, we requested Ms McBain elaborate on her comments regarding the amenity and character values and she has provided a memo dated 4 July 2024. This memo provides the further assessment of the coastal, rural and natural character.

- The expert Contaminated Land Specialist, Ms S Newall, of HAIL Environmental, provided her comments (email) dated 09/11/2023 and is confident that there is no further assessment under the NES-CS at this time.
- The expert Ecologist, Mr J Markham, of Tonkin and Taylor, provided his comments (email) dated 26/10/2023. These comments stated that the submitted Ecological Values, Constraints and Opportunities Report provided by the applicant was high-level and only a partial assessment of the existing ecological environment. Mr Markham considered that significant detail was missing for an assessment and quantification of the ecological effects in the coastal environment. This information was provided to the applicant by way of a s92 request for further information on 06/12/2023. The applicant responded.
- The experts for Coastal Hazards, Mr J Clarke and Mr T Shand of Tonkin and Taylor, provided their initial comments (email) dated 18/12/2023. They requested further information from the applicant's Coastal Hazard expert on matters relating to the data used and analysis of the erosion and accretion trends. The applicant provided a response in their s92 response information. Mr Clarke then responded on 12/03/2024 (email) that he had no further queries and requested that the erosion lines were mapped on the scheme plan, and a tsunami evacuation plan be provided as a condition of consent. Due to the Council commissioning Tonkin and Taylor to prepare coastal inundation reporting ("Coastal Inundation: Tangoio to Clifton" report, dated November 2023), I requested that Mr Clarke provide a formal response to the information submitted by the applicant, incorporating a quick review of this report. Mr Clarke provided a memo back to me on 07/06/2024 which states that he is in general agreement with the applicant's coastal hazards expert and considers that the risk to the site from coastal hazards is low.

## Consent History

The subject site has had a long history of past subdivision consents. All previous subdivision consents have lapsed, hence this application for a new subdivision proposal.

Subdivision consent to create a three-stage development into 59 lots, undertake earthworks and construct infrastructure	Current	RMS230061
S127 on RMS07123 <ul style="list-style-type: none"> <li>to enable 61 lots to connect to the NCC sewers in Lot 2 via sewer main to be laid within a disused oil pipeline to a point of connection to the Bay View Transfer Pump Station.</li> </ul>	Granted on 3.11.2017	RMS07123
Subdivision consent to create 73 fully services lots with areas >800m <sup>2</sup>	Granted by Hearing Commissioner on 12.06.2018 to Fore World Developments Limited (across Lot 1 DP22640 and 2 DP 22640 – 66 & 68 Franklin Rd, Bay View, Napier). This application was publicly notified on 15 December 2007 and attracted 29 submissions, with 25 in opposition.	RMS07123
Subdivision consent to create 48 lots	Withdrawn on 5.08.2008 by Fore World Developments Ltd	RMS07075
Subdivision application to subdivide railway land to create sites not viable to farming units in the Rural 2 zone	Granted on 4.06.1991 to Rail Properties [NZRC]	91689SD

The applicant is aware that consent for the discharge of stormwater into the coastal environment will be required by Hawke's Bay Regional Council. At the time of this report, the applicant has not applied for this consent. We do not consider that this land use/subdivision consent needs to be deferred under s 91 until that application is made. The need for regional discharge consent to be acquired in advance of stormwater infrastructure is a matter that can be addressed in the conditions.

## 5. Reasons for the application

### Land use consent (s9) RMS230061

#### Napier City Operative District Plan

##### Chapter 34 – Main Rural Zone

- Rule 34.15(c) Any subdivision (excluding boundary adjustment) that does not comply with the minimum lot size specified in Chapter 66 of this Plan is a **Non-Complying** Activity.

The minimum lot size in the Main Rural Zone is 4 hectares. All proposed lots are between 800m<sup>2</sup> - 1,398m<sup>2</sup>.

While no buildings have been proposed, a general bulk and massing plan has been provided (Attachment C of application) which shows each Lot with a 3m front yard and 1m side and rear yards. The following performance standards are not met:

- 34.21: Density – the maximum density must not exceed one dwelling per site provided the net site area is not less than 2,500m<sup>2</sup>.

- 34.22 Yards – the front yard for all sites is required to be 7.5m and all side and rear yards are 6m. All building platforms will infringe these yard setbacks. A maximum 3m high combined retaining wall and fence will be located along the western boundary of Lots 50-53.
- 24.41 Code of Practice for Subdivision and Land Development – the minimum lot size of 4ha and the design of the road does not meet the standards in the Engineering Code of Practice.

#### *Earthworks 52A.12 Extent Of Earthworks*

For the purpose of assessing the total volume of earthworks allowed as a permitted activity for sites in the above zone, the volume shall be calculated by multiplying the volume threshold (listed in the above table) by the total area of the subject site in hectares, over any 12 month period.

For the importation of fill or removal of cut to or from an offsite location, the volumes of earthworks specified in the above table shall be reduced by 50% in determining the volume permitted in any 12 month period.

The proposal does not comply with permitted activity standards as:

- 52A.12 Extent of earthworks: The proposal exceeds the permitted volume of 100m<sup>3</sup>, with a total cut of 22,265m<sup>3</sup> and fill of 9,288m<sup>3</sup>.
- 52A.15 Excavation: An excavation of greater than 1m will occur along the northern boundary of Lots 50-53 and this is likely to be within 10m of future buildings.
- 52A.10.1 Removal of fill: More than 25m<sup>3</sup> of topsoil, gravel, metal or earth will be removed from the site.

The proposal is considered a **Discretionary** Activity pursuant to Rule 52A.10

#### *Transportation 61.13 General*

Pursuant to Rule 61.11, as the underlying land use consent application is non-complying (and discretionary), the application is considered **Discretionary** and the following performance standards are not being met:

- 61.17: All residential activities that provide onsite vehicle access and car parking shall comply with the following, unless stated by a rule elsewhere in this Plan:
  - b. Vehicle manoeuvring must be provided on the site as follows:
    - ii. On all rural sites.
- 61.19 Vehicle Crossings:
  - 1. All subdivision, use or development of land shall comply with the following vehicle crossing condition:
    - b. minimum distance for a new vehicle access from Rail Level Crossings – 30m. The new entrance into the site is within 30m of the adjacent level crossing on Franklin Road.

## Natural Hazards Chapter 62

Rule 62.13(a): Land development (including subdivision), other than a prohibited activity, within the coastal hazard area identified on the planning maps is a **Discretionary** Activity.

The site is located within the Coastal Hazard Zone identified on the Napier City Council and Hawke's Bay Hazard Portal maps. This hazard zone runs along the east of the property.

## Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

The applicant applied for an application pursuant to Regulation 10(2) of the NESCS – being a Restricted Discretionary Activity. The applicant provided a DSI (prepared by EAM Consultants, dated May 2023, and an addendum letter dated 22/06/2023) that states as part of the site was historically associated with the Bayview Railway Yard, soil investigations were undertaken.

The result of the investigations was that there is a small exceedance of background soil concentrations in four locations. No soil results exceeded background soil concentrations suitable for residential use and the applicant therefore considers the site suitable for residential development and the works will not pose a risk to human health.

Council's expert, Ms S Newall, from HAIL Environmental, peer reviewed the information provided at the time of the application. She was satisfied with the investigation on site and considers that at best, the NESCS assessment could be updated to be a Controlled Activity pursuant to Reg 5(9) for the following reasons:

- The investigation has shown that part of the site was used for an activity on the HAIL (rail yard), however, the analytical results show that the activity of subdivision (and therefore facilitating a change of use to residential) does not pose a risk to human health, and is therefore a permitted activity in accordance with Reg 8(4).
- The soil disturbance may be within permitted levels, if not, then the activity would be Controlled.

Therefore, the application is to be considered a **Controlled** Activity pursuant to regulation 9(3) of the NESCS.

## Proposed City of Napier District Plan (Proposed District Plan)

The Proposed District Plan has been notified and submissions have now closed. Decision have not yet been made.

The rules of the Rural Production Zone chapter and the rules of the SUB, TRAN, CE and NH chapters of the Proposed District Plan do not have immediate legal effect under s 86B.

Chapter EW – Earthworks does have two rules with immediate legal effect (EW-R2 and EW-R6). However, neither of these rules pertain to this application, and therefore the EW chapter does not need further consideration at this time.

## Status of Resource Consents

The reasons for consent are considered together as a **Non-Complying** activity overall.

## 6. Public notification assessment (sections 95A, 95C-95D)

Section 95A specifies the steps the council is to follow to determine whether an application is to be publicly notified. These steps are addressed in the statutory order below.

### Step 1: mandatory public notification in certain circumstances

No mandatory notification is required as:

- the applicant has not requested that the application is publicly notified (s95A(3)(a));
- there are no outstanding or refused requests for further information (s95C and s95A(3)(b)); and
- the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977 (s95A(3)(c)).

### Step 2: if not required by step 1, public notification precluded in certain circumstances

The application is not precluded from public notification as:

- the activities are not subject to a rule or national environmental standard (NES) which precludes public notification (s95A(5)(a)); and
- the application does not exclusively involve one or more of the activities described in s95A(5)(b).

### Step 3: if not precluded by step 2, public notification required in certain circumstances

The application is not required to be publicly notified as the activities are not subject to any rule or a NES that requires public notification (s95A(8)(a)).

The following assessment addresses the adverse effects of the activities on the environment, as public notification is required if the activities will have or are likely to have adverse effects on the environment that are more than minor (s95A(8)(b)).

### Adverse effects assessment (sections 95A(8)(b) and 95D)

#### **Effects that must be disregarded**

Effects on persons who are owners and occupiers of the land in, on or over which the application relates, or of land adjacent to that land.

The Council is to disregard any effects on the persons who own or occupy the land in, on, or over which the activity will occur, and on persons who own or occupy any adjacent land (s95D(a)). The land adjacent to the subject site is listed below and shown with green circles on the accompanying aerial photos:

1 Le Quesne Road, Bay View	70 Rogers Road, Bay View	36 Rogers Road, Bay View
66B Franklin Road, Bay View	68 Rogers Road, Bay View	34 Rogers Road, Bay View
Lot 6 DP 564385	66 Rogers Road, Bay View	32 Rogers Road, Bay View
66 Franklin Road, Bay View	58 Rogers Road, Bay View	30 Rogers Road, Bay View
78 Rogers Road, Bay View	54 Rogers Road, Bay View	28 Rogers Road, Bay View
76 Rogers Road, Bay View	52 Rogers Road, Bay View	26 Rogers Road, Bay View
74 Rogers Road, Bay View	Lot 1 DP 28009	24 Rogers Road, Bay View
72A Rogers Road, Bay View	44 Rogers Road, Bay View	22 Rogers Road, Bay View
72 Rogers Road, Bay View	38 Rogers Road, Bay View	21/21A Mer Place, Bay View



*Immediately adjacent properties (North)*



#### *Immediately adjacent properties (South)*

As the application is non-complying, under s 95D(c) the Council must consider all effects for this assessment.

There are no trade competition effects to be disregarded under s 95D(d).

No person or persons have given their written approval to this application, and so no effects are to be disregarded under s 95D(e).

### **Effects that may be disregarded**

#### Permitted Baseline

Section 95D(b) states that a decision maker **may** disregard an adverse effect of an activity on the environment if the plan or a national environmental standard permits an activity with that effect. The adverse effects of the permitted activities (ie. permitted baseline) can, at the discretion of the decision maker, be used to compare the adverse effects of the proposed activity.

There are many permitted activities listed in Chapter 34 Main Rural Zone. The applicant has touched on many of these in their assessment.

In this case, I do not consider that there is an appropriate permitted baseline, as any subdivision of land requires a resource consent. Further, the effects of one permitted residential dwelling, supplementary dwelling and associated sheds are so substantially different to the scale of effects that this application, that I do not consider they should be applied as a baseline.



## ASSESSMENT

The applicant has provided an assessment of environmental effects on pages 25-44 under a number of topic headings. I consider this assessment to be thorough and use similar topic headings to undertake my assessment of environmental effects. Reference to experts and their peer reviews are included in this assessment.

### Residential and Rural Amenity and Character

The applicant notes in their AEE:

*“The zoning of the site is incongruous with the surrounding residential land use and amounts to a spot zone and the characteristics of the site are not favourable for rural activities. The size and location of the site, limited access, and soil composition compromises the productive use of the site. The proximity of residential activity to the site has the potential to result in conflicts if the site was used for rural activities given the narrow and elongated shape of the site and close proximity to existing housing development. Permitted uses on the site include agriculture, viticulture, horticulture, rural processing industries, commercial forestry, feedlots and landfills.*

*The site is bordered on three sides by land that is zoned Rural Settlements and on the eastern side by the unformed road, beach reserve and coast. The Rural Settlement zone permits lots with lot sizes of 1500m<sup>2</sup> for un-serviced sites and 800m<sup>2</sup> for serviced sites. Much of the surrounding residential housing is a mixture of single and double storey homes on sites of 800m<sup>2</sup>. The density of the proposed subdivision is similar or lower to that required for fully serviced sites and consistent with the density in the surrounding residential catchment.*

*The application will result in a change to the scale and intensity of built form permitted on the site. However, the subdivision has been designed to integrate with the subdivision pattern of the neighbouring residential land and will be comparable and in keeping with the scale and intensity of existing residential development. The site, although devoid of buildings, is unkept and contributes little in the way of pleasantness or aesthetic coherence to the surrounding neighbourhood. The use of the site for permitted rural activities has a greater potential to negatively impact the amenity values of the area than a more benign residential development. While it is acknowledged that views to the coast from some residential properties may be impacted as a result of the subdivision, these are not protected in the District Plan.*

*The proposed subdivision layout, lot sizes, and anticipated building form are consistent with, and guided by the Rural Settlement zone standards for dwellings. In terms of future development of the lots following subdivision for residential housing, it is proposed that these will be established under the Rural Settlement zone standards.”*

The applicant notes that conditions of consent have been proposed relating to building scale, setback, fencing and landscaping to “ensure the subdivision is integrated within its residential and coastal setting”.

While the applicant relies heavily on the potential adverse effects from what could happen as of right on the Lot as a Rural Zoned piece of land, at present, the effects from the use of the land are minimal, as it is undeveloped and not inhabited. The lack of access, and proximity to residential dwellings and the coast do limit the possible uses for this piece of land under the current zoning,

but the site is one of the largest in the immediate area and should not be discounted from rural use.

The applicant further proposes on using the Rural Settlement Zone performance standards to manage the effects of the proposed subdivision. It is noted that the current zone of the subject site is Rural and the proposed zone under the Proposed District Plan is Rural Production Zone. Any use of Rural Settlement Zone standards will be at the discretion of Council and the decision maker, should consent be granted. Further, the Proposed District Plan zones the surrounding residential areas Rural Lifestyle. This has a minimum 5,000m<sup>2</sup> site size in a complying subdivision, rendering any comparison with the proposed neighbouring zone invalid.

The applicant has made a submission on the Proposed District Plan (ref 209 Jack Brownlie Investments Limited). This submission requests (amongst other matters) that the proposed zoning of 68 Franklin Road be General Residential or Settlement Zone. This is yet to be determined and will be subject to it's own decision-making process. The existing environment surrounding the site may be relevant but not determinative of the rezoning decision. Further, the proposed zoning around the site is Main Rural and Rural Settlement, which is not consistent with the applicant's submission.

Overall, I do generally agree with the applicant in their assessment of the surrounding residential environment. On all sides, apart from the coast, the site is surrounded by residential land in a medium dense subdivision pattern. These residential properties are wedged between existing rural production land accessed via Main North Road, Franklin Road and Rogers Road. The result in a linear coastal residential suburb, stretching approximately 4.5km along the coast.

When viewed in the context of the surrounding rural and residential environment, the proposal for 59 residential dwellings, with Lot sizes of 800m<sup>2</sup> - 1,398m<sup>2</sup> is not at odds with the surrounding subdivision pattern which sees many lots along Rogers Road at approx. 800m<sup>2</sup> - 950m<sup>2</sup>. The newer subdivision at Mer Place to the south has Lots with a minimum Lot size of 800m<sup>2</sup> and this pattern is continued to the north along Le Quesne Road.

The site does not have any visual or physical link with the rural zoned land to the west. The location of the Napier – Gisborne railway line physically cuts this site off from sites to the west, along with existing residential development. When standing at the intersection of Franklin and Le Quesne Roads, there is no visual link with the productive land to the west, as this site is coastal in nature, with low scrub and sandy soils. Further, from Rogers Road, or Mer Place, the site is visually obstructed by existing residential properties, apart from one point where Rogers Road abuts the railway line. From this point, the development will be visible across the railway line.

Ms McBain in her initial peer review (dated 23/11/2023) notes:

- *Rural Character*

*It is agreed that the rural character values of the site are isolated from the wider rural character values as a result of surrounding rural-residential subdivision. Overall the legibility of the rural land use patterns will remain unchanged following the introduction of the proposal. I consider that an assessment of the level of effect is required on rural character.*

Overall, I consider the proposed 59 Lots would not be out of character with the surrounding residential environment, and I consider the effects of the subdivision to be minor on the surrounding residential character.



## Landscape Effects

The applicant refers to the Landscape Visual Assessment (LVA), prepared by Boffa Miskell (dated 18 July 2023) and submitted with the application. The applicant notes in their AEE (s6.4):

*"The site forms part of a modified coastal setting with residential settlement surrounding the site and predominant along the coastal edge of Bay View... Land surrounding the site is zoned Rural Settlement and is characterised by single and double storey dwellings on medium sized sites.*

*The site is assessed as having a **moderate-low degree** of natural character due to the lack of structures and roads and the vegetation cover being predominantly weed species. The site does not demonstrate unique natural character attributes that generate a higher degree of natural character compared to the adjoining coastal edge land uses to the north and south.*

*While the proposed subdivision introduces change to the site... it creates an integrated approach to the natural vegetation and in turn habitat for fauna along the coastal edge. Although the site will become modified with built form, roading and infrastructure associated with residential development, it will be consistent with existing residential development to the north and south. The management of access to the beach and integration of coastal native vegetation, as part of the subdivision, will enhance the management of natural biota and processes for this coastal environment. This will be a significant improvement compared to the typical domestication of the established residential strip along the Bay View coastline."*

The LVA notes that the scale of the subdivision was reduced following the initial design phase and input by Boffa Miskell. The experts provided a number of recommendations that will be included as conditions of consent, should consent be granted. These include:

- Preparation of a Landscape Management Plan;
- Planting of native and coastal vegetation;
- Height maximums to buildings;
- Material and glazing standards; and
- Fencing standards.

The LVA was peer reviewed on behalf of the Council by Ms M McBain of Wayfinder, memo dated 23/11/2023. Ms McBain is in general agreement with the applicant and their specialists, although she notes that certain types of existing character were not described with as much detail as she would expect, or ascribed values. Her findings are summarised in s2.7 of her memo:

- *Natural character effects;*

*The existing natural character of the site is identified in the LVA as having a moderate degree of natural character, partially because of its undeveloped land use, and exotic weed species. However a more detailed assessment of the sites physical, associative, and perceptual attributes is required. The assessment recognises that the development will introduce a **moderate degree of change** to the site, however the coastline will be enhanced by the provision of beach access and shoreline restoration with native coastal vegetation, thus reducing the overall level of effects to **low**.*

*I agreed (sic) that the proposed development will reduce the site to a **moderate-low degree of natural character**.*

- *Coastal and Rural character effects*

*Both coastal and rural landscape character effects were assessed within the LVA within S.6.2 however it would be clearer if they were assessed separately. Neither the coastal or rural attributes of the site were given a value (eg. moderate – low) to assess the effects of the proposal from. I agree that the existing landscape description provided in the LVA is an accurate account however I consider that the level of value for the existing coastal and rural character is required.*

- *Coastal Character*

*The introduction of dwellings into this landscape is in a pattern similar to the surrounding land use which provides a consistent response to the coastal settlement. The proposal does not detract from a coastal character, rather it consolidates the residential development within the settlement pattern and provides for coastal remediation. I agree that the proposal provides a **low to very low** degree of potential adverse effects on the coastal character.*

## **Natural Character**

Overall, Ms McBain concludes that the development, with the proposed development and design controls, will have a **low-moderate** adverse effect on the areas landscape character, overtime this will be mitigated by the growth of the native vegetation restoration.

Having visited the site, I concur with Ms McBain that the site has low natural character.

However, I note that the site is bordered on the east by a public reserve that stretches some 400m from the end of Franklin Road to the dog leg of the paper Le Quesne Road, as shown in the picture below. Public access is provided along this reserve and then users of the public reserve are directed down onto the beach. The site provides over 1km of uninhabited, vacant, coastal land and is unusual in the area, given the coastal residential development on either side discussed above. It breaks up that existing coastal residential development and compliments the coastal environment and public reserve by breaking up what would otherwise be a long stretch of development and providing an area of open space. While this site is not technically accessible to the public, the lack of fencing or barriers into the site further provides an attractive coastal setting for users of the beach and public reserve.



*Source: Napier City Council GIS*

The proposal for 59 residential sites will alter the character and amenity of the site for users of the public beach and reserve area, including the car park at the northern end of the site. An unbroken row of houses will stretch along the coastline, accompanied by all necessary infrastructure that comes with a development of this type, such as the road, streetlights and services. The proposed mitigation measures such as landscaping, setbacks and building materials will soften the appearance, but cannot totally mitigate the effect that this development has on the coastal environment. The development is considerably different to what would be expected in the context of the Rural Zone. Effects cannot be considered in a vacuum and the underlying zone's objectives and policies are relevant, in this instance the underlying zone expects low built development with a focus on retaining a rural character, something that will not be achieved by this proposal.

The landscape experts agree that the site will go from having a moderate degree of naturalness to a moderate-low degree on naturalness, and that this amounts to a low level of landscape effects following the establishment of mitigation. When comparing an open vegetation covered strip to a collection of 59 dwellings, I consider that the change certainly is at the upper end of what could be described as low, even with the proposed mitigation measure recommended by Boffa Miskell.

I therefore consider that the shorter-term low-moderate effects, and the longer terms effects that sit at the upper end of low together mean that natural character effects of the proposal on the environment are **minor**.

### Natural Coastal Character

With regards to Coastal Character, I have considered this separately given the location adjacent to the coast and publicly accessible spaces at the coast and at the end of Franklin Road.

The site affords the coastal environment a large area of open space, vacant of buildings and breaks up the residential development to the south and north. As the site is not developed with any infrastructure that will support development (driveway, road, services etc) I consider that the visual effects on the coastal character arising from the development of the subdivision will be more than minor. Even with the proposed mitigation that will in time help to soften the visual impact of the development, the effect on the adjacent beach, coastal environment and on those who are users of the environment are more than minor.

Ms McBain notes in her memo dated 08/07/2024:

*"The proposed development will change the natural character of the site by introducing built form and infrastructure. However the proposal also introduces a shingle bank shoreline restoration with native coastal vegetation within private lots and within reserve area to the north of the site. This will create an integrated approach to native re-vegetation and in turn provide habitat for fauna. However, the attributes that contribute to the natural character such as the geomorphology, steep gravel banks, dumping of waves, the unbroken line of exposed coastline and views towards Hawke Bay will not be reduced as a result of the proposed development. The proposed change will be of a low degree in this environment resulting in a change from moderate natural character to low-moderate natural character. However, over time this will be mitigated with the growth of the native vegetation restoration.*

### Overall Landscape Character Effects

The site has been considered to have low-moderate landscape value, when considered in the rural, coastal settlement and natural coastal character. The site is not connected to the nearby rural sites as it is physically separated by existing residential development and the railway. The site itself has few natural characteristics that are worthy of retention, and generally the view of the landscape experts is that the development of the site will lead to improvements to public access and less than minor effects on the natural environment, character and amenity.

My opinion is that while I agree with the findings of the experts, when looking at the cumulative effects on the surrounding coastal landscape, along with consideration of what the underlying zoning provides for as of right (the non-fanciful development of one dwelling and associated garages/sheds) I consider the effects on the landscape to be more than minor. The introduction of 59 residential units, all associated infrastructure, planting and people into an environment that is currently sparsely occupied by people and vacant of built structures will result in a **more than minor** effect for users of the surrounding public areas. While this effect may be mitigated overtime by landscaping, the immediate effects of this proposal will be **more than minor**.

## Ecology

The applicant provides an assessment of ecology in their AEE, section 6.12. The applicant provided an ecological report, prepared by Boffa Miskell, dated 11 July 2023. The applicant notes:

*“The report outlines that the site is highly modified and degraded with majority of the vegetation being exotic weeds. Very few bird species were observed using the habitat within the property boundaries, likely due to a combination of the extensive use of vehicles throughout the site and foreshore and the nearby bird cannons.”*

The applicant makes note of the following recommendations put forward by Boffa Miskell that will be adopted by the applicant in any development in the future:

- Restoring the coastal buffer with native vegetation
- Limited vegetation clearance
- An Avian Management Plan to be developed
- Planting plan to be prepared for the restoration of the coastal landscape strip.

The Council commissioned Mr J Markham from Tonkin and Taylor to peer review this report, Mr Markham provided his comments via email on 19/10/2023 and he notes:

- 1) *The report provides a high-level and partial assessment of the existing ecological environment and identifies some ecological constraints or opportunities that pertain to the site. The scope and context of an ecological values, constraints and opportunities report isn't fit for purpose for resource consent application as an Ecological Impact Assessment (EclA) is required.*
- 2) *An EclA should be provided which uses guidance set out in the Ecological Impact Assessment (EclA) Guidelines (or similar) to determine and quantify ecological values, magnitude of ecological effect and overall level of ecological effect (before and after mitigation, minimisation and management actions being applied) to determine a level of residual ecological effect, which may require offset or compensation actions.*
- 3) *The above EclA should also contain a statutory context relating to the Coastal Policy Statement (specifically policy 11), National Policy Statement for Indigenous Biodiversity, National Policy Statement for Freshwater Management and National Environmental Standards for Freshwater. The above EclA should contain (but not limited to) potential ecological effects from the proposed development on coastal birds, lizards, invertebrates relating to build form, lighting, roading, predation and habitat loss (albeit weedy).*

These points were put to the applicant in a s92 request, dated 06/12/2023. The applicant responded in their response, dated 19/02/2024:

*The Ecological report submitted with the application is not a full Ecological Impact Assessment (EclA), rather it is a report on the ecological values, constraints, and opportunities of the site. As noted below, given the current condition of the site is highly modified and degraded (with the majority of vegetation being exotic weeds), it is considered that full EclA is not required.*

*Clause 2(3)(a) of Schedule 4 of the RMA requires that an assessment of effects includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment. The Ecological report includes a full description of the*

*ecological values of the site and likely impacts of the proposed subdivision including plants and animals. Conditions of consent are offered to mitigate the potential effects on kororā and other bird species using the site for nesting.*

*It is our view that the proposed ecological assessment is appropriate for the site and proposed subdivision activity, and that due to the nature and characteristics of the site, a full EclA is not required.*

I have considered this carefully, and having visited the site, and reviewed the recommendations put forward by Boffa Miskell, I am satisfied that the information provided with the application and subsequent s92 response is sufficient to determine that the effects on the ecological values of the site are minor.

### **Cultural Effects**

The applicant has commissioned a CIA, this is included in the application materials (Cultural Impact Assessment Report – 68 Franklin Road Bay View, Napier. Prepared by Mana Ahuriri Trust, dated September 2023). This report states that it has been prepared on behalf of the Mana Ahuriri Trust in conjunction with the Maungaharuru-Tangitū Trust.

The report provides a comprehensive history of the site, with reference to the nearby Heipipi landscape. Māori settlement has been present in the area since the 1500's. A nearby battle is described in detail in the CIA and the report notes:

*“There is a possibility given the direct proximity of Heipipi Pā to the proposed subdivision at the coastline that the location of the Taraia and Tunuiarangi historical account may have been at or nearby the direct location of where the proposed subdivision is located. This site could be considered to be a waahi taonga as it is a waahi pakanga or site where former battles have occurred and is certainly considered by Hapū as worthy of protection in a way that accounts for the customary practices of ngā hapū in particular Ngāti Matepū, Ngāi Te Ruruku, and Ngāti Tu”*

The CIA has identified a number of impacts on the environment and people, including the discharge of contaminants to land and water, impacts on ecosystem disturbance and site works. The CIA notes:

*“However, this subdivision also has the potential to enhance mauri if key areas and actions promoted by hapū are adopted in this design, construction, and ongoing protection and maintenance of the development.”*

The report makes a number of Tūtohi (Recommendations) including:

- Further consultation with Maungaharuru-Tangitū Trust regarding the location of the proposed development and the adjacent Coastal Hazard Zone.
- Smart water meters;
- Infrastructure plan;
- Low impact design standards;
- Reporting and documentation of greenhouse gas emissions;
- Written Hapū discovery protocol be developed;

- Landscape plan;
- Avian management plan;
- A number of covenants have been suggested.

The authors of the CIA have indicated that the development has the potential to degrade the Mauri of the site, but also to enhance it if the recommendations are adopted.

The applicant has not provided any information as to how they will incorporate any or all of these recommendations in their application, therefore I have erred on the side of caution and concluded that the potential adverse effects of the proposal as it currently stands on cultural values are **more than minor**.

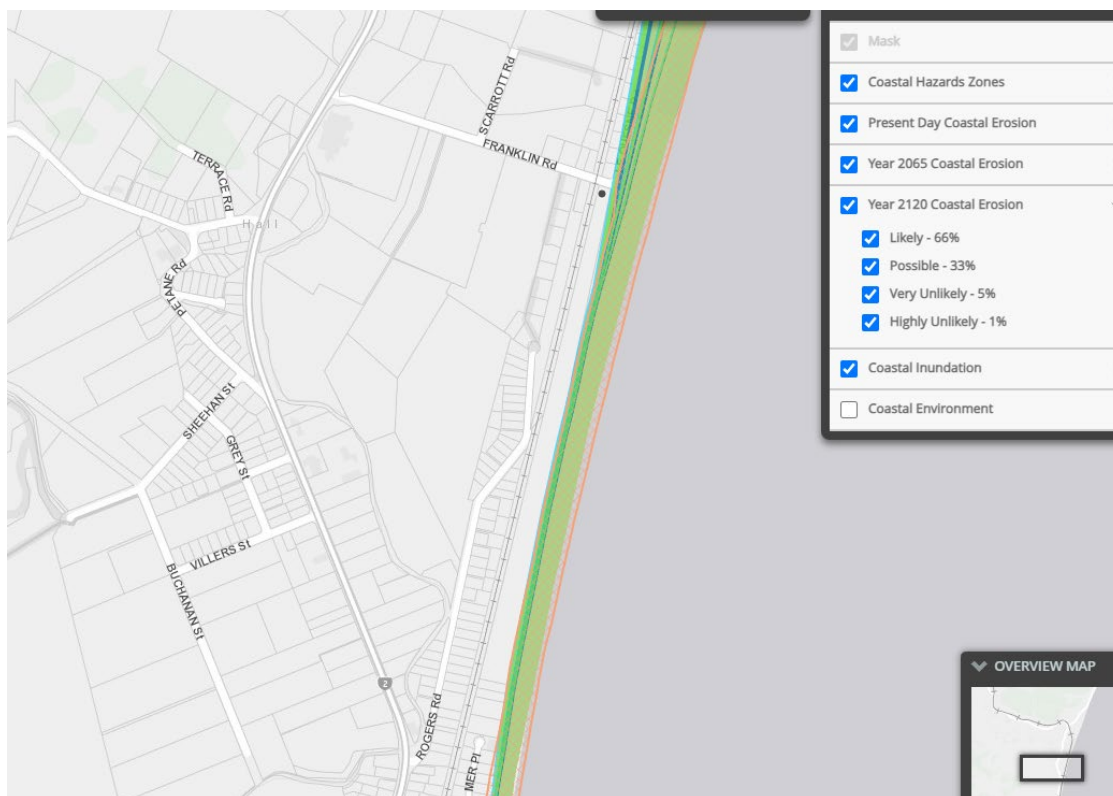
### Coastal Hazards

The applicant provided an assessment of the Coastal Hazards, prepared by Eco Nomos Limited, dated July 2023. This assessment was peer reviewed by the Council's consultant experts, Mr T Shand and Mr J Clarke of Tonkin and Taylor, and an email dated 18/12/2023 requested further information from the applicant.

The applicant responded with letter from Eco Nomos Limited that addressed the request for further information. On 07/06/2024 the team at Tonkin and Taylor provided Council with a memo that supported the Eco Nomos report and subsequent follow-up response.

The report from Eco Nomos Limited is comprehensive and looks at the site and surrounding coastal environment. It considers the history of the site before and after the 1931 Earthquake and includes an analysis of data on the history of the shoreline.

The site is partially covered by the Coastal Hazard Zone, this can be seen on the map below:



Source: Hawke's Bay Hazard Portal

The Eco Nomos Limited report undertook an analysis of the shoreline, the history of the area and the coastal erosion hazard. The report author, Mr J Dahm, provides the following summary:

*"The review of coastal hazards indicates that the 24m coastal hazard setback recommended by the Environment Court in 2006 (which the proposal has been designed in accordance with) is conservative, even taking into account the significantly higher sea-level risk scenario so now required to be considered. On the basis of existing best information, the setback will provide dwellings in the proposed development with the high level of protection from coastal hazard over the next 100 years and probably beyond."*

The Council's consultant Coastal Hazards experts at Tonkin and Taylor have reviewed this report and associated follow up information and make the following statements (letter dated 07/06/2024):

*"The report by EcoNomos Ltd provides a comprehensive site-specific assessment of coastal hazards, following our initial review EcoNomos Ltd have provided clarification on the points we raised, and we are in agreement that the hazard line produced by the analysis is highly unlikely to be exceeded by either erosion or inundation over the next 100 years. We note that the hazard line does cover part of some proposed sections, however it is our understanding that all buildings will be located landward of this line."*

*It is recommended by both EcoNomos Ltd and T&T that the hazard lines produced, and the new inundation information released earlier this year, should be plotted over a map of the proposed development to provide visual clarity for any decision making process. In addition, a Tsunami evacuation plan should be developed for the site."*

As both sets of experts are in agreement that the risk to this site from coastal hazards are low, I consider the effects on the site from coastal hazards to be minor.

## Traffic

The applicant provided a Traffic Impact Assessment (TIA), undertaken by Team (dated 3 July 2023) which was included with the application. The TIA undertook an assessment of the existing road network and traffic numbers.

The proposed road will be accessible via a new intersection located at the intersection of Franklin and Le Quesne Roads. Due to the railway line and proximity of existing residential development to the west of that line, no other vehicle access points were seen as possible.

The proposed road does not meet the Engineering Code of Practice for the following reasons:

- Only one footpath on one side of the road is proposed;
- The 13.5m wide road reserve width for the southernmost section of the road (Lots 33-59) is 1.5m less than the Council requirement.

The road is specifically designed for the proposal and will only serve the proposed lots as it is a cul-de-sac. The above departures from the Code of Practice are therefore not expected to result in adverse traffic effects. As for the wider transport network, Franklin Road is considered to be sufficient to handle the increase in traffic from the site and the intersection at Franklin Road and State Highway 2 is appropriate to accommodate the growth in residential dwellings in this location.

Overall, the effects on the road network are less than minor.



## Engineering

### Wastewater:

One of the previous applications made on this site (s127 of RMS07123) included running a new wastewater line through an existing steel oil pipeline in the railway reserve to Ladywood Road. The applicant has once again proposed this as a solution for wastewater. A new wastewater pump station will be built within the development and wastewater will be conveyed to the Bay View Transfer Pump Station.

Discussions with the Council Engineering Department have been ongoing since the application was made. The engineering team requested further information regarding the specifics of the wastewater treatment and the issues at the Bay View Pump Station. Issues identified have been with the operation of the pumpstation, specifically with Hydrogen Sulphide, resulting in odour issues. Options have been explored including the applicant upgrading the dosing unit and installing a low-pressure pump system at the Station. At the time of this report, no system has been agreed on between the applicant and the Council. As the site can be serviced, and all matters managed through conditions that require Engineering Plan Approval, I consider that the effects on the Council's network to be less than minor.

### Stormwater:

The applicant is proposing to install a new stormwater network that will be vested with Council. Stormwater will be piped through the system to discharge to the beach through a new concrete box culvert outfall (consent from HBRC has not been applied for at this time).

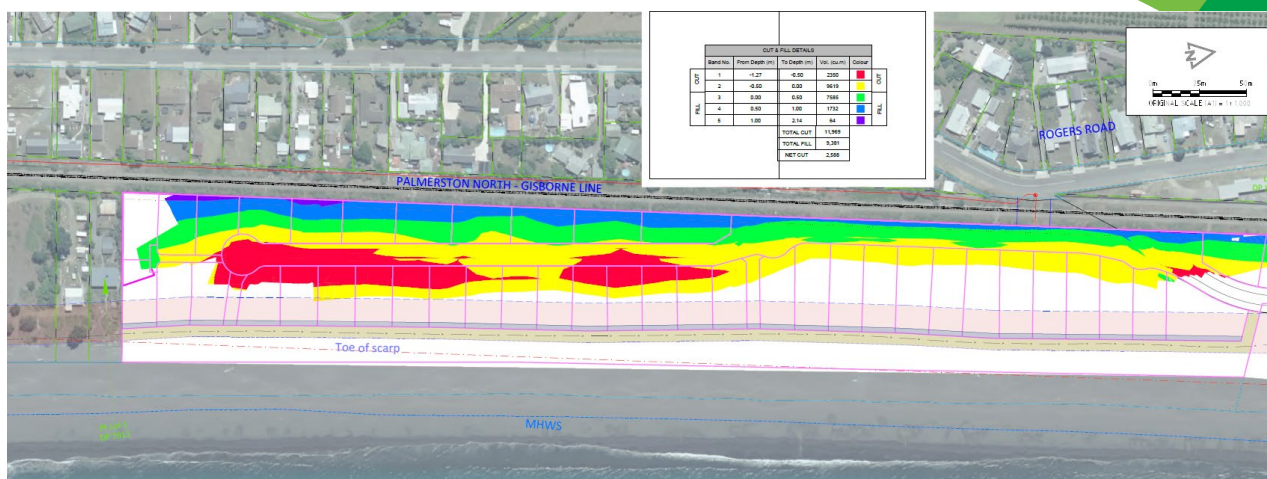
The Council's Engineering Department are satisfied that this network will be constructed to the necessary engineering specifications, and can be managed through conditions that require Engineering Plan Approval. The effects on the Council's network will be less than minor.

### Water and Firefighting Requirements:

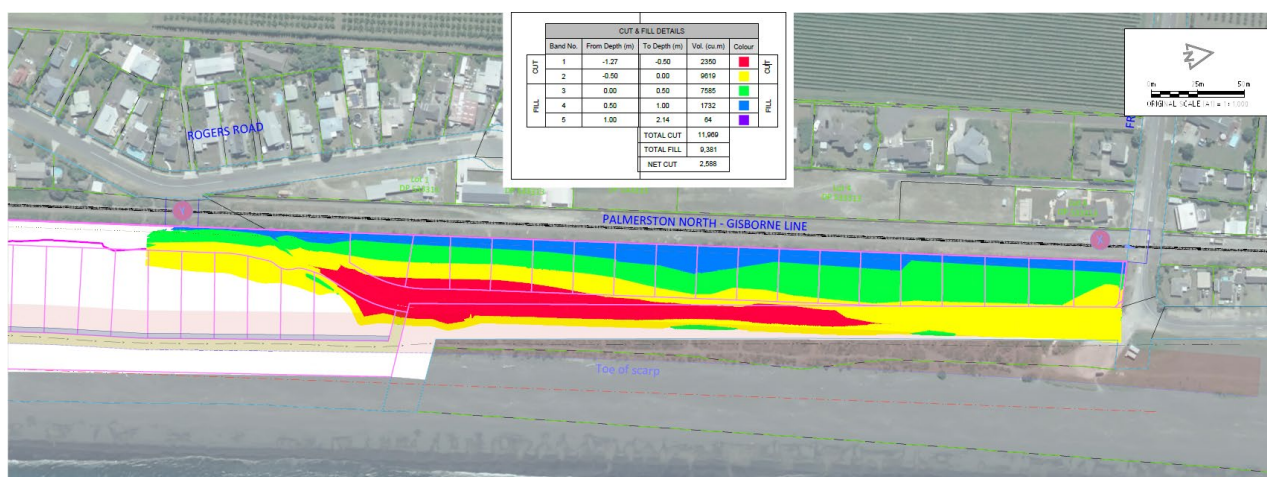
The applicant proposes to install new supply mains within the development. These mains will be vested with Council. Fire hydrants will be installed to ensure compliance with the New Zealand Fire Service Firefighting Code of Practice. Council's Engineering Department are satisfied with this proposal and have no further comments. The effect on Council's network will be less than minor.

## Earthworks

Due to the contour of the site and sandy topsoil, bulk earthworks are proposed. Earthworks will consist of a total of 22,265m<sup>3</sup> cut and 9,288m<sup>3</sup> fill. The applicant has provided a cut and fill plan that shows the cut occurring through the centre of the site and the fill occurring along the western boundary to level the site:



Southern half of site, red is the deepest cut (max 0.75m depth) to the purple is the largest fill (up to 1.14m)



Northern half of the site, the key is the same as the figure above.

These earthworks are considerable, and have the potential to create adverse effects on the surrounding environment through dust, noise and visual effects. Given the coastal environment, the risk of dust being blown from the site by offshore winds is possible, this can be managed through appropriate on site measures. All noise is temporary and there is no reason to consider that any noise generated will not be within the Council's specified limits. The applicant has proposed an Erosion and Sediment Control Plan will be prepared and this can be conditioned at the time of the decision, should this application be granted.

Should the consent be granted, a suite of conditions to manage the erosion and sediment effects that arise from earthworks will be required, these will include, but not be limited to:

- Erosion and sediment control measures;
- Dust control measures;
- Noise control measures;
- Traffic management.

While there will be noticeable visual effects from earthworks, these effects are considered to be temporary and can be wholly contained within the subject site. The earthworks are not altering the landform considerably and are required to facilitate the development.

Overall, the effects from earthworks on the wider environment will be less than minor.

### Contaminated Land

The applicant applied for a Restricted Discretionary resource consent under the NESCS for the disturbance of land, due to a recognised HAIL use on the site.

The Council's expert, Ms S Newall from HAIL Environmental, has questioned if the application will be Restricted Discretionary, as the part of the site that is affected by contaminated soils is small and the proposed earthworks to remediate may be within the permitted activity levels.

To ensure that the appropriate conditions are placed on the site at the time of the consent decision, should the consent be granted, the application will continue to include an assessment under the NESCS and an appropriate Remediation Action Plan will be required prior to earthworks.

Overall, the effects on human health from this proposal are considered to be less than minor.

### Summary of Effects

While the site is surrounded by established residential development, the proposed density, built environment and associated infrastructure in the coastal environment, that is accessible by and viewed by the public, is considered to result in more than minor effects on the coastal character amenity values, and a more than minor cultural effect (in the absence of cultural mitigation being accepted by the applicant).

Together I consider that the adverse effects of the proposal are **more than minor**.

### Step 4: Public notification in special circumstances

If an application has not been publicly notified as a result of any of the previous steps, then the Council is required to determine whether special circumstances exist that warrant it being publicly notified (s95A(9)).


In the event that the decision-maker does not agree with my finding that the effects on the environment are more than minor, I have considered potential special circumstances below.

Special circumstances are those that are:

- exceptional, abnormal or unusual, but something less than extraordinary or unique;
- outside of the common run of applications of this nature; or
- circumstances which make notification desirable, notwithstanding the conclusion that the activities will not have adverse effects on the environment that are more than minor.

In this instance I have turned my mind specifically to the existence of any special circumstances and conclude that consideration be given to the timing of the application in conjunction with site-specific applications under the current Proposed District Plan process.

The subject site is currently zoned Rural under the Operative District Plan, with the Proposed District Plan proposing the site be zoned Rural Production. Neither of these zones are conducive to the level of density and type of development put forward by the applicant.



At the time of this notification decision, the further submissions on the Proposed District Plan are closed, with hearings on the Proposed District Plan set for later in the year. The applicant has made a site specific submission that the subject site be zoned General Residential or Settlement Zone. The principles that apply to the application site are therefore currently subject to a review via a public process and are not clear or settled at this time.

While the determination of submissions on the Proposed District Plan are subject to their own process, I consider that, if the application is granted, it would impact the assessment of the submissions regarding zoning.

Further, I note that the rezoning of this land to residential has previously been the subject of litigation. A similar application for 73 residential lots, one lot to be vested in Council as a reserve and lots to vest as road was applied for in 2007 and publicly notified on 15/12/2007. Twenty-nine submissions were received, with twenty-five of those submissions in opposition. Matters the submitters rose regarded the change of character to the surrounding area, concerns about stormwater, concerns about reverse sensitivity with nearby agricultural lots and that the proposal was a “de facto plan change”. The application was granted by a Hearings Commissioner on 12/06/2008 (Council reference RM07123).

As there has been a similar application in the past that was publicly notified, but not yet given effect to (acknowledging that this consent has lapsed), I consider that Council would be remiss to not publicly notify the current subdivision application given the proposal is very similar in nature to RM07123.

I consider these to be special circumstances which means that notification is desirable.

### Public notification conclusion

Having undertaken the s95A public notification tests, the following conclusions are reached:

- Under step 1, public notification is not mandatory.
- Under step 2, there is no rule or NES that specifically precludes public notification of the activities, and the application is for activities other than those specified in s95A(5)(b).
- Under step 3, public notification is required as the application is for activities that are not subject to a rule that specifically requires it, and it is considered that the activities will have adverse visual, character and amenity and cultural effects on the environment that are more than minor.
- Under step 4, there are special circumstances that warrant the application being publicly notified given that the site is subject to a submission on the zoning in the proposed District Plan and a similar application of this type has been notified before.

It is therefore recommended that this application be processed with public notification.

## 7. Limited notification assessment (sections 95B, 95E-95G)

The application is considered for public notification for the following reasons:

- Effects on natural character;
- Cultural effects;
- Special circumstances.

Therefore, no further assessment under s95B is required.

## 8. Notification recommendation

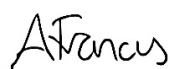
### Non-notification

For the above reasons under section 95A this application may be processed with public notification.

Notice should be served on the following persons (being all directly adjacent parties and relevant Iwi groups):

- Mana Ahuriri Trust;
- Maungaharuru- Tangitū Trust;
- Te Taiwhenua o Whanganui A Orotu;
- KiwiRail;
- 1 Le Quesne Road;
- 66B & 66 Franklin Road, Lot 6 DP 564385, 66-78 Rogers Road, 52-58 Rogers Road, Lot 1 DP 28009, 44 Rogers Road, 22-38 Rogers Road, Bay View; and
- 21 and 21A Mer Place.

Accordingly, I recommend that this application is **publicly notified**.



Alison Francis  
Consultant Resource Consents Planner  
City Strategy

Date: 9 July 2024

## 9. Notification determination

Acting under delegated authority, and for the reasons set out in the above assessment and recommendation, under sections 95A and 95C to 95D of the RMA this application shall be **publicly notified**.

The Boffa Miskell Assessment of Landscape Effects concludes that *the potential adverse effects of housing within this landscape, unmanaged, will result in moderate-low adverse landscape effects. The proposed mitigation measures... will ensure the potential adverse landscape effects will be reduced to a low adverse effect. This would occur over a 5-year period from the installation of planting comprehensively across the site.*

The mitigation measures include 11 conditions in regard to landscape management and 13 conditions in regard to design. The Landscape Effects report appears to give little weight to the fact that the site is zoned Main Rural and as such the minimum lot size is 4ha rather than 800m<sup>2</sup>. This zoning is part of the receiving environment and the landscape and character effects of the application should be viewed against the expectations of that zone. In addition to the proposed 59 dwellings, there will be a road constructed to an urban standard, with street lighting and footpath. The effects on Character in the round therefore tip into more than minor.

I have specifically turned my mind to special circumstances. The submissions period for the Proposed District Plan is now closed, with hearings set to be conducted towards the end of this year. The application site is zoned Rural Production in the PDP as notified, and the applicant has made a submission seeking that it be rezoned to *“General Residential Zone. Alternatively, the Site should be rezoned to Settlement Zone”*. The ‘principles that apply’ to the application site are therefore currently subject to review via a public process and are not clear or settled, especially with two zones proposed by the applicant. If the application is granted, it would impact the assessment of the submissions regarding zoning in that process. Further, a similar application was previously publicly notified with submissions being received. I consider this to constitute special circumstance which means that notification is desirable.



Nick McCool

Date: 9 July 2024

Team Leader Resource Consents (Acting)

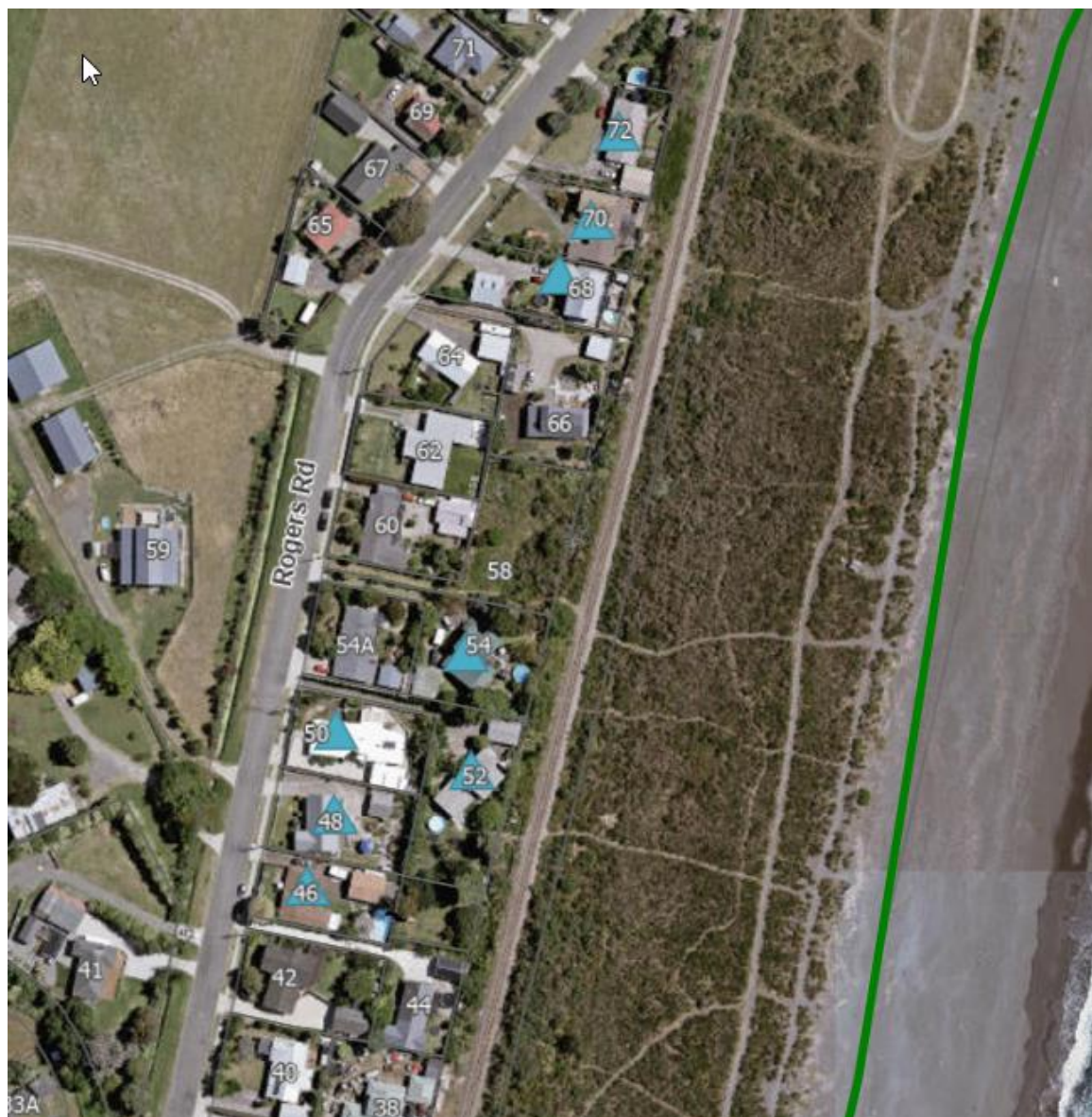
City Strategy

Attachment 4 Map of Submitters – Source Map Napier City Council GIS

Submitters shown with blue triangle









**Attachment 6 RMS230061 Submission Summary**

Green highlight: Submitter wishes to be heard at hearing.

**Oppose**

No.	Submitter	Address	Date Received	Oppose	Matters of opposition	Relief Sought	Heard at hearing?
1.	Denis Pilkington	77 Rogers Road	16/08	Yes	Does not support removal of pedestrian access between 72a and 76 Rogers Road.	Decline consent and amend with reinstatement of public pedestrian access from Rogers Road to beachfront	Yes
2.	Shane Stothart	95 Rogers Road	23/08	Yes	Does not support removal of pedestrian access between 72a and 76 Rogers Road.	Decline consent and amend with reinstatement of public pedestrian access from Rogers Road to beachfront	No
3.	Desley Aranui	46 Rogers Road	24/08	Yes	Does not support removal of pedestrian access between 72a and 76 Rogers Road.	Decline	No
4.	Neil Smith	99 Rogers Road	27/08	Yes	Does not support removal of pedestrian access between 72a and 76 Rogers Road.	Decline consent and amend with reinstatement of public pedestrian access from Rogers Road to beachfront	No
5.	Brett Lawson	70 Rogers Road	27/08	Yes	<ol style="list-style-type: none"> <li>1. Beach Access: does not support the removal of beach access onto the railway land and to the beach.</li> <li>2. Tsunami Evacuation: When a tsunami warning is activated, local residents have opted to use the dirt track along railway line to get to Franklin Road. Adding 59 sections will add to the congestion.</li> <li>3. Devalue his property.</li> <li>4. Erosion: Who will pay for the removal of properties when erosion causes damage?</li> </ol>	Decline	Yes

6.	Michael Arnold	93 Rogers Road	27/08	Yes	<ol style="list-style-type: none"> <li>1. Density: Development is too large, more houses will result in more noise and traffic. Could support with less houses.</li> <li>2. Loss of views.</li> <li>3. Loss of possible nesting sites for little blue penguins which should be investigated further.</li> </ol>	Decline and a new submission lodged with less houses.	No
7.	Rebecca Hollyman	68 Rogers Road	27/08	Yes	<ol style="list-style-type: none"> <li>1. Coastal Hazards: Bayview has been confirmed as an eroding beach, we should therefore be retreating and not building closer to the shoreline. Will end up costing money in the long run.</li> <li>2. Traffic: The development will result in a lot more traffic causing congestion, pollution and damage to roads.</li> <li>3. Tsunami: In the event of a tsunami, more people will add to the congestion</li> <li>4. High density will lead to rates increases, power outages and decrease our property value</li> </ol>	Decline	Yes
8.	Ross Longdon	32 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>1. Coastal Hazards: Bayview has been confirmed as an eroding beach, we should therefore be retreating and not building closer to the shoreline. Will end up costing money in the long run.</li> <li>2. Traffic: The development will result in a lot more traffic causing congestion, pollution and damage to roads.</li> <li>3. Tsunami: In the event of a tsunami, more people will add to the congestion</li> <li>4. High density will lead to rates increases, power outages and decrease our property value</li> <li>5. Birdlife known in the area include blue penguins, NZ dotterels, European skylarks and others. Request a complete study to be performed to</li> </ol>	Decline	No

					ascertain what wildlife inhabits this land and what impact the development would have. Land should be considered for protection rather than development.		
9.	Reynold Ball	48 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>1. Proposal does not sit within the zoning criteria of the District Plan.</li> <li>2. Insufficient consultation with iwi (Maungaharuru-Tangitū Trust) who propose a pause on new developments at risk from coastal hazards.</li> <li>3. Scientific reports are pre-Cyclone Gabrielle and might not take into consideration new information around flooding and coastal erosion.</li> <li>4. Further, coastal erosion study based on IPCC projections which do not take into consideration potential climate tipping points.</li> <li>5. NCC should be held accountable to home owners for allowing homes to be built in a coastal hazard zone.</li> </ol>	Decline. NCC and applicant to investigate land swap.	No
10.	Rosie Longdon	32 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>1. Coastal Hazards: Bayview has been confirmed as an eroding beach, we should therefore be retreating and not building closer to the shoreline. Will end up costing money in the long run.</li> <li>2. Traffic: The development will result in a lot more traffic causing congestion, pollution and damage to roads.</li> <li>3. High density will lead to rates increases, power outages and decrease our property value</li> <li>4. Native wildlife use this area as their habitat, blue penguins and dotterels included.</li> </ol>	Decline	No
11.	Tim Ackroyd	50 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>1. Development is contradictory to the maintenance and intentions and values of the rural zone.</li> </ol>	Decline	Yes

					<ol style="list-style-type: none"> <li>Will change the rural character of the area. This section of the beach has a remoteness and beauty to be maintained and treasured, this will be lost.</li> <li>Development will impede on recreational use of the beach.</li> <li>Development not consistent with surrounding settlement.</li> <li>Proposed development is big and intensive and unlike anything in the wider area.</li> </ol>		
12.	Jim Phillips		14/08	Yes	<ol style="list-style-type: none"> <li>Seems insane to build first row of houses so close to the beach. Rough sea waves do overtop the bank in some places. Beach is littered with massive tree trunks pushed right up to the bank.</li> <li>How can we be assured stormwater flows won't impact on the houses below on Rogers Road?</li> <li>How reliable is the old pipeline taking sewage away? Will this come back to bite ratepayers?</li> </ol>	-	No
13.	Tania Coleman	30 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>Tsunami red zone: Most of these properties will be in the red zone, putting another x60 cars on the road when everyone fleeing.</li> <li>Coastal erosion: How much will it cost ratepayers to save these homes going into the sea. Coastal Hazard Strategy indicates this land is subject to erosion.</li> <li>Sealife: This is a nesting area for seals and blue penguins but no reserve areas for this in the plans. This whole area should be a council reserve.</li> <li>Height restrictions: Are there height restrictions for these homes along the railway or will they be looking into Rogers Road back yards?</li> </ol>	Decline	Yes

					5. Tongioio development: Is this going to be another example where the council gives consent and then rebukes it after the homes become inhabitable after a natural disaster or from coastal erosion? 6. Public access: Many residents use the thoroughfare to get to the beach and there are no allowances in the plans for this to continue.		
14.	Barbara Daniel	24 Rogers Road	28/08	Yes	1. Reduced public access to the beach. 2. Increased demand on stormwater, roading etc. 3. Impact on the overall environment	Decline	No
15.	Sam Harvey	54 Rogers Road	28/08	Yes	1. Earthworks will mean a loss of beauty of the natural environment. 2. Public access will be negatively affected to the foreshore. 3. House will completely lose view of the ocean. 4. House will lose value. 5. Dust and noise of construction	Decline	No
17.	Anne Greenhalgh	21 Mer Place	28/08	Yes	1. Does not oppose application, however, want to ensure that I am not adversely affected. My property is directly adjacent to the site. Concerns about: 2. Dust and noise, steps need to be taken to ensure appropriate work hours. 3. I operate an Air BnB from my property so do not want that affected. 4. Security risks from a development this large. 6. Little blue penguins nest next to my property, are steps being taken so nests not impacted	Large fence to be constructed by the developers to minimise noise and dust that might impact my property, this will also help with security concerns. Solutions to protect the Little Blue Penguins	No
18.	Jacqueline St Clair	74 Rogers Road	28/08	Yes	1. Close proximity to the sea is problematic, ground is unstable and even our house which is on similar ground has moved over the past 3 years to require intervention.	Decline if these issues are not resolved satisfactorily	No

					<ol style="list-style-type: none"> <li>Object to waste water being pumped to beach, this will be unsightly and impact the wildlife that use the beach. Water salinity and quality will very likely affect the quality of the seawater.</li> <li>Observed a seal at the beach which would not be there if the stormwater pipe was installed.</li> <li>Sewage system to be used will pump through old unused piping. Is this fit for purpose given how old it is? Don't need sewage leaking into the ground for obvious reasons. Will be a lot of pressure on the sewage system.</li> <li>Lack of pedestrian access to the beach, this makes Rogers Road a desirable place to live. No pedestrian access will reduce the value of these properties significantly.</li> </ol>		
20.	Vicki Maunsell	22 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>Concerns about the effect this will have on infrastructure. It will create pressure on stormwater and stormwater run off, sewerage and effluent management.</li> <li>Opposed to the clearance of the natural environment in the area, it will affect native species and adversely change the outdoor lifestyle for existing houses in the area.</li> <li>Main reason is the difficulty it will pose to residents to make a quick escape from the area in case of a natural disaster such as a tsunami.</li> </ol>	Decline	No
21.	Wendy Munro	72 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>Development will adversely affect my well being by way of environmental concerns, noise concerns, loss of privacy, lack of beach access, changes to community character, strain on street resources, loss of lifestyle.</li> <li>Loss of lifestyle for the precious banded dotterel nesting site.</li> </ol>	Decline	No

22.	Luke Buxton	28 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>1. Not opposed to the use of the land for rural purposes, but opposed to the level of concentrated housing that is being proposed. Will have effects on an area of cultural significance and environmental impacts.</li> <li>2. This area is surrounded by long stretches of coast that allow access to the public for walking, swimming, fishing etc. Beauty and character of this beach defines and shapes Napier, proposed development will change this.</li> <li>3. Water quality: both construction run off and stormwater runoff in long term. Long term implications for water quality include potential for stormwater and sewage impacts.</li> <li>4. Increased pressure within a hazard area. Coastline shifts and changes over time, the distance from the waters edge to the scrubland has narrowed and weather events push up to the bushland. Building this close is asking for expensive trouble.</li> <li>5. Public access: people enjoy the access to this space to fish, sit around bonfires and stop during a walk.</li> </ol>	Decline	No
23.	Annabel Busby	85 Rogers Road	28/08	Yes	<ol style="list-style-type: none"> <li>1. Development will restrict beach access from this property</li> <li>2. Does not agree with coastal erosion risk, refers to Haumoana/Te Awanga coastal erosion and damage, cost falls to ratepayers to fix</li> <li>3. Due to Cyclone Gabrielle evidence that some homes should not have been built where they are, concerned about the Geotech and stability of sites</li> <li>4. High density will devalue existing houses</li> </ol>	<ol style="list-style-type: none"> <li>1. Decline application</li> <li>2. Amended version with reduced lots and direct beach access from Rogers Road to the beach</li> </ol> <p>Remove Lots 19-48 due to concerns around coastal erosion and rising sea levels</p>	Yes

					5. High density will negatively impact current close knit community 6. These houses will not fix the housing shortage 7. Extra ratepayer revenue should not be derived at the expense of existing community 8. Current community uses this space for recreation, has this been considered.		
25.	Diane Donoghue	52 Rogers Road	28/08	Yes	1. We do know that Kororā nest in this area. Residents who reside at 32 Rogers Road have penguins each year nesting under their house. 2. Have seen penguins at different areas of the beach adjacent to Rogers Road on numerous occasions. 3. Concerns are the development will bring more hazards, more people, cats and dogs and more vehicles. This will have a big impact on the area. 4. Have been in contact with DoC on these concerns for the nesting for the penguins.	Decline	Yes
26.	Paul Musson	52 Rogers Road	28/08	Yes	1. Oppose this subdivision as it is a unique site, beach and buffer from the sea. Natural protection from the ocean. 2. Will change character of Bay View. 3. Going from rural land to residential. 4. Stormwater issues. 5. Rural Zoned.	Decline	Yes
LATE SUBMISSION							
27.	Patricia Wilson	1 Le Quesne Road	06/09	Yes	1. The development would introduce significant traffic noise and general activity and would compromise rural amenity of property. 2. Traffic will shine headlights directly into my home.		Yes

					<ol style="list-style-type: none"> <li>3. Traffic noise from vehicles exiting the development would be inconsistent with current rural environment.</li> <li>4. Traffic safety is reliant on the trimming of trees on my property, there is a large power pole to be considered as well.</li> <li>5. I will need to install a fence to screen traffic which might impact the visibility splay from the development.</li> <li>6. Concerned the TIA assumes the incorrect speed of people using the road and with the railway line not in use at the moment, many people do not slow down for that crossing.</li> <li>7. Greater work needed to improve the intersection, concerns about traffic safety.</li> <li>8. Development will destroy rural open character of the area.</li> <li>9. Not consistent with objectives and policies of rural zone.</li> <li>10. Development is at odds with the messages from Council in relation to coastal hazard zones, coastal erosion risk and consenting risk within coastal environments.</li> <li>11. Concerned about effects from coastal erosion.</li> </ol>		
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**Neutral**

No.	Submitter	Address	Date Received	Neutral	Matters of submission	Relief Sought	Heard at hearing?
19.	KiwiRail Holdings Ltd		28/08	Yes	<ol style="list-style-type: none"> <li>1. Requests a Level Crossing Safety Impact Assessment.</li> <li>2. Amenity of future residential units may be impacted by noise and vibration. Have</li> </ol>	Consent notices	Yes

					<p>recommended consent notices for noise attenuation and vibration measures.</p> <ol style="list-style-type: none"> <li>3. Agree to the 4m setback from the railway corridor for buildings, to be maintained as a consent notice.</li> <li>4. Concerns about earthworks and stormwater runoff into the rail corridor, conditions of consent requested to manage earthworks and stormwater.</li> <li>5. Any need to enter the rail corridor for works will require a Permit to Enter.</li> <li>6. Agree to the boundary treatment of a 1.8m high closed boarded acoustic fence on a 1m high retaining wall.</li> <li>7. Separate wastewater pipe is shown as entering the rail corridor, a separate KiwiRail process (Deed of Grant) is required to be worked through.</li> </ol>		
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### Support

No.	Submitter	Address	Date Received	Support	Matters of support	Relief Sought	Heard at hearing?
16.	Mana Ahuriri Trust	170A Waghorne Street	28/08	Yes	Prepared a CIA and support the application and the recommendations made in the report are implemented in full.	-	Yes
24.	Alan Petersen		28/08	Yes	<ol style="list-style-type: none"> <li>1. Issue of coastal hazards has been discussed and defined by Environment Court decision in 2006.</li> <li>2. 61 lot subdivision was granted by Independent Commissioner in 2008, however GFC did not allow it to proceed.</li> <li>3. Agree with evidence put forward by Jim Dahm. Can see accretion at the end of Fanning Street.</li> </ol>	Grant	Yes

					<ol style="list-style-type: none"> <li>4. This application is much improved from the 2008 61 lot subdivision.</li> <li>5. Can contribute to the Bay View residential area with a plan to connect to Napier's wastewater infrastructure.</li> <li>6. Considers that there are a number of permitted activities that would result in reverse sensitivity issues that are more than this proposed residential development.</li> <li>7. Have made submissions on the proposed plan opposing the zoning proposal in the Bay View area.</li> <li>8. Has direct access to State Highway 2.</li> <li>9. Stormwater can be discharged directly to the ground or sea outfall.</li> <li>10. Provision of wastewater infrastructure is an improvement on the on-site systems.</li> <li>11. Agrees with many of the CIA recommendations. Does not agree to a restriction on pets.</li> </ol>		
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Placeholder for Attachment 38

ITEM 1/24 RM230061 - 68 Franklin Road, Napier - Section 42A Report

Attachment 7 - Draft Conditions to be circulated at a later date



# Avifauna Management Plan

68 Franklin Road Subdivision  
Prepared for Jack Brownlie Investments Ltd

4 November 2024





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Document Quality Assurance

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## 1.0 Introduction

Jack Brownlie Investments Ltd is proposing to develop a 59-lot residential subdivision at 68 Franklin Road, Napier. The site is coastal and is located on a raised gravel barrier dune adjacent to a gravel beach. West of the site is a railway corridor, and residential areas border the site to the north and south (Figure 1). The proposal includes clearance of all exotic vegetation within the site and restoring the coastal buffer and Council Reserve (Lot 13; see Figure 1) with indigenous coastal vegetation.



Figure 1. The design of the proposed subdivision.

An Ecological Values, Constraints and Opportunities report was prepared (Boffa Miskell Ltd, 2023) for the subdivision and submitted with the resource consent application. An ecological impact assessment was not prepared and was not requested by Napier City Council. The resource consent application was notified by Napier City Council and submissions received stated that the site is a possible nesting site for kororā / little blue penguins (*Eudyptula minor*) an indigenous species that is classified as At Risk - Declining (Robertson et al., 2021). The Ecological Values, Constraints and Opportunities report notes that kororā may use the site for nesting and recommended preparation of an Avifauna Management Plan for the project to minimise potential adverse effects on indigenous bird populations, specifically kororā, but also other bird species of conservation concern (Boffa Miskell Ltd, 2023).

Accordingly, this document is an avifauna management plan for the proposed subdivision that provides methods to avoid and manage adverse effects on indigenous birds potentially nesting and moulting<sup>1</sup> within both the project site and the project's zone of influence / ZOI during enabling and construction works.

We note that the project site is the area for which consent is being sought to develop (depicted in Figure 2) and is the area in which direct effects may occur to nesting avifauna. The project's ZOI includes the project site and the wider surrounding area of public land (e.g. foreshore) in which direct and indirect ecological effects may occur to nesting avifauna.

We note that the reason the plan focuses on nesting and moulting birds is because while undertaking these activities birds and nest contents (eggs, chicks) are bound to nest sites and are most vulnerable to construction effects. The plan does not focus on birds that only use the ZOI for foraging and roosting as these activities are transient and birds engaging in such

<sup>1</sup> Relevant to kororā only.

activities can leave at any time of their own accord if disturbed by enabling and construction works.

## 2.0 Glossary

The following terms are used in this document and are defined as follows:

- **Project Site:** The project site is the area for which consent is being sought to develop and is the area in which direct effects may occur to nesting avifauna during enabling and construction works.
- **Project's Zone of Influence:** In this context, the project's ZOI includes the project site and the wider surrounding area of public land (e.g. foreshore) in which direct and indirect ecological effects may occur to nesting avifauna during enabling and construction works.
- **Direct Effect:** An outcome resulting in changes to an ecological feature that is directly attributable to a defined action.
- **Indirect Effect:** In this context – an outcome resulting in changes to an ecological feature that is indirectly attributable to a defined action. Indirect effects are often, but not necessarily, expressed at some distance from the source.
- **Active Nest / Burrow:** A nest or burrow containing, or suspected to contain, a nesting bird, viable nest contents (egg(s) and / or chicks (s)), or moulting bird (this is specific to kororā) based on the time of the year and other evidence observed at the nest or burrow location by a suitably qualified and experienced person (defined below).
- **DOC:** The Department of Conservation.
- **Kororā / Penguin Detector Dog:** A dog (and handler) that has been certified by DOC to detect kororā.
- **Suitably Qualified and Experience Person (SQEP):** A person with expertise and experience in ornithology (birds), including kororā (little blue penguin).

## 3.0 Existing Environment

To prepare the Ecological Values, Constraints and Opportunities report, the site was visited on 8 February 2023 by Dr Ashley Flood, a suitably qualified and experienced Boffa Miskell ecologist. During this site visit general site descriptions were made, including vegetation present, avifauna observed (incidental observations were made, no formal surveys were conducted) and anything else of note.

To prepare this avifauna management plan, the site was visited on 14 October 2024 by Karin Sievwright, a suitably qualified and experienced Boffa Miskell ornithologist, with particular expertise in kororā. During the site visit, a nesting bird survey was conducted which involved:

- Slowly walking the length of the beach within the project's ZOI looking for nests and any signs of nesting activity / behaviours indicative of nesting.
- Slowly walking along the main tracks through the project site, as well as the beach / dune margin, and searching the vegetated margins for nesting birds, with a particular focus on kororā and any signs of kororā (e.g. guano and moulted feathers).
- Slowly walking through the grass and open areas of the project site and looking for signs of nesting birds.
- Walking the length of the beach / dune margin of the project site and back via an internal track for an hour after dusk listening for kororā calls and using a headtorch to search for any kororā coming ashore and along the main track margin.
- Recording incidental observations of all bird species observed within the ZOI.

We note that due to the dense shrubby nature of the vegetation on site, not all areas could be checked for nesting birds without causing undue damage and disturbance. As such, a conservative approach has been taken in this management plan and habitat has been used as a proxy to inform which bird species may nest in the ZOI, together with observations made during the site visits and desktop information.

### 3.1 Avifauna Habitats

As identified during the site visits, habitats available for indigenous avifauna in the ZOI include exotic-dominated vegetation on the gravel dune (Photos 1-3), unvegetated (or sparsely vegetated) areas on the gravel dune (Photo 4) and a gravel beach with large driftwood deposits (Photo 5). One old wooden kororā nest box was also observed under vegetation within Area 1 on site (Photo 6, Appendix 1).

The exotic-dominated vegetation on the gravel dune is characterised by four areas, as described in the Ecological Values, Constraints and Opportunities report (Boffa Miskell Ltd, 2023), summarised in Table 1 and depicted in Figure 2.

Table 1. Vegetation across the site (Boffa Miskell Ltd, 2023).

Area	Vegetation Description
1	Densely vegetated in wild fennel ( <i>Foeniculum vulgare</i> ), boneseed ( <i>Osteospermum moniliteru</i> ), needle-leaved broom ( <i>Genista lintolia</i> ) and Indian fig cactus ( <i>Opuntia ficus-indica</i> ). Patches of Agapanthus ( <i>Agapanthus</i> sp.).
2	Along the shoreline and dune system interface. Primarily vegetated in mallows ( <i>Malva</i> sp.), treasure flowers ( <i>Gazania</i> sp.), spur valerian ( <i>Centranthus ruber</i> ), California poppy ( <i>Eschscholzia californica</i> ), knobby clubrush ( <i>Ficinia nodosa</i> <sup>2</sup> ), sea figs ( <i>Carpobrotus</i> sp.) and sweet pea shrub ( <i>Polygala myrtifolia</i> ).
3	Mix of rank exotic grassland (e.g. three-spiked goose grass ( <i>Eleusine tristachya</i> ), hare's tail grass ( <i>Lagurus ovatus</i> ), black windmill grass ( <i>Chloris truncata</i> )) and cleared areas.
4	Densely vegetated in wild fennel, boneseed, needle-leaved broom and Indian fig cactus.



<sup>2</sup> An indigenous species.





The ZOI is relatively modified and disturbed as evidenced by:

- A number of informal tracks throughout the vegetation (Photos 1 and 2).
- Areas where vegetation has been cleared.
- The presence of garden waste.
- People walking along the tracks and beach, including dog walkers, with dogs, both on and off-leash.
- Quad bike tracks on both the beach and unvegetated areas on site.

Figure 2. The different vegetation types within the project site (Boffa Miskell Ltd, 2023). Descriptions of the vegetation types are provided in Table 1.



	
Photo 1. Exotic shrubland on the gravel dune with an informal track through it.	Photo 2. Exotic vegetation on the gravel dune with an informal track / road through it.



	
<p><i>Photo 3. Exotic vegetation (fennel-dominated) on the gravel dune.</i></p>	<p><i>Photo 4. Largely unvegetated area on the gravel dune.</i></p>
	
<p><i>Photo 5. Gravel beach with driftwood deposits.</i></p>	<p><i>Photo 6. Old kororā nest box found within the project site.</i></p>

3.2 Key Avifauna Species




No indigenous bird species were observed nesting in the ZOI during the nesting survey conducted, however, the one-day survey provided only a small snapshot of the breeding season. Based on the habitats present, the desktop review and on-site observations of non-nesting birds, we consider that the ZOI could provide potential nesting and moulting habitat for five indigenous bird species of conservation concern, albeit likely marginal habitat due to the habitat modification and disturbance described above.

Table 2 summarises observations made on site and the key species that may nest and moult in the ZOI for which management is required.

Table 2. Indigenous bird species that may nest within the project's ZOI.

Species Observations & Potential Nesting Habitat within the ZOI	Relevant Biological Information	Photos
<b>Kororā / Little Blue Penguin (<i>Eudyptula minor</i>)</b>		
<ul style="list-style-type: none"> <li>No kororā, or signs of kororā (guano, moulted feathers) were observed during the nesting survey conducted; however, a comprehensive survey of the dense shrubland was not conducted due to time constraints.</li> <li>The site does not appear to provide good quality nesting habitat for kororā as it is a popular dog walking area, with dogs observed both on and off leash during the nesting survey conducted. The regular presence of people and dogs may disturb any kororā present.</li> <li>The sloping gravel beach with large “dumping” waves may deter / hinder kororā from accessing the site.</li> <li>No rocks, driftwood, or structures were observed within the site under which kororā could nest and moult under. However, some of the exotic shrubland may be dense enough to provide a sheltered area for kororā to nest and moult under and the presence of an old wooden kororā nest box within the site suggests potential presence of kororā at the site in the past. At the time of survey, the nest box was empty and did not show any signs of recent occupation (there were cobwebs across the entrance and in the box, and there was no sign of guano or moulted feathers).</li> <li>Given that a comprehensive survey of the dense shrubby vegetation was not conducted and based on kororā presence in rock revetment at the nearby Napier port<sup>3</sup> (~7 km away), the presence of an old kororā nest box on site and the resource consent submissions received on kororā, we have been conservative and assumed that <b>kororā may nest and moult within the exotic shrubland on site.</b></li> <li>The beach and grassland areas within the ZOI do not provide potential kororā habitat.</li> </ul>	<ul style="list-style-type: none"> <li>Kororā are an At Risk-Declining species protected under the Wildlife Act (1953).</li> <li>Kororā are a marine and coastal species and typically come ashore after dusk and leave before dawn.</li> <li>Adult kororā are present at colonies throughout the year, though numbers are lowest between completion of moult (April) and start of breeding (July).</li> <li>The kororā breeding season and moult period broadly spans between July and the end of February.</li> <li>Kororā form loose breeding colonies with burrows located several metres apart and above mean high water springs.</li> <li>Burrows are generally situated close to the sea in burrows excavated by the birds or other species, or in caves, rock crevices, under logs and dense vegetation, or under a variety of man-made structures including nest boxes, pipes, stacks of wood and buildings.</li> <li>Egg laying (one or two eggs) occurs from late July to mid-late November. Chicks generally fledge the burrow between December and mid-January.</li> <li>Moult occurs post-breeding between January and February. Kororā are confined to land during the annual moult, during which all feathers are replaced simultaneously over the period of 2-3 weeks.</li> <li>Kororā exhibit high levels of site fidelity, generally returning to the same landing site and nest each breeding season.</li> </ul>	 <p>Photo 7. Adult kororā with chicks<sup>4</sup>.</p>  <p>Photo 8. Kororā egg<sup>5</sup>.</p>

<sup>3</sup> Little Penguin - Species Map - eBird<sup>4</sup> Image source: Colin Miskelly, [Little penguin | Kororā | New Zealand Birds Online \(nzbirdsonline.org.nz\)](https://nzbirdsonline.org.nz/)<sup>5</sup> Image source: Jean-Claude Stahl, [Little penguin | Kororā | New Zealand Birds Online](https://nzbirdsonline.org.nz/)

Tarāpunga / Red-Billed Gull ( <i>Larus novaehollandiae scopulinus</i> )		
<ul style="list-style-type: none"> <li>Tarāpunga were observed foraging and loafing on the beach during the first site visit and there are records in the wider coastal area<sup>6</sup>.</li> <li>No nests were observed during the nesting survey conducted, but <b>the beach within the project's ZOI provides potential nesting habitat for this species.</b></li> <li>The project site itself does not provide nesting habitat for tarāpunga.</li> </ul>	<ul style="list-style-type: none"> <li>Tarāpunga are an At Risk-Declining species protected under the Wildlife Act (1953).</li> <li>Tarāpunga are found in most coastal locations in New Zealand and generally nest in large colonies on sandspits, boulderbanks, shellbanks, gravel beaches, rocky headlands and rocky islets.</li> <li>The tarāpunga breeding season is broadly between September and January.</li> <li>Nests are made of small mounds of dry grass, seaweed, twigs, feathers and tidal flotsam up to 15 cm in diameter with a shallow depression in the centre.</li> <li>One to three eggs are laid (average two), generally between October and December.</li> <li>Incubation is shared by both parents and averages 24 days. Chicks fledge at approximately 55 days old.</li> <li>At most colonies, adults and chicks return to the same colony in which they previously bred or were hatched.</li> </ul>	 <p>Photo 9. Tarāpunga adult and a nest with eggs<sup>7</sup>.</p>  <p>Photo 10. Tarāpunga chick and egg<sup>8</sup>.</p>
Tōrea Pango / Variable Oystercatcher ( <i>Haematopus unicolor</i> )		
<ul style="list-style-type: none"> <li>Tōreo pango were not observed during the site visits, but they have been recorded in the wider coastal area<sup>9</sup> and <b>the beach within the project's ZOI provides potential nesting habitat for this species</b>, although potentially marginal due to disturbance from recreational use of the beach.</li> <li>The project site itself does not provide nesting habitat for tōrea pango.</li> </ul>	<ul style="list-style-type: none"> <li>Tōrea pango are an At Risk-Recovering species protected under the Wildlife Act (1953).</li> <li>Tōrea pango are almost exclusively a coastal wader, favouring sandy and rocky shorelines.</li> <li>The tōrea pango breeding season broadly spans between September and March.</li> <li>Nests are shallow scrapes, usually on a sandy beach just above spring-tide level, but also shingle and gravel beaches and wave platforms.</li> </ul>	 <p>Photo 11. Adult tōrea pango with chicks<sup>10</sup>.</p>




<sup>6</sup> Silver Gull (Red-billed) - Species Map - eBird

<sup>7</sup> Image source: Rebecca Bowater, Red-billed Gull | Tarāpunga | New Zealand Birds Online (nzbirdsonline.org.nz)

<sup>8</sup> Image source: Rebecca Bowater, Red-billed Gull | Tarāpunga | New Zealand Birds Online

<sup>9</sup> Variable Oystercatcher - Species Map - eBird

<sup>10</sup> Image source: Anja Koehler, Variable oystercatcher | Tōrea pango | New Zealand Birds Online (nzbirdsonline.org.nz)



	<ul style="list-style-type: none"> <li>• Egg laying (two to three eggs) occurs from mid-September to early February. Eggs are incubated for an average of 28 days and chicks fledge when ~40-50 days old.</li> <li>• Breeding success is often low, with main causes of failure being predation of eggs or chicks by a range of mammalian and avian predators, flooding of nests by big tides, and disturbance resulting from human recreational use of the coast.</li> </ul>	 <p>Photo 12. Tōrea pango eggs<sup>11</sup>.</p>
<b>Banded dotterel / Pohowera (<i>Charadrius bicinctus bicinctus</i>)</b>		
<ul style="list-style-type: none"> <li>• Pohowera were not observed during the site visits, but they have been recorded in the wider coastal area<sup>12</sup> and <b>the beach within the project's ZOI provides potential nesting habitat for this species</b>, although potentially marginal due to disturbance from recreational use of the beach.</li> <li>• The project site itself does not provide nesting habitat for pohowera.</li> </ul>	<ul style="list-style-type: none"> <li>• Pohowera are an At Risk-Declining species protected under the Wildlife Act (1953).</li> <li>• Pohowera are widespread in estuaries, riverbeds and coastal habitats.</li> <li>• The pohowera breeding season broadly spans between July and January.</li> <li>• Eggs (typically three) are laid in shallow scrapes in gravel, sand or soil, usually lined with small stones.</li> <li>• Incubation takes approximately four weeks and chicks fledge when four to five weeks old.</li> </ul>	 <p>Photo 13. Adult pohowera (female in the foreground, male in the background)<sup>13</sup>.</p>  <p>Photo 14. Pohowera nest scrape with eggs<sup>14</sup>.</p>

<sup>11</sup> Image source: Anja Koehler, [Variable oystercatcher | Tōrea pango | New Zealand Birds Online \(nzbirdsonline.org.nz\)](#)

<sup>12</sup> [Double-banded Plover - Species Map - eBird](#)

<sup>13</sup> Image source: Steve Attwood, [Banded dotterel | Pohowera | New Zealand Birds Online](#)

<sup>14</sup> Image source: Neil Fitzgerald, [Banded dotterel | Pohowera | New Zealand Birds Online](#)

New Zealand pipit / Pīhoihoi ( <i>Anthus novaeseelandiae novaeseelandiae</i> )	
<ul style="list-style-type: none"><li>Pīhoihoi were not observed during the site visits but they have been recorded in the wider area<sup>15</sup> and <b>the rank grassland within the project site does provide potential nesting habitat for this species.</b></li><li>The exotic shrubland, unvegetated areas and beach do not provide nesting habitat for pīhoihoi.</li></ul>	<ul style="list-style-type: none"><li>Pīhoihoi are an At Risk-Declining species protected under the Wildlife Act (1953).</li><li>Pīhoihoi are widespread in rough open habitats.</li><li>The pīhoihoi breeding season broadly spans between August and March.</li><li>Nests are a cup of woven grass under tussocks and grass clumps within fern, and partly or fully covered with vegetation.</li><li>Egg laying (two to four eggs, average three) occurs between August and January. Incubation takes 14-16 days and chicks fledge at 14 days.</li></ul> <div><p>Photo 15. Adult pīhoihoi<sup>16</sup>.</p><p>Photo 16. Pīhoihoi nest with eggs<sup>17</sup>.</p></div>

<sup>15</sup> New Zealand Pipit - Species Map - eBird

<sup>16</sup> Image source: Duncan Watson, [New Zealand pipit | Pīhoihoi | New Zealand Birds Online](#)

<sup>17</sup> Image source: Peter Reese, [New Zealand pipit | Pīhoihoi | New Zealand Birds Online](#)

## 4.0 Management Actions

### 4.1 Avoiding Potential Effects

#### 4.1.1 Avoiding Impacts on Nesting Birds

##### 4.1.1.1 Timing of Works

The collective time period when the key avifauna species identified in Section 3.2 breed (and moult in the case of kororā) is broadly between 1 June and 31 March. To avoid potential effects on nesting or moulting birds, where practicable, enabling and construction works (including vegetation clearance) within the project site will be prioritised to occur during the non-breeding and non-moult periods (i.e. collectively between 1 April to 31 May) rather than during the breeding season and moult periods (i.e. collectively between 1 June to 31 March).

##### 4.1.1.2 Not Moving Nests or Nesting Birds

If enabling and construction works occur during the nesting period for the key avifauna species identified in Section 3.2 (and moulting period in the case of kororā (little blue penguin)) under no circumstances will birds, nests or nest contents within the ZOI be moved as the project does not have authority under the Wildlife Act (1953) to do so; instead, techniques will be employed to manage effects as outlined in Section 4.2.

### 4.2 Managing Potential Effects During Enabling and Construction Works

If it is not possible or practicable to avoid conducting enabling and construction works within the project site during the breeding season for the key species of interest identified in Section 3.2, pre-works surveys will be conducted to manage potential effects on birds, as outlined in Section 4.2.1.

We note that for kororā (little blue penguin), pre-works surveys are required year-round, not just during the breeding and moult period. This is because, although kororā are mainly found on land during the breeding and moult period, they can be present year-round, and because they are flightless, they are not capable of easily dispersing like the other key species of interest if disturbed by enabling and construction activities.

The survey results, in combination with results from monitoring conducted throughout construction (refer to Section 6.0), will determine if and what management actions are required.

We note that the dates for the breeding and moult period for the key avifauna species outlined in Section 3 are specific, but that enabling and construction works in the breeding period can commence as soon as a SQEP has confirmed that any nesting or moulting birds identified have completed breeding or moulting activities.

Prior to the commencement of the enabling and construction period, training (including a project briefing and induction) will be provided to onsite contractors to identify the key bird species associated with the project. As kororā are not surface nesters (i.e. active nests are not obvious),

the training will also cover detecting signs of kororā habitation (e.g. moulted feathers and guano (penguin poo)). The training will also discuss the requirement for pre-works surveys, establishing exclusion zones, what to do if nesting, injured or dead birds are incidentally discovered during works, and any other information that is necessary for them to know during construction works (e.g. not handling birds, not disturbing nests, key contacts, etc.) This training will be run by a suitably qualified and experienced person (SQEP).

#### 4.2.1 Pre-Works Surveys

##### 4.2.1.1 Kororā (Little Blue Penguin) Surveys

Shrubland habitat within the project's ZOI provides potential nesting and moulting habitat for kororā. Within the 24-hour period prior to the commencement of shrubland vegetation being cleared in the project site, a kororā survey will be conducted. This will occur irrespective of time of year (i.e. not just during the breeding and moult periods) as kororā can be present at colonies throughout the year.

The survey/s will be conducted in shrubland habitat within the project's ZOI that is above mean high water springs (the high tide line; Appendix 1). To maximise kororā detections the survey/s will be conducted by a certified kororā detector dog and handler if available. We note that there are only a small number of certified kororā detector dogs and handlers in New Zealand, so if they are unavailable, the survey will be conducted by a SQEP (defined in Section 2.0).

If the shrubland vegetation clearance takes more than one week, another kororā survey will be conducted within the 24-hour period prior to the commencement of the second week of clearance (and likewise for additional weeks if spanning multiple weeks).

If the shrubland vegetation clearance halts for more than one week, another kororā survey will be conducted within the 24-hour period prior to recommencement.

If breeding or moulting kororā are detected within the ZOI during the pre-works survey/s, then an exclusion zone will be set up around the active burrow as outlined in Section 4.2.2.1.

If non-breeding and / or non-moulting kororā are detected during the pre-works survey/s then an exclusion zone will be set up around the bird, as outlined in Section 4.2.2.2 to allow the bird to move away of its own accord.

If no kororā detections are made, works can commence.

If kororā are detected, the SQEP will record the following information and inform the construction team so they are aware of active nests and non-breeding and /or non-moulting kororā within the ZOI:

- Date found
- GPS location
- The number of adult birds present
- The presence and number of any eggs or chicks.

The location of the detection will also be photographed (a photo of both the nest / bird and its context in the wider project site will be taken) and a description of the location/s will be noted.

The SQEP will report the pre-works survey results to Napier City Council as per Section 8.0.

##### 4.2.1.2 Pīhoihoi (New Zealand Pipit) Surveys

Rank grassland habitat within the project's ZOI provides potential nesting habitat for pīhoihoi. If rank grassland clearance occurs between 1 August and 31 March (the pīhoihoi breeding

season), then within the 24-hour period prior to the commencement of clearance, a SQEP will conduct a survey for nesting pīhoihoi within the project's ZOI (Appendix 1).

We assume this clearance will be done quickly, but if it takes more than a week, or halts for more than one week, then within the 24-hour period prior to week two clearance commencing, or clearance re-commencement if previously halted, another survey will be conducted.

The survey/s will involve making observations with binoculars from outside the required survey area, then slowing walking through potential nesting habitat within the survey area looking for any signs of nesting.

If breeding pīhoihoi are detected within the ZOI during the pre-works survey/s, then an exclusion zone will be set up around the active burrow as outlined in Section 4.2.2.1.

If no detections of breeding pīhoihoi are made, works can commence.

If nesting pīhoihoi are detected, the SQEP will record the following information and inform the construction team so they are aware of active nests within the ZOI:

- Date found
- GPS location
- The number of adult birds present
- The presence and number of any eggs or chicks.

The location of the detection will also be photographed (a photo of both the nest / bird and its context in the wider project site will be taken) and a description of the location/s will be noted.

The SQEP will report the pre-works survey results to Napier City Council as per Section 8.0.

#### 4.2.1.3 Tarāpunga (Red-Billed Gull), Tōrea Pango (Variable Oystercatcher) and Pohowera (Banded Dotterel) Surveys

The project site does not provide nesting habitat for tarāpunga (red-billed gull), tōrea pango (variable oystercatcher), and pohowera (banded dotterel), however indirect disturbance effects may result from the subdivision works on adjacent beach nesting habitat within the project's ZOI.

If enabling and construction works commence between 1 August and 31 March, the collective breeding season for tarāpunga (red-billed gull), tōrea pango (variable oystercatcher), and pohowera (banded dotterel), then within the 24-hour period prior to the commencement of works, a SQEP will conduct a pre-works survey along beach habitat above mean high water springs within the project's ZOI (Appendix 1).

To survey for these species, observations will first be made with binoculars from outside the required survey area and then by slowing walking through potential nesting habitat within the survey area looking for any signs of nesting.

If breeding birds are detected within the ZOI during the pre-works survey/s then an exclusion zone will be established around the nest/s as outlined in Section 4.2.2.1.

If no detections of breeding tōrea pango, tarāpunga and pohowera are made, works can commence.

If any nests are located, the SQEP will record the following information and inform the construction team so they are aware of active nests within the ZOI:

- Date found
- GPS location
- The number of adult birds present

- The presence and number of any eggs or chicks.

The nest location/s will also be photographed (a photo of both the nest and its context in the wider project site will be taken) and a description of the location/s will be noted.

The SQEP will report the pre-works survey results to Napier City Council as per Section 8.0.

## 4.2.2 Exclusions Zones

### 4.2.2.1 Non-Nesting / Non-Moulting Kororā (Little Blue Penguin)

If a non-breeding and / or non-moulting kororā is detected during a pre-works survey, then the construction team will establish a 20 m exclusion zone around the bird. Works will be delayed, and no person or machinery will enter the exclusion zone until the bird has departed the ZOI of its own accord as determined by a SQEP. The bird will not be handled.

#### 4.2.2.1.1 Active Kororā (Little Blue Penguin) Burrow

If an active kororā burrow is detected during a pre-works survey, then the construction team will establish a 20 m exclusion zone centred around the burrow. Works will be delayed, and no person or machinery will enter the exclusion zone until nesting is complete (as determined by monitoring conducted by a SQEP, as outlined in Section 6.0). If more than one burrow is found, a 20 m exclusion zone will be established around each burrow.

#### 4.2.2.1.2 Active Pīhoihoi (New Zealand Pipit) Nest

If an active pīhoihoi nest is detected during a pre-works survey, then the construction team will establish a 20 m exclusion zone centred around the nest. Works will be delayed, and no person or machinery will enter the exclusion zone until nesting is complete (as determined by monitoring conducted by a SQEP, as outlined in Section 6.0). If more than one nest is found, a 20 m exclusion zone will be established around each nest.

#### 4.2.2.1.3 Active Tarāpunga (Red-Billed Gull) Nest

If an active tarāpunga nest is detected in the ZOI during a pre-works survey, then the construction team will establish a 20 m exclusion zone centred around the nest. This will only be physically marked out (as per Section 4.2.2.1.5) where the exclusion zone overlaps with the project site; areas on the beach will not be marked out as the beach is public property, however signage will be installed informing people using the beach to take care as a nest is nearby. Where the exclusion zone overlaps with the project site, works will be delayed, and no person or machinery will enter the exclusion zone until nesting is complete (as determined by monitoring conducted by a SQEP, as outlined in Section 6.0). If more than one nest is found, a 20 m exclusion zone will be established around each nest.

#### 4.2.2.1.4 Active Tōrea Pango (Variable Oystercatcher) and Pohowera (Banded Dotterel) Nest

If an active tōrea pango or pohowera nest is detected in the ZOI during a pre-works survey, then the construction team will establish a 50 m exclusion zone centred around the nest. This will only be physically marked out (as per Section 4.2.2.1.5) where the exclusion zone overlaps with the project site; areas on the beach will not be marked out as the beach is public property, however signage will be installed informing people using the beach to take care as a nest is nearby. Where the exclusion zone overlaps with the project site, works will be delayed, and no person or machinery will enter the exclusion zone until nesting is complete (as determined by monitoring conducted by a SQEP, as outlined in Section 6.0). If more than one nest is found, a 50 m exclusion zone will be established around each nest.

We note that the reason the exclusion zone for tōrea pango and pohowera is larger than that for the other key species of interest is because these they are more sensitive to human activities / disturbance than these other species.

#### 4.2.2.1.5 Exclusion Zone Demarcation

The exclusion zone/s will be demarcated by waratahs with yellow caps or stakes spray-painted with brightly coloured paint (or something similar), and rope / bunting. The waratahs and rope will be at least 1 m high. Signage will also be added to the exclusion zone/s to alert people to the presence of an active nest /burrow and that the zone cannot be entered. The signs will be securely fastened so that they do not flap in the wind and potentially scare the birds.

### 4.2.3 Site Management

If there is a delay between rank grassland being cleared in the project site and earthworks commencing, the grassland will be mowed regularly and maintained below a 5 cm sward height so that it does not provide suitable habitat for pīhoihoi / New Zealand pipit to nest in. If the grassland is left to go rank, and re-clearance is to occur during the pīhoihoi breeding season (1 August – 31 March), then within the 24-hour period prior to clearance, a pre-works nesting survey will be required as outlined in Section 4.2.1.2

## 5.0 Incidental Discoveries During Works

Despite implementation of pre-works surveys, it is possible that nesting birds and non-nesting / non-breeding kororā may be incidentally discovered during construction works.

### 5.1 Kororā (Little Blue Penguin)

If non-breeding or non-moulting kororā are incidentally discovered during construction works, then an exclusion zone will be established around the bird as outlined in Section 4.2.2.2.

If breeding or moulting kororā (active burrow/s) are incidentally discovered during construction works, then the on-site construction manager will immediately contact the SQEP. Works will stop immediately, and an exclusion zone will be set up around the active burrow (as described in Section 4.2.2.1). Works will only resume in this area when nesting activities are completed (as monitored and informed by the SQEP).

### 5.2 Other Key Species

If nesting tōrea pango (variable oystercatcher), tarāpunga (red-billed gull), pohowera (banded dotterel) or pīhoihoi (New Zealand pipit) are incidentally discovered or observed during construction works, then the on-site construction manager will immediately contact the SQEP. Works will stop immediately, and an exclusion zone will be set up around the nest (as described in Section 4.2.2.1). Works will only resume in this area when nesting activities are completed (as monitored and informed by the SQEP).

## 6.0 Monitoring

Any nests detected within the ZOI will be monitored weekly by the SQEP. The SQEP will notify the on-site construction manager when the nest has either failed or the chicks have successfully fledged. At that point, the exclusion zone will be removed, and the area accessed again.

Any non-breeding or non-moulting kororā detected within the ZOI will be monitored daily by the SQEP as they are not bound to the site and will likely leave relatively quickly (i.e. such birds may come ashore after a storm event to rest and once recovered will leave again to forage). The SQEP will notify the on-site construction manager when the kororā has left of its own accord and at that point, the exclusion zone will be removed, and the area accessed again.

## 7.0 Injury or Death of Birds

In the case of an injury or death of an indigenous bird on site, the on-site construction manager will immediately contact the Department of Conservation (DOC) hotline (0800 362 468) for guidance on required actions. Following this, the on-site construction manager and SQEP will meet to create an adaptive management plan to ensure that the situation is not repeated.

## 8.0 Reporting

Records will be kept of any active nests and non-breeding / non-moulting kororā detected during pre-works surveys (as described in Section 4.2.1) and the results of routine monitoring conducted (as described in Section 6.0). Pre-works survey results will be provided to Napier City Council within five days of each survey being conducted. Likewise, the outcome of any nesting activities will be provided to Napier City Council within five days of the conclusion of nesting activities for each nest detected and monitored.

## 9.0 Plan Updates

If adaptive management is required during construction works (i.e. the implementation of management techniques that differ to those outlined in this plan), this will be discussed with Napier City Council prior to implementation (unless action is required urgently and there is no time to consult beforehand; in such cases Napier City Council will be contacted as soon as possible after adaptive management has been conducted). If these management techniques are successful and are likely to be used regularly and become part of routine management (rather than one-off), the plan will be updated and re-submitted to Napier City Council for approval.

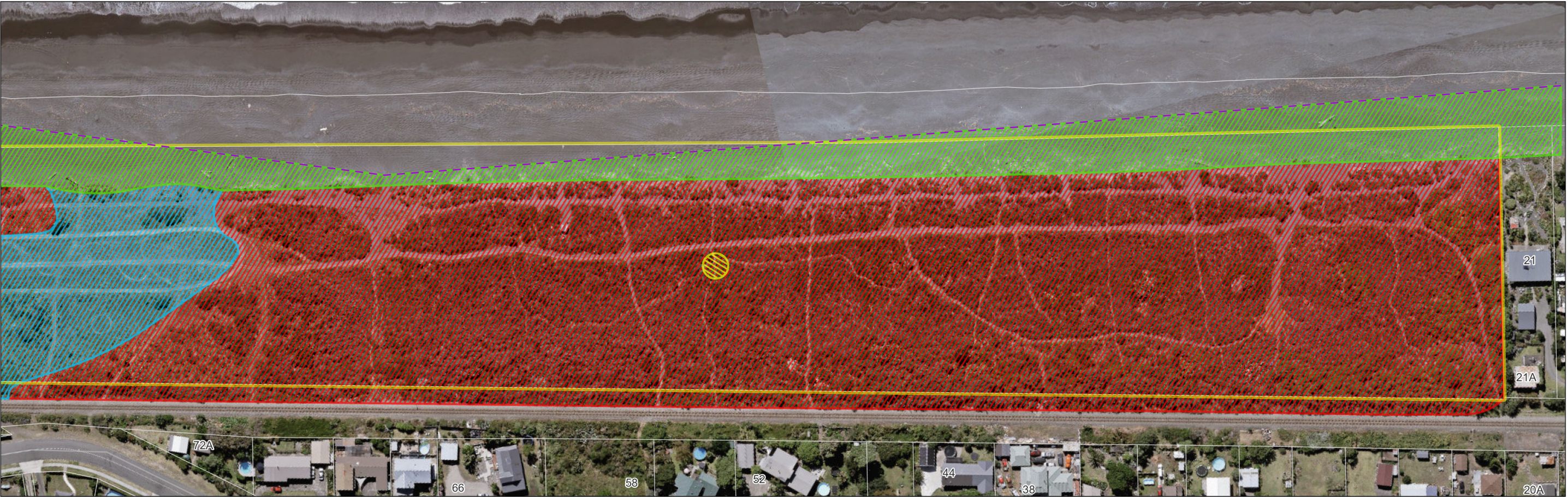
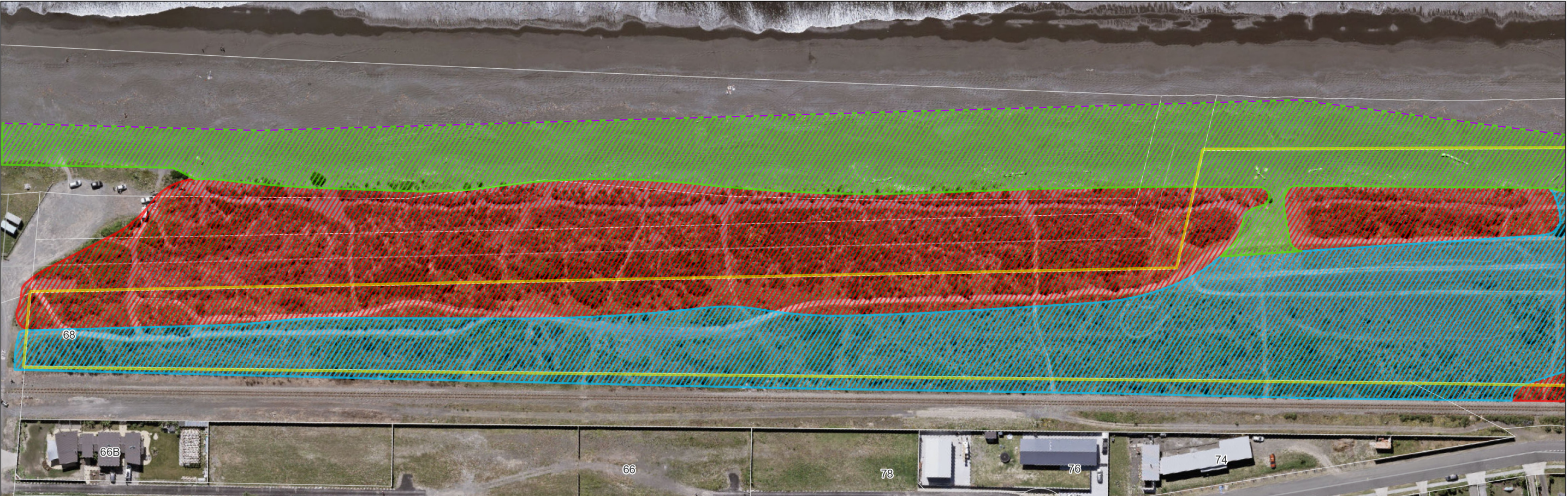
## 10.0 References

Boffa Miskell Ltd. (2023). *68 Franklin Road ecological values, constraints and opportunities* (Report BM221180). Prepared by Boffa Miskell Ltd for Jack Brownlie Investments Ltd.

Robertson, H. A., Baird, K. A., Elliott, G. P., Hitchmough, R. A., McArthur, N., Makan, T. D., Miskelly, C. M., Sagar, P. M., Scofield, R. P., Taylor, G. A., & Michel, P. (2021). *Conservation status of birds in Aotearoa New Zealand, 2021* (New Zealand Threat Classification Series 36). Department of Conservation.

## 11.0 Appendix 1 – Pre-Works Survey Locations







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Data Sources: Eagle Technology, Land Information New Zealand, CERCA Community maps contributors

Nesting Bird Survey Area

-  Kororā - Little Blue Penguin
-  Nest box - Kororā - Little Blue Penguin
-  Pīhoihoi - New Zealand Pipit

Tōrea pango - Variable Oystercatcher, Tarāpunga - Red-billed Gull, Pohowera - Banded Dotterel

 Indicative MHWS (HBRC Coastal Margin)

**NAPIER SUBDIVISION - AVIFAUNA MANAGEMENT PLAN**

**Pre-works Nesting Bird Survey Area**

**Date: 31 October 2024 | Revision: 0**

Plan prepared for Mark Vinall by Boffa Miskell Limited



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