



RESOURCE CONSENT HEARING WITH INDEPENDENT COMMISSIONER

Open Agenda

Pre-circulated Submitter Evidence

Meeting Date:	Friday 13 December 2024
Time:	9.00am (68 Franklin Road - Submitter Evidence)
Venue:	Large Exhibition Hall War Memorial Centre Marine Parade Napier

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	Regulatory Administration
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ORDER OF BUSINESS

Agenda items

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AGENDA ITEMS

1. RM230061 - 68 FRANKLIN ROAD, NAPIER - SUBMITTER EVIDENCE

Type of Report: Legal

Legal Reference: Resource Management Act 1991

Document ID: 1819185

Reporting Officer/s & Unit: Nick McCool, Team Leader Resource Consents

1.1 Purpose of Report

The purpose of this report is to enable the evidence of the submitter, Alan Petersen in relation to a Resource Consent application to undertake a residential development located at 68 Franklin Road, Bay View (RM230061) to be pre-circulated and uploaded to the website prior to the hearing as is required by the provisions of the Resource Management Act 1991.

The late evidence has been accepted for pre-circulation by the Independent Chair van Voorthuysen and is attached. The nine appendices referred to will be tabled at the hearing on 13 December 2024.

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

- 1 Submitter Evidence Alan Petersen - 68 Franklin Road (Doc Id 1819183) [↓](#)

Appendices referred to in the submitter evidence will be tabled at the Hearing on 13 December 2024

Evidence by Alan Petersen

The Planner's Report for RMS230061

I have made submissions supporting the application. I now present my evidence to the Hearing.

I have written a report on my experience in agriculture, horticulture, floriculture and property development. Appendix 1.

I will also be providing a report on my involvement with Bay View developments and the applicant's property. Appendix 2.

This report is based on my responses to the Planner's report.

By Alison Francis – Consultant Planner. Bay Planning Ltd.

She started practice in Napier/Hastings - Sep 2020 - 4 years. Company formed in 2021. Sole shareholder & director.

On her website - *“Our mission is to help property owners and developers across the Central North Island increase the value of their assets through successful navigation of the resource consent and planning process. As Hawke's Bay Consultant Planners, we partner with developers to get projects approved”*.

She has been contracted by NCC to assess the application.

In my view her report is in parts heavily influenced by the site being zoned Main Rural. That has resulted her final recommendation that the resource consent application should be declined.

I have referred to her comprehensive 74-page report as it also sets out the submissions received on the application. I have found it inconvenient to work on as there is no index.

7 - Executive Summary

I understand wastewater has been amended to a low-pressure system (lps) with multiple pumps.

All other services will be provided – including power, telecom and computer media.

8 The proposal, site and locality description

Total length of the site is 1.4km.

“Sandy” soil? This is not the correct description as the soils are predominantly coarse gravels. Refer to Appendix 3.

P8 - It used to be the Bay View Railway Yard – not station.

The surrounding environment is residential. Often also referred as an urban environment. So why is it defined as a rural environment in the Operative District Plan and the Proposed District Plan? The Main Rural Zone is partially justified because it is in the rural environment.

As in the Proposed District Plan of 2000 the Variation 3 CHZ meant the site was unable to be developed. I believe it was the CHZ that Council used as one of the reasons to change the zone from Deferred Residential to Main Rural. The other main issue was and still is the provision of wastewater to Council's infrastructure.

9 Background

I have requested the resource consent of NZ rail subdivision that created the site.

It was likely to have been subdivided for residential housing prior to rail taking the land in 1916. I have a plan that shows the Bay View area was subdivided into residential lots in 1915. It is the plan that shows the centre line of the proposed rail corridor. Appendix 3.

It shows all the section in that part of Bay View were separated by the rail corridor. The sections at the north end of Mer Place used to have a part on Rogers Road and only informal access to the seaward side from Gill Road.

I was told it was sold in 1989 by the Rail entity as the yard was surplus land. The land was seen as ideal for potential residential development. Foreworld Developments Ltd managed to buy it.

After submissions by owners to the Bay View Section Plan (the first RMA Section Plan in Napier) sometime in the 1990s managed to get it changed to a Deferred Residential Zone. This zone remained until it was to be changed to Main Rural in year 2000 in the Proposed District Plan.

It is relevant to note that up to the year 2000 the site as Deferred Residential had a registered value of \$2m. When the Proposed District Plan in the year 2000 and the CHZ was notified without any pre-knowledge of the owners, or me as manager, overnight the site was worth \$167,000. FDL had a loan of \$1m. The Mortgagor advised they had mortgage insurance with Lloyds of London. We were advised to do whatever it took to fix the issues. Use the best consultants available. That was my job. It took 4 years and cost FDL about \$750,000. Napier City Council & the Hawkes Bay Regional Council spent over \$1m each.

Mark Cooper QC was the Auckland barrister who was engaged to prepare an appeal. He recommended the Appeal for zoning was best done under s85 of the RMA. Then about a year later he was made a High Court Judge. He became a Judge of the Court of Appeal and retired this year. When Mark became a High Court Judge we engaged Paul Cavanagh QC also from Auckland.

What irritated me the most at that time was in the Proposed District Plan 2000, Council was determined to rezone a significant area of Lagoon Farm Section Plan where ALL DEVELOPMENT WAS PROHIBITED as residential. That area is now known as Parklands. I made submissions opposing it. On the morning of the Hearing, I found out the Independent Commissioner for the Hearing was Mr Bill Wasley who had done the comprehensive planning report to support this rezoning. He had to step down. But it eventually got rezoned as residential.

The FDL's Franklin Road properties the zone Deferred Residential was to be Main Rural. This happened despite our submissions.

Recently I acquired the Council meeting minutes and reports supporting the change of that zoning. Appendix 5.

9 Background

The previous owners did obtain a consent to discharge stormwater into the coastal environment. It lapsed. It can be applied for once there is certainty about the decision on the subject application.

10 – Reasons for the application

It is well known & recognised by the applicant and their legal counsel and expert consultants that the proposal is Non-complying. The Main Rural Zone did not result in Commissioner Gardiner refusing to approve a similar application in 2008 – RMS07123. It was approved and remained in place until 2018.

Engineering Code of practice – INFIR the applicants civil engineer has provided volumes of reports and drawings on all infrastructural aspect of the application. There are some minor aspects that are variations to the Code, and they are in the application.

Earthworks – The application includes approval for some aspects of earthworks for the development.

Most of the non-compliances outlined by the Planner are in regard to the Main Rural Zone.

All those issues were addressed in the 2008 resource consent.

NESCS Regulations

p8 Bay View misspelt as Bayview. But “yard” is correct.

Proposed District Plan

The proposed rules in the PDP do not have effect. Agreed. But the submissions made by the applicant and myself are relevant.

11 Notification.

There have been 27 submissions with 24 opposing the application. There are approximately 80 households on Rogers Road that are directly landward of the applicant’s site – the submitters are 30%. The other three are on Le Quesne Rd, Mer Place and three Hapu. There were no other submissions from any other part of the Bay View residential coastal area. Or any other part of Bay View.

I’m the only submitter from anywhere else in Napier as I reside on Napier Hill. Just Kiwirail.

Consideration of the application

12 Statutory considerations

The problem is that all these are assessed on the Main Rural Zone. It should never have been made a rural zone. I now believe that at the time the rural zoning was driven by the Council’s concerns about the CHZ assessed by Dr Jeremy Gibb. That CHZ almost went to the rail corridor about halfway along the site. It may have been considered by Council that the site was not able to be developed and was best reinforced if made Main Rural. In the Appeal on Variation 3 that CHZ was not accepted by the Environment Court and was reduced to a 24m setback from Gill Rd to Franklin Rd.

Once that had been dealt with Foreworld was able to apply for a resource consent that was approved by Commissioner Gardner in 2008.

As a matter of interest it took me four years to prepare the Appeal to the Environment Court. FDL costs were in the order of \$750k. NCC & HBRC over \$1m each. A total of \$2.5m just for that process. Then there was the additional cost of the 2008 resource consent application.

13 Actual and potential effects on the environment

Positive effects

Great to see all of those. Agreed.

Adverse effects

The Planner reviewed the Council's records – she must have seen considerable reference to my involvements. Has she read the s85 and Variation 3 Appeal to the Environment Court or the resource consent files in the 2008 Garland decisions? There are some very relevant assessments & decisions made in those decisions.

Residential and Rural Amenity and Character

Lack of access do not limit the applicant's development proposals. As the largest site in the immediate area, she advises it should not be discounted from rural use. I strongly disagree – there is no expert consultant who has assessed its productive capabilities who advised it is suitable for any sensible productive use.

The Planner refers to "sandy soils". See my comments above. Also addressed in Jim Dahm's report.

I see the Planner is dismissive of the applicant's submissions on the PDP. She should have read mine as well. These submissions are relevant to the application. After all she has referred to the PDP in pages 59 to 62 of the Planners report.

Is there any evidence in Council files that any part of the coastal gravel barrier in Napier from the south to the northern extents where any part of it has been used for productive rural uses?

Chris Brownlie, Steve's brother is a longtime orchardist with properties in Bay View including the north end at 83 Le Quesne Rd. On that orchard there is a strip of land as part of the coastal gravel barrier parallel to the scarp/cliff. It looks like that strip has never been used for any productive purpose. The apricot orchard is set back from the coastal crest behind an established shelter belt.

Steve Brownlie is also an experienced orchardist. He is the largest orange grower in New Zealand. He certainly didn't buy the subject site to establish a commercial orange grove. Why not you may ask.

As the Brownlie brothers have lived for many years at Bay View I believe they could advise if any of the coastal gravel barrier been used for productive rural activities. In the 28 years I've known the area I have not seen any productive rural activity along the coastal gravel barrier. That would extend from the Tutaekuri River in the south to Tangoio Beach.

It should be noted that the Brownlie brothers as very experience orchardists have never used the subject site for any horticultural endeavour over the 12 years they have owned it. I wonder why.

The site being part of the Main Rural Zone is inappropriate but then changing it in the Rural PRODUCTION Zone in the PDP is even more of a planning aberration. The site cannot be classified as productive rural land.

Submitter 22 Mr Buxon - A plant nursery is possible but would be a real challenge for many reasons. It would only work if crops & plants were in greenhouses. Even that would be a challenge.

The Planner advises the area is not culturally significant. I suggest the environmental effects of the proposed development would have positive impacts.

Submitter 26 Mr Musson – *will change character of Bay View going from rural land to residential.* In the Bay View section plan it was rezoned deferred residential. Then changed to rural for coastal hazard and other concerns.

Submitter 27 Mrs P Wilson – Very well said but I disagree. The ribbons of residential development are along the coastal strip almost follow the inland extent of the landward side of the gravel barrier (the backshore) that overlies alluvial soils. The applicant's development is on the crest of the raised gravel barrier.

The Planner comments on my submission in that I say that Main Rural is an aberration without any further information on zoning to support a residential zone. I have plenty to say about that in my submissions on the PDP and for that reason will table my submissions. Appendix 6.

This has been a dilemma for the applicant. Should they wait for the PDP to result in a change to a residential zone within a rural environment or repeat what was achieved in 2008 and obtain a resource consent in the current Main Rural Zone.

Certainly, the Commissioners cannot make any decisions on this plan change process under this Hearing.

These parallel planning processes mean the applicants and my submissions to the Proposed District Plan should be tabled and read by the Hearing Commissioners as they are relevant information for the subject application.

It is worth noting a point made by Hearings Commissioner Garland 13 May 2008 under Discussion of Issues – Plan Change Versus Application – p7 – *“For that reason only should the application be successful and development proceed, a change of zoning may well be appropriate”*.

Buxton – Site has no cultural significance as advised by hapu.

Musson – Yes it is contrary to the ZONE of Main Rural and the Proposed Main Rural Zones are contrary to its actual environment – coastal residential and utterly unsuitable for most rural activities.

Wilson - The rural zoning has never been accepted by the owners since 1992 – over 24 years. It was always intended for residential development – see Table on p6. The Councils also knew that.

Ms M McBain – agree with assessment.

Natural Character - Page 17

Council reserves and paper road at north end. Napier City Council has had this land since 1989 and has done nothing to enhance it for public use. The carpark is actually on the Council Reserve (the 0.4755ha lot) and has been unofficially created by unofficial fill. One can see that this fill extends beyond the natural scarp.

The site is private land – not “technically accessible” or “unofficial access” are not really appropriate terms. Its trespass.

Natural character – Natural Coastal Character - Ecology.

I advise that in about 2003 I hired a bush bulldozer – a D4. I pushed all the vegetation on the area of the crest back to the railway line into heaps. I got a very heavy steel channel about 6m long. I towed that around the site that flattened all the vegetation. I also cut down the row of pines along the inland side of the boundary of the paper road at the north end.

All the vegetation on the bulk of the site now comprises the mainly exotic weeds that have regrown. From that time there is no vegetation on the site that could be classified as contributing to the natural character, the natural coastal character or have ecological value.

There are photos by various consultants who visited the site at that time. Appendix 7.

The only part of the site that has some degree of natural character is the scarp strip and upper beach. In all the time I've been involved the upper beach, scarp and narrow strip above has never been cleared or subject to earthmoving. Even this narrow coastal strip has almost unobservable natural character in terms of fauna or flora.

The only aspect that is natural is the gravel beach, the scarp and the land comprising the raised coastal gravel barrier. Proposed minor changes to those features will be responsibly undertaken at some points. The main area of the site is having a character of non-endemic exotic weedy species including a prickly pear forest.

The applicant's proposals will over time will help re-establish the natural character and also provide public access. This will all result in an improvement to the beach frontage. In my view it would be at a higher standard than any other section of the Westshore & Bay View coastline.

Ecology

The 400m long Council Reserve could be developed by Council as the place for avifauna including nesting boxes for Blue Penguin. I'm certain that some of the residents that end up living in the new development will be very enthusiastic about maintain and improving ecological improvements along the coastal strip and even the Council's reserve and carpark area at the end of Franklin Rd.

Submitters

My opinions on the submissions

Submitter 11 - *Remoteness and beauty to be maintained and treasured.* It can hardly be termed remote. Along the beach frontage once developed it will still have these qualities as well as the Public Reserve.

Submitter 14 - Impact on the overall environment will result in a development similar to Mer Place, but with planting and fencing controls to address the coastal edge.

Submitter 15 - Earthworks will mainly be over the flat crest area. They will have temporary effects.

Submitter 20 - Apart from the physical environment there is very little that is natural. There are very few native plants.

Submitter 22 - The long stretches of coast that are not developed between Westshore and the Esk River will still be available and untouched by the development. After all the beach front of the site is only 1km – a small fraction of all the coastal land available for people to enjoy. Even the beach front of Lot 62 will be a Council Reserve with legal access along a cycleway/walkway.

Cultural Effects

The hapu should be practical with some of their recommendations. Mana Ahuriri have a proposal to develop a part of the Ahuriri Farm – apparently along Onehunga Rd. This was recently reported in HB Today. It is included in the Fast Track schedule. They must see a need for more housing in the Bay View area.

Would they feel it practical to disallow residents to have dogs and cats near in their residential development.

Coastal Hazards

Submitter 23 - Haumoana/Te Awanga subsided by 0.075m to 1m in 1931 Earthquake. Bay View uplifted by 1.7 to 2m. This is almost a 3m differential in height. The change point was about the southern boundary of Napier City.

That is the main reason the Clifton to the Waitangi Estuary is so vulnerable to coastal erosion when north of there to Tangoio Beach is not.

All the submitters who have concerns about the coastal erosion should read the Dahm Report. I met a resident on Sat 7th Dec. I was checking a few matters in Rogers Rd. I went down a driveway at the end of Rogers Rd that used to be part of the Foreworld project. It had a trespass notice at the start of the accessway. The owner of 78 Rogers Rd accosted me. We had a polite but uncomfortable discussion. He was really concerned about coastal erosion. I asked if he had read the applicant's report by Jim Dahm – *“Yes but all bullshit. We are all against the development. We will stop it with our petition”*

Rather ironic I got pulled up for trespass. I wonder how often he goes across the applicant's site.

I also see there is a new unofficial track formed alongside the rail corridor so locals can drive directly between Franklin Rd & Rogers Rd.

The greatest protection for the coastal cell from Westshore to Tangoio Beach is for HBRC to just continue nourishment at Westshore.

Most of the submitters have concerns about coastal erosion. All they should do to allay those concerns is read Jim Dahm's Report. Or the decisions made by the Environment Court on Variation 3 in 2006.

As noted above Jim Dahm's assessment in 2023 for the applicant he validates the Court's decision as there has been no erosion on the beach from Gill Rd to Franklin Road since 2006 – almost 18 years. He concludes that part of the coast has not eroded for 50 years. It is actually accreting.

Hearings Commissioner MGJ Garland – Hearing in 2008. Note in his Introduction, p2 *“Now that the boundary of the Coastal Hazard Zone has been settled, there is sufficient certainty for a resource consent to be considered”*.

He is referring to the 2006 Environment Court Decision on the location of the CHZ. It is the CHZ in the Operative District Plan. NCC has no plans to change it as it is now a responsibility of the HBRC.

The Commissioners should note that the Hawkes Bay Regional Council and Hastings District Council have since 2016 been working on a Coastal Hazard Strategy between Clifton & Tangoio (referred to as C2T Coastal Hazard Strategy). Earlier this year the final meeting was held. Once the proposed Strategy is formalised in the near future it is the Regional Council who will manage the subject coastline. I have attended many of their more recent meetings.

It should be noted the Tonkin & Taylor have been the coastal hazard consultants advising the Committee. They have also recently peer reviewed Jim Dahm's report and are satisfied with his findings.

Tsunami

Council and locals should prepare an evacuation plan. The hills at Bay View such as the water tanks site are only 600m away and would take 2 minutes to get there. Other areas of Napier have much greater risks and evacuation routes to get to safety.

Traffic.

The traffic assessment for the applicant is Team "Traffic".

It has to be recognised that the proposed dwelling will be next to a rail corridor that could be reinstated in future. But in my view very unlikely. In the preparation for the 2008 application, I had a retired Rail Engineer. He explained to me why the Napier to Gisborne is very uneconomic. Cyclone Gabrielle has trashed the line right from Esk Valley and north to Gisborne. There will be an enormous cost to reinstate it.

But Kiwirail and those next to it have to treat this rail corridor as though it's part of an operating railway.

The houses on the applicant's site where they are two deep, and the retaining wall and rear acoustic fence will provide a degree of traffic noise attenuation from the subdivision for the Roger's Rd residents.

This will be similar to the rear fence that is along the rear of the railway corridor at Mer Place.

Many of the realistic submissions of the submitters about rail can be addressed.

If not already done so the submissions by Kiwirail can also be addressed by the applicant.

Engineering

Wastewater.

Submitter 12 - *How reliable is the old oil pipeline?* In my early work I had an expert oil pipeline engineer from Taranaki look at this pipeline. He advised it was a high-spec steel pipe installed to pump diesel oil. His advice was that it was in good order and likely to remain so. The Council engineers will also be familiar with it as they used it for the Bay View Village wastewater connection. If used for the applicant's wastewater this pipe will be the outer shell whilst the low-pressure pipe will be threaded through it.

On the narrow property that Foreworld owned on the west side of the rail corridor (66B Franklin Rd to 78 Rogers Rd) this pipeline runs along the length of this site. Almost down the middle. There is an easement. It was quite a constraint to the development of this site. That's one of the reasons the density on that site is lower than the applicant's proposals. This in addition to these properties requiring on-site wastewater systems.

Submitter 18 – It was abandoned by the entity that established it as the diesel delivery to the Whirinaki Power Station was no longer required. Council then took ownership.

Submitters 20 & 22. They have concerns about infrastructure.

The civil engineers will ensure it is all installed to be robust over time. Johan Ehlers and the INFIR team are very capable civil engineers on such matters. He used to be the infrastructure manager for Napier City Council so fully understands their requirements. The Council's engineering team will also ensure all the infrastructural services will be designed to meet engineering standards including the Code of Practice.

The wastewater reticulation is likely to be a low-pressure system. It comprises on-site tanks and macerators that reduce the waste to a fine soup. The control systems provide pumping to even out morning and late afternoon peak loading. On land that is flat over longish distances it is much more efficient than conventional gravity systems – with reduced CAPEX & OPEX to benefit Council, future residents and the developer.

Council has amended the Code of Practice to allow the use of such systems as they are going to use it on the next stage at Parklands. The likely installer is EcoFlow. Over many years they have installed over 20,000 systems in NZ (households).

Submitter 24. On research I did there were about 400 dwellings along the Bay View coastal strip and less than 10% have complying on-site wastewater treatment systems.

The above submitters shouldn't be concerned about infrastructure issues.

Stormwater

Submitters 12, 14, 20, 22 & 26. Stormwater won't flow to Rogers Rd as the system will be designed to flow to a sea outfall. It should be noted that Kiwirail requires a condition that stormwater will not discharge onto their land. That becomes a buffer to the Rogers Rd/Franklin Rd properties to the east of the rail corridor.

The gravel/sand mix is highly permeable, and any overflows will simply percolate into those soils – approx. 7m deep. Tests on permeability were tested and assessed by a previous engineer Takis Koutsos for the Foreworld application. He was considered one of the top stormwater specialists in NZ. Refer to his report – Appendix 8.

The infrastructural services as proposed for the site will be more up-to-date and superior than the existing services of wastewater, stormwater, roads, and footpaths in Bay View.

Even the coastal walkway/cycleway as proposed will be to a higher standard to that at Mer Place or any other part of the Bay View coastal line.

It can now be noted the entire coastal gravel barrier strip in Napier is not in the Flood Map areas except for a very small area at Snapper Park. This is at the lower level of the excavated ballast pit – approximately 7m below the crest of the raised coastal gravel barrier.

Earthworks

Submitter 15; The area of the site subject to earthworks is only a natural environment in regard to its geology and landforms. The applicant's engineers have been very careful to minimise the volume of earthworks and to keep it away from the coastal scarp strip and not to lower the building platforms.

Submitter 17; Ms Greenhalgh has lived on her property for a long time. Her property and the properties next door (north of Mer Place) prior to the railway development in the early 1900s were long sections from Rogers Road to the beach.

I spoke to her in 2022. She is very keen to get a boundary fence built on the common boundary with the applicant's site, and the vegetation removed near her property due to the potential fire risk. It should be noted this is Stage 3 of the development which would be sometime away in terms of earthworks. However, she would really appreciate if the above was done sooner rather than later.

Summary of Effects.

In my opinion some of the more than minor effects could be considered by the Commissioners and be reduced to minor or less than minor effects.

Measures proposed to compensate or offset adverse effects.

I just find "*vegetation to be managed in perpetuity*" seems to be dramatically over the top. It means lasting forever. It is an unrealistic timeframe. Unenforceable!

Summary

In the third sentence for all the reasons I have provided along with the applicant's expert consultants and counsel, I don't agree with the effects on the application that is assessed to remain more than minor.

By the criteria used by the Planner to assess potential effects it seems to me that no residential development on bare land could pass such a high bar of effects. Particularly from neighbouring residents.

In my view the 24 submitters from individuals only represent a small percentage of the Bay View coastal strip. This comprises approximately 400 houses and that means the submitters represent less than 1% of that community.

14. Relevant statutory documents

National Policy Statement on Urban Development.

The applicant's planners' statement is a reasonable assessment of the development in regard to NPS-UD.

The Planner's disagreement is illogical. Her second opinion saying there is no justification as to whether these new residential lots are needed or necessary in this part of Napier. Where is her evidence on this? It is not remote from employment, education or community services.

In New Zealand it is well known by Central Government that more housing is required throughout the country. With all the limitations where houses can be built such as on low-lying

flood prone land, or on high quality agricultural land (LUC 1-3) or all the other reasons land such as the applicant's site should be developed as proposed.

Napier City is the second smallest Territorial Authority in New Zealand (Kawerau is the smallest) and probably has one of the highest proportions of urban and industrial environments as a proportion of its rural environments. Many areas within Napier's territorial boundaries are not suitable for residential development as they are low-lying and will be increasingly subject to flooding.

Would the Planner make the same statement in regard to Taradale that is definitely a residential environment.

Google maps show from central Napier that Bay View Village is 16min (13.5km) whilst Taradale is 14min (8.9km).

Residents of the development intersection with Franklin Rd is similar to the distance to Taradale. If residents from the site travel to EIT or the Pettigrew Green Stadium it is 17min (17.2km). Travel to the more outer industrial areas would be similar.

Travel to Pan Pac – the Bay's largest industrial site would be 6min (6.5km).

Napier has an expressway running through it that allows people to travel to parts of the city in short times and to our neighbouring city of Hastings- 22min (20.4km).

These are very short times and distances compared to other New Zealand cities.

Just ask any of our Auckland visitors at the Hearing.

The Operative District Plan was notified 20 years ago and is out-of-date on many matters.

Including the zoning of Bay View.

In the Proposed District Plan that the classification of the Bay View residential environment as rural and the zoning of the applicant's site as Main Rural is a planning anomaly. To maintain that in the Proposed District Plan and renaming the zone on the site as Rural Production Zone is even more of an anomaly. This is subject to submissions opposing the Rural Production Zone on the applicant's site.

It was recently in a report in HB Today that a Mana Ahuriri proposed residential development is in the Fast Track schedule. If there was no demand for residential housing in Bay View why would it be proposed by Mana Ahuriri and approved to be included by the Government appointed panel deciding on Fast Track projects.

The applicant's site is already in an urban environment. Surrounded by it. The difficulty the applicant faced when looking at re-applying for a new resource consent in 2022 was which planning process would be the quickest and provide the greatest certainty. It has transpired that the process of the Proposed District Plan is considerably slower than anticipated by Council and the resource consent application is also slower than anticipated. It's been a bit of a leapfrog situation.

Due to the history of previous appeals and resource consent applications in regard to the applicant's site the legal counsel and planners for the applicant supported the proposal to proceed with the application. In my view overall it will be quite an improvement compared to the 2008 development.

The opinion of the Planner to say the application would be more appropriate if the applicant had waited until the PDP had become operative in this point in time is rather simplistic.

Refer to the Garland decision p7 as noted above.

In any case the applicant is entitled to make their own decisions on such timing matters.

The Commissioners should note the Operative District Plan has had no significant changes that would have changed the planning environment at Bay View since the 2008 application was approved. Surely that is the benchmark for the application to be approved.

Operative Napier City District Plan

Issue 33.1.9 – 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.

The raised coastal gravel barrier along the Bay View coastal strip is NOT an area of high-water table, nor heavy ground conditions. By all stormwater data ever measured in Bay View including the recently released Flood Maps the subject site is NOT included in any flood assessment. Why – because since the 1931 Earthquake uplifted the Bay View area the coastal gravel barrier has probably never been flooded. Nor was it by Cyclone Gabrielle or any other severe storm event. Just look at the Takis Koutsos Report Appendix 8. He showed it had a high level of porosity and capacity to absorb rainwater.

On these incorrect fundamentals the Council decided it couldn't support additional residential intensification in such areas and should be zoned Rural Settlement & the applicant's site as Main Rural. Also, as a reason to limit normal residential development to occur in the Rural Settlement Zone but to severely limit any further residential intensification in the area.

It should also be recognised that since 2008 to 2018 the subject site has had a resource consent for 61 residential sections based on being fully serviced.

Policies 33.3.1 and 33.3.4

The Planner considers that as the size of the site is large it could be used for a rural activity. But it probably NEVER has been since 1931. Just remember a number of expert consultants have advised that the soils and other criteria over the entire site are unsuitable for most rural activities. That is the opinion of the Brownlies and myself.

When I was the project manager for Foreworld, Mr MacFarlane from Gill Rd had his pig pens on the part of the site on the western side. Some neighbours on Rogers Rd complained to Council about this. Small piggery. The pigs had to go. Probably in the next few hangi. So, imagine if the applicant decided to setup the entire site as a free-range piggery. What fun that would be. The afternoon breezes from offshore wafting the smell of pig poo etc over their properties.

As a site that is zoned Main Rural many of the permitted activities if carried out on the site could essentially turn the entire area, including the scarp and the vegetation on the landward side of the paper road that is on the beach (owned by the applicant) into an area for farming animals such as sheep, pigs, cattle or deer. The vegetation would be well grazed. Reverse sensitivity issues galore!

The applicant would be entitled as a permitted activity to erect an electrified deer fence around the entire boundary of the site. Plus, an entry & security gate. This would also prevent other people using the site for any “unofficial” activity.

My assessment of the subject land as an ex-sheep & cattle farmer, dairy farmer, horticulturalist and floriculturist is that the site is utterly unsuitable for any “productive” use. It’s assessed by experts as an LUC 7. This when the least productive soils in New Zealand are LUC 7. Just on its LUC classification the PDP where Council is proposing the site be renamed as a Rural PRODUCTION Zone is even more bizarre from a planning perspective.

The Planner advises to the south the lots at the north end of Mer Place are larger than on the proposed development and sparsely occupied. These are old sites that existed pre-rail development and owned by people who have lived there a long time. Appendix 9.

Surely it is relevant to advise that south of those there is a modern high-quality development that has been completed at Mer Place comprising 12 sections with 10 of them with substantial dwellings.

The Foreworld team just thought of the Franklin Road site as a logical extension of their development at Mer Place.

It is interesting to recognise that the Nicholls family (the family behind Foreworld) grew up in Bay View on the Mer Place site and saw the Franklin Rd development as a legacy project. Sadly, defeated by a number of factors.

Steve Brownlie and his family also grew up in Bay View. They also see the project as a legacy to their family.

The subject site is not being development by out-of-town developers.

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 Rd and to the west the residential area is separated from the site by the rail corridor. I advise those sites are larger due to the easement for the gas pipeline and the site requiring on-site wastewater systems.

The reason that most previous development in the coastal Bay View strip have a minimum lot area of 1500m² is ONLY due to the fact they are unserviced in regard to wastewater rules requiring a minimum area of 1500m² per site. In the Bay View Section Plan the minimum area was 800m² per unserviced site. That was changed to 1500m² in the 2000 proposed District Plan (hence the 800m² sites at Mer Place).

The Planner states the number and scale of residential dwellings is not what is envisaged in the Main Rural Zone. That’s because the zoning is inappropriate.

The applicant’s proposal is actually the most productive use of the land. 59 fully serviced dwellings to add to Napier’s housing stock.

Objectives 33.4 & five Policies that the Planner considers are relevant.

33.4.8. The Planner is concerned with yard setbacks particularly with the rail corridor. I spent considerable time with the Kiwirail planner to reduce the setback. Due to the proposed acoustic fence along the rail boundary it was agreed a 4m setback was adequate.

Policy 33.4.9. The site is not within an “identified greenfield growth area” identified in Appendix 35.

This was not within such an area as it was already known to be a development area having been zoned as Deferred Residential in the Bay View Section Plan. Then from 2008 with an approved subdivision until it lapsed in 2018.

Objective 33.5 Services and Infrastructure

Policy 33.5.4

The Planner advises no specific plans have been provided for this pipeline at this time.

In the INFIR documents there are a comprehensive reports and drawings for every aspect of the development. There is no point completing final drawings until the resource consent for the application is approved and the conditions set out by the Commissioners.

Total number of Engineering Consent drawings for Stage 1 are 57.

Drawings for Resource Consent Drawings are 20. Servicing report for resource consent are set out in Appendix 1 of the Planner’s Report.

Specific design & working drawings will need to be finalised and approved by the Council’s Engineering Team before construction can commence.

Policies 41.3.1 – 2 -4 7 and 8.

It should be noted Lot 62 increases the area of public reserve along the beach.

Policies 41.4.1, 5, 8, 9 and 11.

The bulk of the site has little natural character compared to a more typical coastal environment with sand dunes. Just a flat gravel platform that is growing exotic weeds. So how can the applicant be expected to preserve an environment that hasn’t been natural for a very long time. Certainly, not since I’ve known it.

The applicant has employed expert consultants to advise on appropriate landscaping for flora and fauna. This will improve the degraded coastal environment, particularly along the beach frontage. Therefore, the proposal should be sufficiently consistent with policy 41.4.1.

The proposal is sufficiently consistent with Policy 33.5.4.

Chapter 61 – Transportation

Policy 61.5.1

With respect Mr Curson is being unrealistic in an expectation that Kiwirail will accept a railway crossing from the development onto Rogers Rd. There is already a crossing at Gill Rd and another at Franklin Rd. Kiwirail don’t even want a pedestrian crossing at that point.

In any case adding the traffic to Rogers Rd would just create more congestion in a tsunami evacuation that would be further from high ground. The most logical route is via Franklin Rd to the Bay View Hills such as where the Bay View water tanks are located. This will only take less than 5 minutes with a distance of less than a kilometre. Obviously it will take more time in a tsunami evacuation but less congested than other areas of the city.

The reasons to advise the proposal is not consistent with the Chapter 61 Objectives and Policies seems unreasonable.

Chapter 62 – Natural Hazards

Policies

All the relevant factors were addressed by the Environment Court Decisions in 2006. The appeal took two weeks in Court with most of that time spent on the coastal hazard issues. There were seven coastal hazard experts involved plus surveyors etc.

In 2023 Jim Dahm carried out his assessment on all the relevant factors in regard to coastal hazards. He reinforced the Court's decision by concluding there has been no erosion along the applicant's site for 50 years. It is actually accreting.

However, the site is not subject to pluvial flooding. Therefore, pluvial flooding is not a Natural Hazard to this coastal cell.

Overall, the proposal is consistent with the Policies if it was correctly zoned as part of the Rural Settlement Zone. It is acknowledged some relatively minor matters are not complying with the rules for that zone but they can be dealt with in a resource consent application.

Conclusions.

The assessment of inconsistent objectives and policies as noted above are summarised, but some based on incorrect input factors. The applicant has provided sufficient information so the Commissioners can decide there are more minor and less than minor effects.

Proposed District Plan;

The Planner has referred to all the relevant factors in the Proposed District Plan but is critical of the applicant making its application prior to the PDP becoming operative.

On this basis it would be fair and reasonable for the Commissioners to at least consider the applicant's submissions as well as mine.

Objectives SD-UFD-01, 02, 09 & 010. Policies SD-UFD-P1, P2, P3 & P5. Why is the residential environment of Bay View residential area considered to be not part for a compact urban form for Napier City?

By that measure maybe Westshore should not be part of the compact urban form. Or the Mission Hills development. The Planner's opinion the Bay View residential areas are not considered to be accessible to centres, employment opportunities or public transport is nonsense. Refer to my previous comments.

Policies

So, in terms of environmental factors the proposed residential activity will provide greater enhancement of this coastal environment with residents establishing gardens and coastal planting provided by the applicants.

Compare this with existing development including Mer Place. Along the beach frontage there has been very little gardening or improvements to the coastal environment and fauna & flora along their coastal strip. It should be noted that before I got involved in 1996 that the Nicholl's

contractor had already cleared the site of all the trees and old batches. Unfortunately, they also cleared and modified the beach frontage land. There is no scarp there.

The development of the site as proposed by the applicant will result in a high-quality residential development providing enjoyment for potentially 120 people (av 2 persons per household). It will also attract their visitors. Similar to Mer Place.

In the proposal before you there will also be access for the public via the north entry point along a public road, two new accessways to the beach and cycleway/walkway along the crest of the scarp. The entire beach will be more accessible and provide a critical link for pedestrians and cyclists between Gill Rd and Franklin Rd. At present the furthest they can go along the coast to the north is Snapper Park. If going north from there its on roads.

Lot 62 which is land the applicant owns on the upper beach will become public land as an esplanade reserve.

All this will provide considerably improved access for the general public compared for the few residents along Bay View who illegally cross the rail corridor and the applicant's land to enjoy activities such as fishing and walking. In all the time I've been involved with Bay View I can't recall seeing anyone swimming on the beach. That's not to say some people may do. I've certainly never swum on that beach. Just too dangerous.

There is also the unofficial motorbike circuit. I understand the noise from this activity must irritate many neighbours on Rogers Rd. When I was involved we would get complaints to shut it down. This will obviously not continue once that area is developed.

Policies: RPROZ-P2

The Planner advises –*“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 will be made. At present, I consider that this proposal is “ad hoc urbanisation” and therefore the proposal does not meet RPROZ -O3”*.

This is a rather extraordinary statement to make. Was the approval of the previous development by Commissioner Gardiner in 2008 simply ad hoc urbanisation with no legal standing?

In the 2006 Environment Court's decision to not rezone the subject site under s85 they advised that it did not prevent the landowner from applying for a resource consent for their development.

Geology

There is no comment on the geology of the site. The Planner in parts of her report calls it a “sandy” beach. This is an incorrect description.

All around New Zealand's 15,000km coastline (tenth longest in the World) there are many sandy beaches. Sandy beaches normally have sand dunes created by wind-blown sand. Examples on the west coast of the North Island – Waverly to Muriwai - have wind-blown ironsands – estimated to be 4 billion tonnes. All beaches in the Bay of Plenty are sandy beaches with extensive sand dunes.

On the Hawkes Bay beaches from Clifton to Tangoio there are no wind-blown sand dunes landward of the active beach. The gravel barrier along these coastal cells comprises coarse

gravels and sands that do not form windblown sand dunes. Also note the crest is flat longitudinally and on a x-section mainly flat on the crest. See the x-section by Ormiston Associates – Appendix 9.

Note the various features including a test bore. It is still there. Refer to Appendix 3.

There are other features that means it is suitable land to build houses on.

For example, this includes all the established residential buildings, industrial buildings and public facilities along Marine Parade. The residential developments of Westshore & Bay View.

Refer to the geotechnical report for the applicant by Rick Wentz.

Bay View

Bay View Village is located approximately 13.5km north of Napier City and has been a popular alternative to suburban living. Actually, the residential areas of Bay View are suburban living.

Bay View is characterised by large sites, and this is due to the area not previously being serviced. Since becoming part of Napier City in 1989 a water supply has been provided but this has placed additional strain on the onsite wastewater systems upon which the community relies. There is a proposal for a serviced wastewater system with cost implications for residents. In order to provide residential choice growth of the area is recommended at a low level to recognise the infrastructure limitations which include development adjacent to the State Highway. This growth must be sequenced to occur when the servicing issues are resolved.

Last year I was at a pre-lodgement with about 10 Council staff. One of the engineers invited the applicant to join the proposal to provide a wastewater system to all of the Bay View residential areas. This to be based on a low pressure system.

The Regional Council is getting very concerned this issue is still not addressed. Not addressed since 1989 when Napier City Council's territory was extended to include Bay View.

15 Any Other Matter

The Planner advises on the matters that submitters have provided but cannot be considered.

Even so it is of interest that none of the single story houses, or even the 8 double storey houses across from the site have any view of the beach.

In regard to loss of access and crossing the rail line I just find the term “un-official” precious. People crossing the rail corridor and going onto the applicant's site without their consent is officially known as trespass.

16 Particular restrictions for non-complying activities – s104D

I respectfully suggest that the Commissioners determine if the adverse effects are deemed to be more than minor if taken as a whole.

In my view the assessments being determined against the Main Rural Zone criteria is because that zoning of the site is an aberration. If you asked a lecture hall of expert planning consultants, or a busload of Commissioners, or a courtroom of Environment Court Judges to determine what the environment is of the Bay View residential areas and the most appropriate zone for the applicant's site very few would agree it should be a Main Rural Zone or as proposed in the PDP as Rural Production Zone.

Submissions

The Planner correctly assesses that 15 of submitters made submissions that are outside the scope of the RMA. This is quite a high percentage.

16 Particular restrictions for non-complying activities – s104D

p64 under “Specifically”

Paragraph 1. The applicant has made a significant effort to ensure the remediation of the most natural part of the coastal edge. The Planner then advises this could be better achieved without the development. This is a completely unrealistic opinion. The applicant has shown the development can restore the coastal edge as part of the proposed development. In my view without the development the coastal edge will remain as is for many more decades. It has been the same since my involvement started in 1996 – 28 years. It is even likely the coastal edge has remained some time after the 1931 Earthquake.

Recently a Tsunami Inundation Map was made public. Its purpose is to advise on areas that may be flooded by a Tsunami so plans can be put in place to evacuate. I don't believe it is a Tsunami Zone that prevents development like the coastal hazard zone. See my suggestions herein.

Paragraph 2. The NPS-UD was promulgated in 2022.

The applicant is quite within its rights to proceed with the proposed development based on the approval granted by Commissioner Garland in 2008. That consent was extended in 2013. If it hadn't been for the Covid pandemic it is highly likely an extension under s.127 would have been granted before expiry in 2018.

Some will know the Napier City Council took a long time to produce its first District Plan under the RMA – it took 11 years to notify and was one of the last in New Zealand.

Now its first significant review is also proving to be a lengthy process. The PDP process started in 2019. It was notified in Sept 2023. The Hearings are underway. On the NCC website the PDP timeline at present advises the PDP will be adopted at the end of 2025. It is very likely it will extend beyond that estimate.

It should be noted that Stakeholder & affected parties initial engagement commenced in March 2019. The applicant was not advised as an affected party and later even after requesting such consultation was never given the opportunity to do so.

In the plan change process in the year 2000 the owners of the Franklin Road site had no pre-engagement as an affected party at all. Just found out the Deferred Residential Zone had been changed to Main Rural on the day after it was publicly notified.

Paragraph 3

In terms of zoning the final urban form is at this time unknown. The urban zone surrounding the applicant's site is known. The previous development was approved and in place until 2018. So that level of urban development on the site was well known by Council. The applicant's re-application is similar to the previous development but significantly improved. The applicant has made submissions on the PDP to rezone to an appropriate urban zone. So have I.

Paragraph 4

The Planner considers the site is an over development. It's not. These days if there is a site capable of residential development it should be designed to make the most of the potential provided it meets the planning requirements. Due to its significant areas of existing development over low-lying land, and limited sites for future development, especially in the Napier area, the level of the development on the applicant's site should be supported.

Fully serviced sections of 800m² are not over-development. I have not heard anyone has complained about the five 800m² sections on Mer Place, or elsewhere in Bay View, even without connection to the Councils wastewater infrastructure. The dominant area of sections in coastal Bay View at 1500m² has been largely determined by having no public wastewater infrastructure. What a waste of prime residential land.

These days an 800m² section is considered to be quite large. Many residential developments are now 400m² or less. It's about trying to build more houses on less land.

Paragraph 5.

The applicant has provided considerable reports and drawings on the stormwater system.

Paragraph 6 – I understand the consultation with Mana Whenua has been concluded.

In my view the application can be approved under s104D. It was in 2008. The Operative District Plan relating to Bay View has not had any significant changes since then.

Other relevant RMA sections. The Planner advises the resource could be granted subject to conditions. Great.

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

It is helpful that conditions have been proposed by the Planner. The Commissioners will make the conditions they consider are appropriate.

Lapsing of resource consents.

It would be very helpful if the term of the consent, if approved, was for 10 years. That would have been very useful for the previous resource consent. It could have meant the previous resource consent would still be alive.

18 Consideration of Part 2

The Planners advice is appropriate for the applicant's proposal.

19 Conclusion

The Planner has had to consider the underlying zone of Main Rural. But as noted over & over by the applicant's legal counsel and experts, and myself, it is the underlying zoning that is the factor that forces the Planner on behalf of Council to make her recommendations on that basis.

However, the previous 2006 EC Appeal and the approval granted by Commissioner Gardiner demonstrate that the application can be approved EVEN IF THE SITE IS ZONED MAIN RURAL.

20 Recommendation.

Recommendation on the application for resource consent

The Planner recommends the application be refused. As my submissions indicate this is not justified. By previous legal opinions and decisions related to the site the Planner is considering the application on its unsuitability in a rural zone. Even with the Main Rural Zone, Commissioner Garland made a decision to approve the resource consent for a very similar residential development.

The inappropriate zone locks the Planner into making decisions based on a zone that is a planning aberration. She should have at least considered and taken into account the previous Environment Court and Commissioners opinions and commentary in regard to the applicant's site.

I could have addressed many more matters in the Planner's Report but have decided due to lack of time to leave it to the applicant's expert legal and planning team.

I trust my work assists the Commissioner's with their deliberations.

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