

9 June 2015

Napier City Council
Private Bag 6010
NAPIER

Attention: Paul O'Shaughnessy

Dear Sir,

Submission on subdivision application by A & F Partnership – 258 Meeanee Road, Napier

1. This submission is made on behalf of the Hawke's Bay Regional Council. For the record, the Regional Council did not receive notice from Napier City Council about this application. Regional Council staff 'discovered' the application by accident when viewing NCC's website content after the submission period had closed. Consequently, by the time Regional Council planning staff were aware of the subdivision proposal, the submission period had closed and HBRC had not lodged a submission, until now.
2. I understand Napier City Council's Planning Department has made improvements to its public notification procedures to ensure notice of future applications is properly served on the Regional Council as required by the RMA.
3. The Regional Council opposes the application by the A & F Partnership to subdivide Lots 7-10 Deeds Plan 96 (1.8919 ha) into five (5) lots.
4. It is the Regional Council's submission that approving the application would be contrary to:
 - a. the Regional Policy Statement (RPS), particularly objectives and policies in Chapter 3.1B Managing the Built Environment; and
 - b. the agreed settlement pattern and development locations as adopted in the 2010 Heretaunga Plains Urban Development Strategy (HPUDS).
5. Furthermore the Regional Council opposes the application as it is in an area with limiting physical characteristics and limited infrastructure and servicing.

Heretaunga Plains Urban Development Strategy (HPUDS)

6. Napier City Council will obviously be aware that HPUDS was jointly developed by the Regional Council, Hastings District Council and Napier City Council, and adopted by all three councils in August 2010. In short, HPUDS guides planning for urban growth over the next 30 years in the wider Heretaunga Plains sub-region (which includes the Meeanee area).
7. Defined areas for appropriate (and in some cases, inappropriate) future development are a key element of the settlement pattern in HPUDS. Those appropriate areas are typically more efficient and cost effective from an infrastructure and servicing point of view; and ensure land use and infrastructure can be co-ordinated, development well planned; and growth on the versatile land of the Heretaunga Plains avoided as much as possible.

8. HPUDS describes¹ Meeanee as having developmental constraints including those relating to a lack of reticulated wastewater infrastructure and as being poorly draining leading to increased development costs. Through the HPUDS process, areas potentially suitable for greenfield development over the 2015-2045 planning period were identified. Meeanee and Jervoistown were specifically identified as inappropriate for greenfield development noting the poor drainage².
9. While infrastructure, drainage and development costs are a specific consideration which led to HPUDS not identifying Meeanee as an appropriate area for future residential development, it was not the sole reason. For example, some of those considerations are articulated in HPUDS' vision (see s1.5) and principles (see s1.6).
10. Napier City Council will be well aware of the process and opportunities for public input into the development of HPUDS prior to its adoption in 2010 so we do not repeat that in the Regional Council's submission.
11. One of the actions (of over 60 in total) recommended in the HPUDS was to prepare a change to the RPS, which became known as 'Change 4.' Change 4 was promulgated to provide specific guidance on where growth will occur and include the concept of urban limits for the Heretaunga Plains sub-region. The change would determine the overall extent of HPUDS through setting urban limits and working towards specific rather than indicative lines on the map.

Chapter 3.1B Managing the Built Environment – Regional Policy Statement

12. Change 4 to the RPS became operative on 1st January 2014. Amongst other things, Change 4 has now inserted a new chapter into the RPS as 'Chapter 3.1B Managing the Built Environment.' Chapter 3.1B incorporates the principles of HPUDS and directs how development should occur and be managed in the Heretaunga Plains sub-region. In this way, key elements of the HPUDS settlement pattern etc are embedded into a statutory planning document under the RMA. Given that the Regional Council, Napier City Council, along with Hastings District Council are partners in the preparation and implementation of HPUDS, many of Chapter 3.1B's provisions should not be a surprise to Napier City Council.
13. Those RPS provisions are now expected to be implemented by local authorities via regional plans, district plans and also when making decisions on resource consent applications such as the application by A & F Partnership.
14. A key element of both HPUDS and the provisions in RPS Chapter 3.1B is recognition that unplanned urban form and ad hoc land use development over the long term can have adverse effects on people and communities, and on the natural environment (soils and water), that can cross local authority jurisdictions. Effective management of growth in the Heretaunga Plains sub-region is necessary to ensure development occurs in a planned, sustainable manner and in a way that also does not compromise the planned provision, operation, maintenance and upgrading of regionally significant infrastructure. A lack of integration between land use and infrastructure can result in poor infrastructure investment decisions, public funding pressures and inefficient land use patterns.
15. Of particular relevance to A & F Partnership's application is Policy UD4.4(e) which names Meeanee as an inappropriate residential greenfield area within the Heretaunga Plains sub-region where future residential greenfield growth is inappropriate beyond the existing settlement pattern. Several other objectives and policies in RPS Chapter 3.1B are also particularly relevant in this case. Table 1 below elaborates on a selection of those provisions.
16. Section 104(1)(b)(v) of the RMA requires the consent authority to have regard to relevant provisions of the RPS. It is our submission that objectives and policies in Chapter 3.1B are indeed relevant to A & F Partnership's subdivision consent application. It is also the Regional Council's submission that by

¹ Heretaunga Plains Urban Development Strategy, s 2.5.2 Physical Constraints, pg 34.

² Heretaunga Plains Urban Development Strategy, s 5.34 Stormwater, pg 144

having due regard to the RPS, (objectives and policies in Chapter 3B in particular) that the consent authority would find the proposal is contrary to those provisions.

17. As an aside, we note that the applicant's agent (Opus International Consultants in the Napier planning office) had an active role in preliminary drafting Change 4 to the RPS. We are surprised that the application by A & F Partnership (including the AEE) has given scant regard to the RPS and relevant regional plans.

City of Napier District Plan

18. Napier City Council will be aware that the Regional Council made a submission on Change 10 to the district plan. Napier City Council has heard submissions on Change 10, but decisions are still pending (at the time of writing this submission).
19. The Regional Council's submission on Change 10 covered several matters, including the relationship between Change 10 (i.e. the district plan) and Change 4 (i.e. the RPS). The Regional Council considers that, at the very least, the Napier District Plan should include provisions cross-referencing to urban growth management provisions in Chapter 3.1B of the RPS (although we argued that a cross-reference alone would not properly give effect to relevant RPS objectives and policies). The Regional Council also submitted that Change 10 should be amended to inform district plan users that Jervoistown and Meeanee are identified as inappropriate greenfield growth areas according to HPUDS and RPS Policy UD4.4(e).
20. We note that Change 10 (as notified) proposes inserting two new policies (Policy 33.4.10 and 33.4.11) which direct avoidance of residential development in the Rural Zone outside of certain suitable greenfield growth areas. While rules in proposed plans do not have immediate legal effect³, there is nothing preventing policies and other provisions in proposed plans from having some legal effect. The Regional Council submits that the consent authority in this case, should give strong regard to Policies 33.4.10 and 33.4.11 in Change 10 because:
 - a. those policies (in part) give effect to relevant objectives and policies in the RPS; and
 - b. further assist in embedding HPUDS' settlement pattern into statutory planning documents (i.e. the district plan).

Applicant's assessment of effects (AEE) on the environment

21. In Chapter 6 of the applicant's AEE, both HPUDS and the RPS are considered under RMA s104(1)(c) as Other Matters. This is not entirely accurate and could lead to disingenuous consideration of relevant planning provisions in this case. For starters as noted above, RMA s104(1)(b)(v) clearly places an obligation on the consent authority to have regard to relevant provisions of the RPS, and certainly at least RPS Chapter 3.1B is particularly relevant. Nonetheless, s104(1)(c) remains as the foothold to consider relevant provisions of HPUDS (plus other non-statutory planning documents) insofar as the matters for the consent authority's discretion allow.
22. Chapter 6.3 of the applicant's AEE addresses the RRMP, but this appears to have completely disregarded Chapter 3.1B of the RPS and its particular relevance (and implications) for the proposal. Instead, only a very broad conclusion is reached. The AEE states *"the overall conclusion as to how this proposed subdivision relates to the provisions of the RPS and Plan is that it is consistent and does not threaten any of the outcomes the Regional Council is seeking to achieve through the promotion of its objectives and policies."*
23. It is very difficult to concur with this assessment. If fuller and proper regard was to be given to the objectives and policies in RPS Chapter 3.1B (and other RPS chapters), then the lack of 'strategic fit' of the proposed subdivision with those provisions would be abundantly clearer. A different conclusion

³ Rules in proposed plans are not to have immediate legal effect, except in certain circumstances (refer ss86A – 86G, RMA). These sections do limit application of other provisions in proposed plans (refer s86A(2) RMA).

would surely have been reached. It appears that the application ‘jumps’ to consider means of mitigating adverse effects that may (or may not) be “consistent” or “threaten any of the outcomes” that the RRMP (including the RPS) is promoting. In this way, the proposal clearly overlooks the broader implications of the proposal in undermining the agreed settlement pattern and discouragement of ad-hoc residential and lifestyle developments in the Heretaunga Plains sub-region.

24. The following table summarises some of those provisions that are considered particularly relevant to this proposal (but this table is not exhaustive).

Table 1 - Selected provisions from RPS Chapter 3.1B

RRMP inc RPS Ch 3.1B	Description	Comment
Objective UD1	The establishment of compact and strongly connected urban form which among other things avoids unnecessary encroachment of urban activities on versatile soils.	The proposed subdivision does not provide a contiguous urban form with the existing Meeanee settlement pattern and would result in further fragmentation of existing productive land. The proposed subdivision is not consistent with Objective UD1 of the RPS.
Objective UD2	Encourages higher density development and provides for the intensification of residential areas.	The proposal would result in creation of additional ‘lifestyle’ lots. Assessments undertaken during the preparation of HPUDS indicated that there was an over representation of lifestyle blocks available in the Heretaunga Plains sub-region (compared against projected market demand for such sites and other housing choices). Essentially, the application is proposing further ad-hoc lifestyle development on productive land in that is not contiguous with other development nor an intensification of existing urban form. The proposed subdivision is not consistent with Objective UD2.
Policy UD1	Directs that when considering urban development priority be placed on the retention of versatile soils and ensuring the utilisation of existing and planned infrastructure.	Meeanee is not currently reticulated for wastewater and is poor draining with a high water table which leads to significant servicing issues. At this time there is no intent to construct servicing infrastructure i.e. mains sewers. It is likely that there are other infrastructural servicing issues in the Meeanee vicinity. Policy UD1 therefore directs that urban expansion in Meeanee is not to be prioritised over other more suitable locations ⁴ .
Policy UD3	Discouraging or avoiding ad-hoc residential development outside of existing rural residential zones.	The subject property is zoned as Main Rural in the Napier City District Plan. The proposal is not within an existing zone providing for typical residential development or residential ‘lifestyle’ development. The Rural Zone (and associated policies) discourages such developments and certainly doesn’t “provide for” them. NCC’s Change 10 is partly giving effect to Policy UD3 (e.g. the inclusion of Policies 33.4.10 and 33.4.11).
Policy UD4.4	Inappropriate residential greenfield growth areas	Both Jervoistown and Meeanee have been determined through the HPUDS process to be inappropriate for further growth beyond the existing settlement pattern ⁵ . This was in part due to poor drainage and infrastructural constraints leading to increased development costs. Policy UD4.2 does not provide an ‘alternative pathway’ for inappropriate greenfield areas to be reassessed on a case-by-case basis. To do so would severely undermine the settlement pattern and sequencing of development within the Heretaunga Plains sub-region previously adopted in HPUDS. A fuller review of HPUDS would be the suitable pathway to revisiting policy of Meeanee and Jervoistown being inappropriate for future greenfield development. The outputs of such a review is anticipated in Policies UD14.1 and UD14.2.

⁴ As identified in RPS 3.1B Policy UD4.3.

⁵ Included in the RPS as inappropriate for residential growth as Policy UD4.4

RRMP inc RPS Ch 3.1B	Description	Comment
Policy UD12	A range of matters need to be considered when preparing or assessing proposals for urban development (e.g. residential activities in rural zones)	Policy UD12 outlines a range of additional matters that the consent authority (in this case) must have regard to. However, this is <u>not</u> merely a 'checklist' exercise that can be applied in isolation of the policy guidance and directives elsewhere in Chapter 3.1B. In other words, ticking all the relevant matters in this list does not trump requirements and directives in other policies.
Policy UD13	Local authorities are to ensure [planned and coordinated] developments are appropriately serviced.	This is another policy cornerstone of HPUDS now embedded in the RPS. The applicant proposes on-site servicing. No reticulated wastewater, water supply or stormwater services are planned by local authorities for this area.

Submitter's request

25. The Regional Council requests that Napier City Council:

- a. waives the lateness of this submission and/or grants an extension to the submission period so that this submission can be considered by the Consent Authority; and
- b. declines the application.

Other Matters

26. We do wish to be heard in support of our submission.

27. We would not consider presenting a joint case with other submitters.

28. Regional Council representatives are willing to have further discussions with Napier City Council planning staff about matters raised in this submission as they prepare their s42A hearing report over the coming weeks.

29. The Regional Council's address for service in relation to this submission is:

Hawke's Bay Regional Council, 159 Dalton Street, Private Bag 6006, NAPIER 4110
 Attn: Esther-Amy Powell
 p: 06 833-8026
 e: esther-amy@hbrc.govt.nz

30. Thank you for the opportunity to make this submission. If you have any queries on this submission, in the first instance please contact Esther-Amy Powell using the details above.

Yours sincerely



LIZ LAMBERT
INTERIM CHIEF EXECUTIVE