

Consent Number:	SS-2019-9001-00
Applicants:	Barry Raynes
Site address:	60 Pohutu Street, Whakatane
Legal Description of Site:	Lot 25 DPS 3057
Site Area:	943m²
Zoning:	Residential
Special Features / Policy Areas / Hazards:	N/A
Description of Application:	Two lot subdivision

1.0 Summary of Proposal

The application to undertake a two lot residential subdivision at 60 Pohutu Street, Whakatāne was received by Council on 31 July 2019. The applicant, proposes to create Lot 1, being 475m² and containing an existing dwelling, and Lot 2, a rear allotment of 468m² that contains a garage (to be removed) and several small sheds. The proposed scheme plan of subdivision identifies that the existing vehicle crossing will be removed and both proposed lots will share vehicle access from Pohutu Street, over a newly-created vehicle crossing and right of way along the eastern boundary (Figure 2).

The site is a flat residential allotment and is zoned Residential on the Whakatane District Planning Maps (Planning Maps). The 943m² property is developed with one dwelling, a garage and several small sheds. It is legally described as Lot 25 DPS 3057. For a more detailed description of the site, surroundings and application, please refer to the *Section 95 Non-Notification Recommendation and Decision Report*.

A Section 92 request for additional information was sent to the applicant on 9 August 2019, requesting information regarding the distance of the existing dwelling to proposed boundaries, the size and dimensions of the proposed outdoor living space, and the proportion of proposed impermeable surfacing. The further information was provided on 14 August 2019.

The proposal is inconsistent with the 4m carriageway width requirement of Rule 13.2.4.1 of the Whakatāne District Plan (District Plan), as well as Rule 4.2.7.1(c) by way of Rule 12.3.5.1, insofar as the proposed outdoor living space will not be directly accessed from a main living area.

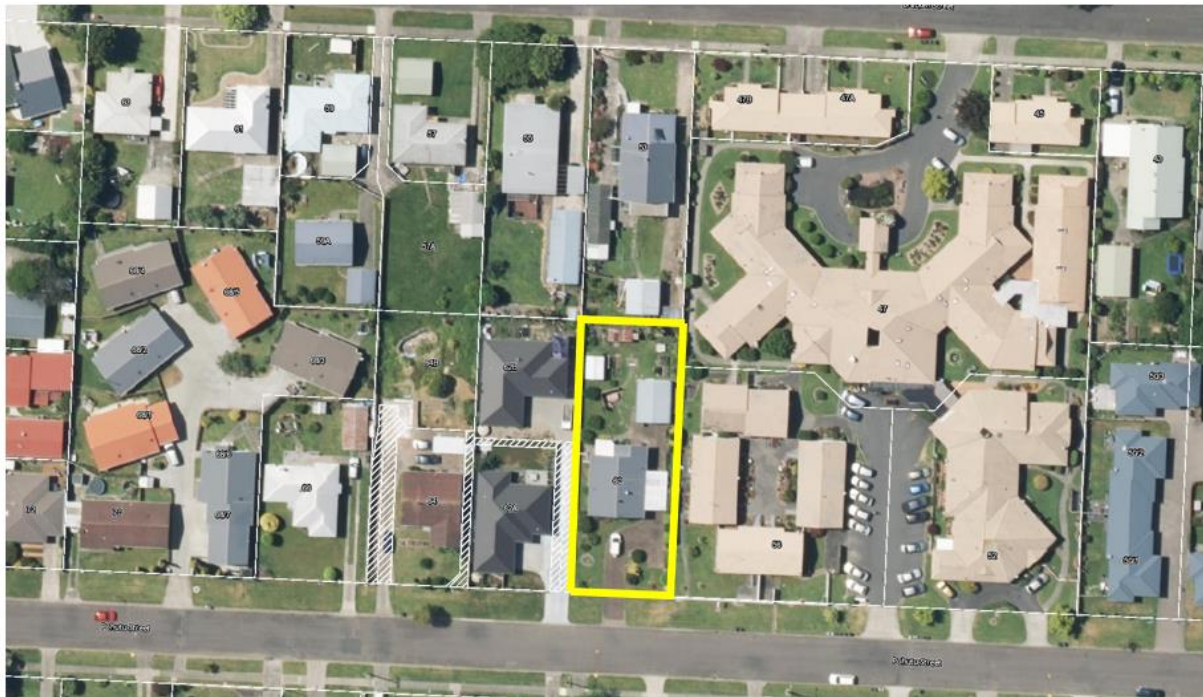


Figure 3: Subject site and surrounds

2.0 Reasons for Consent

Whakatāne District Plan (District Plan) Rule 12.2.1.1.1 states that subdivision complying with all standards is a Controlled activity. There are two standards that this subdivision cannot meet. These are:

- The proposal does not comply with the standard specified by District Plan Rule 4.2.7.1(c) because the proposed outdoor living space will not have direct access from the indoor living area. Consent is therefore required pursuant to Rule 12.3.5.1 (General Subdivision Standards - Existing Buildings).
- The existing vehicle crossing will be removed and a new crossing and right of way constructed to provide access to each proposed allotment. The proposed right of way does not comply with District Plan Rule 13.2.4.1 for width, being 3.5m wide instead of the required 4m.

As a result, this proposal does not constitute a Controlled activity, rather it must be assessed against Rule 12.2.1.1.17, as a subdivision not otherwise provided for. This rule attracts a non-complying activity status.

All other matters relevant to the subdivision have been considered and in this regard, the proposal is considered to comply with the District Plan. Therefore, resource consent is required under Rule 12.2.1.1.17 – Non-Complying Activity – *Any other form of subdivision not otherwise provided for.*

3.0 Existing Environment

3.1 Surrounding Land Use/s

The site is in a well-established residential area. Surrounding properties are a mix of single dwellings on larger sections and infill developments similar to this proposal. The property to the east contains the Golden Pond Home and Hospital, a retirement village and aged care facility.

3.2 Significant Features

There are no significant features within, or near, the subject site.

3.3 Title Search

There are no relevant covenants or consent notices on the Record of Title.

4.0 Actual and Potential Effects on the Environment

4.1 Potential Effects Resulting from the Application

The Section 95 *Notification Recommendation and Decision Report* addressed the following effects:

- Design and layout of the subdivision;
- Water management and design;
- Residential character and amenity; and,
- Traffic movement on and off site.

An assessment of the relevant actual and potential effects on the environment is further discussed in section 7.1 of this report.

4.2 Proposed Mitigation

No mitigation measures are proposed.

4.3 Positive Effects

The proposal will provide an additional residential allotment in an appropriate location. The site has good pedestrian and cycling links to local walkways, the Whakatāne town centre and recreational areas.

4.4 Effects to be disregarded

Under Section 104(2) of the Act, when forming an opinion for the purposes of Section 104(1)(a), a Council may disregard an adverse effect of the activity on the environment if a plan or national

environmental standard permits an activity with that effect (i.e. the Council may consider the 'permitted baseline'). There is no permitted baseline for subdivision. The permitted width for a right of way access is 4m. There is no permitted baseline in relation to the respective configurations of outdoor living areas and main living areas.

Under Section 104(3)(a) of the Act, when forming an opinion for the purposes of Section 104(1)(a), a Council must not have regard to any effect on a person who has given written approval to the proposal, nor any trade competition or effects of trade competition.

No written approvals have been received. Trade competition is not relevant.

5.0 Notification Decision

Under Section 95 of the Act, a decision has been made to process the application on a Non-Notified basis. See the '*Non-Notification Recommendation and Decision*' report for this consent application.

6.0 Statutory Assessment

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS).

When considering a consent application, the authority must 'have regard' to the relevant provisions of a National Environmental Standard. The subject site has not been identified as having accommodated an activity listed on the Hazard Activities and Industries List. For this reason, the proposal does not require assessment against the NESCS.

Bay of Plenty Regional Policy Statement and Bay of Plenty Natural Resources Plan

The site contains no significant features. It is not within the coastal environment, an identified natural hazard area or close to a waterway. The site is in a well-established residential area. On this basis, it is not considered that the proposed subdivision will be contrary to the objectives and policies of the Bay of Plenty Regional Policy Statement or those of the Bay of Plenty Natural Resources Plan.

7.0 104D - Particular Restrictions for Non-Complying Activities

Section 104D of the RMA specifies the following in relation to activities with a Non-complying status.

- 1) *Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*

- a. *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - b. *the application is for an activity that will not be contrary to the objectives and policies of—*
 - i. *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - ii. *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - iii. *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
- 2) *To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.*

The following discussion contains an assessment of the proposal against these S.104D matters.

7.1 104D(1)(a) – Assessment of Environmental Effects

An assessment of the adverse effects of the activity on the environment in accordance with section 104D(1)(a) is tabulated below.

Rule	Comment
3.7.28.1 Amenity values and rural or urban character effects	
b) The nature and degree of adverse effects from the proposed activity upon the existing and future amenities of the locality, including recreational values, and on the health and safety of the community. h) Potential adverse effects on people such as neighbouring property owners or the immediate community through increased overshadowing or loss of visual privacy.	The subdivision will result in two residential lots, of a standard infill design common to residential areas. Future development will relate to residential activities. Lot 2 has sufficient space for a complying dwelling to be developed when the existing garage is removed. Lot 1 complies with all standards except that the outdoor living area is not directly accessible from the main living area. The amenity effects of this are discussed below. Given the proposal's high compliance with District Plan performance standards, no unanticipated adverse effects on neighbouring properties are likely to arise as a result of the grant of a resource consent.

f) The cumulative visual effect of the length and height of building bulk. g) In relation to applications for Non-Compliance with any bulk and location or lot size requirements, site characteristics such as; iii) the location of existing buildings or mature specimen trees on site.	The proposal breaches bulk and location standards, however the effects of the breaches are wholly internal to the site. Any future proposal for development that breaches a performance standard in a manner that may cause adverse offsite effects will be subject to a resource consent process and consideration of the need for affected party written approvals or notification.
j) Any adverse effect from vehicles entering or leaving the site.	Council's roading authority has commented on the application, and advises that a 3.5m wide right of way will provide acceptable vehicle access to, and egress from, the lots. All other matters relating to traffic movement are compliant with the District Plan. The additional volume of traffic and vehicle movements expected by the granting of this consent are in line with the objectives and policies in the District Plan for the Residential zone.
Rule 4.4.5 - Outdoor Living Space (see Rules in 4.2.7)	
Rule 4.4.5.1 - Council has considered that these matters are relevant to this activity:	
amenity in terms of; i. the quality of the unobstructed outlook; ii. the availability of contiguous public recreation reserve; and iii. access to alternative recreation areas, including but not limited to on-site indoor swimming pool	The nominated outdoor living space on Lot 1 is not directly accessible from the main living area of the dwelling, and can only be accessed internally through two bedrooms. It is noted that the outdoor living space proposed is north facing and private, and is away from the car parking area. Alternatively, the outdoor area that is directly accessible from the main living room is south facing, open to the street and obstructed by the driveway and car parking areas. The northern outdoor living space has greater amenity than what could be achieved from the outdoor space off the living room.
Rule 13.4.7 - Design construction of private ways and access legs (see Rule 13.2.4)	
Rule 13.4.7.1 – Council has considered that these matters are relevant to this activity;	
Traffic volumes and traffic mix relative to existing and future patterns, access, parking and loading on-site	There is sufficient space for the parking and manoeuvring of two vehicles per lot.
pedestrian and cyclist safety	There will be one access way for both lots. Pedestrians and cyclists will benefit, as there

	will be more unobstructed open space available on the footpath.
Construction traffic volumes, traffic mix and hours of operation	No construction is immediately anticipated as a result of this proposal. Future development of the vacant lot is unlikely to generate adverse effects of concern, given construction management obligations that apply under building legislation, and the modest scale (i.e. a single dwelling) of any future development.
The ability of the site to accommodate the traffic anticipated and the nature of the adjacent roading pattern, including the position of the road in the roading hierarchy	Council's roading authority has advised that the increase in traffic generated by one additional residential allotment will have a negligible effect on the safety and efficiency of the wider transportation network.
Formation of the road or access	Vehicle access, parking and manoeuvring areas will be required to be formed in accordance with Council's Engineering Code of Practice.
aspects of the proposal that could compromise the safety and convenience of pedestrians as well as individual and cumulative adverse effects associated with traffic movements	If a fence or landscape planting is proposed within the front yard of Lot 1, the first 2 metres distance as measured in a westerly direction from the western edge of the right-of-way, and from the eastern edge of the right of way in a northerly direction will not exceed 1m in height, to allow on-site traffic better visibility of the footpath and road when exiting from either lot. This will create a safer pedestrian walkway and traffic network.

The above assessment shows that any adverse effects of the activity on the environment will be less than minor, and therefore the proposal meets the requirements of Section 104D(1)(a) of the RMA. On this basis, the Council can proceed to consider the application. Nevertheless, for surety, a consideration of the proposal against the matters of Section 104D(1)(b) of the RMA is below.

7.2 104D(1)(b) – Assessment against the District Plan

The application has been assessed against the following objectives and policies of the Whakatane District Plan in accordance with Section 104D(1)(b) of the RMA.

<i>Objective Res1:</i> <i>The maintenance and enhancement of the character and amenity for dwellings and residential activities within Residential and Urban Living Zoned areas.</i>	The proposal is within the scope of the anticipated density of dwellings provided for by the District Plan and will not be out of character with the surrounding environment. The potential effects on character and amenity as a result of this proposal have been discussed in detail in the Section 95 Non-Notification Recommendation and Decision Report.
Policy 1: To ensure a site is large enough for a proposed use, development or subdivision to ensure residents on-site or in the neighbourhood retain or will have a high level of residential amenity.	The proposed density is compatible with the character of the surrounding residential area. Lot 2 has adequate space to build a dwelling that complies with residential design standards and provides appropriate internal amenity. The amenity of future residents of Lot 1 was assessed in the Section 95 Non-Notification Recommendation and Decision Report. It was concluded that Lot 1 will provide acceptable residential amenity.
Policy 5: To enable changes in land use, including greater density of residential development in urban areas, without compromising the existing level of amenity.	Infill subdivision in the Residential Zone is common. Many other properties on Pohutu Street are similarly developed. The use of the site for residential purposes will have no notable adverse effect on existing amenity and the proposed increased density is consistent with the strategic direction of this policy.
Chapter 12 – Subdivision and Esplanade Reserves	
<i>Objective Sub3:</i> <i>The adverse effects of subdivision on natural and physical resources, are avoided, remedied or mitigated</i>	Subdivision of this nature is anticipated and provided for by the District Plan by way of the nominated minimum lot sizes. The potential adverse effects of the proposal can be mitigated by way of consent conditions.
Policy 2: To ensure that infill housing and houses in identified urban growth areas are able to dispose of stormwater, sewerage and wastewater into Council's systems to avoid, remedy or mitigate adverse effects on the environment.	Consent conditions recommended by Councils Three Waters authority will ensure the proposal avoids adverse effects on the environment.

Policy 3: To ensure that all sites are large enough for the proposed use, development or subdivision and, for residential sites that residents within the site or in the neighbourhood retain or will have a high level of residential amenity.	See comment for <i>Objective Res1</i>.
Chapter 13 – Transportation and Services	
<i>Objective TS1:</i> <i>A safe, efficient, sustainable integrated land transport network.</i>	The Council's roading authority supports the proposal having regard to the operation of the transport network.
Policy 2 : To ensure that adverse effects on traffic movement, safety, sustainability, network capacity and the environment from the location, construction, maintenance and operation of activities are avoided, remedied or mitigated.	The subdivision of the site will include alteration of the existing access arrangements. This will be managed by way of consent conditions and is anticipated to provide a positive streetscape and pedestrian outcome.

The above assessment shows the application will not be contrary to the relevant objectives and policies of the District Plan, and therefore the proposal meets the tests of Section 104D(1)(a) of the RMA.

8.0 Other Matters s.104 (1)(c)

1. Financial Contributions for Roads and Public Reserves

A financial contribution is required for this application in accordance with Chapter 14 of the District Plan.

Adopted: 28 June 2018

Commences: 1 July 2018

Financial contributions provide a mechanism for the Council to recover costs (or other in-kind contributions) from developers to help manage the direct impacts and adverse effects of their developments.

As with development contributions, financial contributions provide a mechanism to recover a fair proportion of development-related costs from developers, rather than these costs being passed on to ratepayers. Financial contributions work hand-in-hand with development contributions, ensuring that the level of contribution is fair, transparent, and not taken twice for the same purpose.

For the purposes of Chapter 14 (Financial Contributions) of the Whakatāne District Plan, the Council's Long-Term Plan must include defined information to allow monetary contributions to

be charged for subdivision, development and use of land, towards the upgrading of roads and the acquisition of reserves and/or development of reserves.

The financial contribution (for reserves) for this subdivision is \$2,300.00 (+GST).

2. Development Contributions

A development contribution is required for this application.

Under the Local Government Act 2002, Councils are permitted to take development contributions towards the costs that capital growth imposes on a community. The financial contribution policy of the Council's Long Term Plan incorporates a development contribution based on the capital expenditure for infrastructure and community facilities for that ten-year period.

The purpose of the development contributions provisions (and the need for a policy) is:

To enable territorial authorities to recover from those persons undertaking development a fair, equitable, and proportionate portion of the total cost of capital expenditure necessary to service growth over the long term.

The policy has been developed to meet the principles of the Act that (amongst other principles) require development contributions to be required if the effects or cumulative effects of development will create (or have created) a requirement for the Council to provide (or to have provided) new, or additional assets, or, assets of increased capacity:

Once consideration has been given to the capacity life of the assets in a way that avoids over-recovery of costs allocated to development contribution funding;

Once consideration has been given to the persons who will benefit from the assets, including the community as a whole, and those who create the need for those assets;

For, or towards, the purpose of the activity or the group of activities for which they were required, and for the benefit of the district or the part of the district where they were required.

The policy will apply to the type and/or location of development, where applications are received for:

- Resource consent (land use and subdivision consents); or
- Building consents; or
- Authorisations for service connection.

This policy applies to any applications received for resource consent, building consent or authorisations for service connections on or after 1 July 2018, for the type of activity or within a defined area as stipulated in this policy.

The development contribution estimated for this proposal is \$3,208.00 (+ GST).

8.0 Section 106 – Consent Authority May Refuse Subdivision Consent in Certain Circumstances

In relation to subdivisions, the consent authority may refuse to grant a consent or impose conditions if:

- (i) there is a significant risk from natural hazards. This assessment requires consideration of:
 - a. The likelihood of natural hazards occurring;
 - b. The material damage to the subject land, other land, or structures that would results from natural hazards; and,
 - c. Any likely use of the land that would accelerate, worsen or result in material damage of that sort.

(“Natural hazards” may include erosion, falling debris, subsidence, slippage or inundation from any source); or
- (ii) Whether sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.

The subdivision is not expected to subject the proposed lots, or any structures upon them, to natural hazards. The site is not subject to District Plan rules relating to the management of natural hazards. Any future development of the site will be subject to the resource consent requirements of the day, which will consider the effects referred to above if appropriate. The proposal will provide legal access for each lot to a road and an acceptable access design.

Overall the proposal complies with Section 106 of the Act.

9.0 Part 2 Matters

Section 5 describes the purpose of the Act:

5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*
 - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations;*
 - and*

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Section 6 describes matters of national importance to be recognised and provided for. There are not considered to be any matters of national importance relevant to this proposal.

Section 7 describes other matters that are relevant. In relation to this proposal these matters include:

(c) The maintenance and enhancement of amenity values;

(f) Maintenance and enhancement of the quality of the environment.

Section 8 requires that the principles of the Treaty of Waitangi be taken into account.

It is concluded that the proposal is also consistent with the principles (Section 6 – 8) of the Act. Overall, the application is considered to meet the relevant provisions of Part 2 of the Act as the proposal achieves the purpose (Section 5) of the Act, being the sustainable management of natural and physical resources.

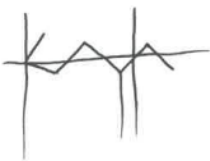
10.0 Consent Term

The standard consent term of five (5) years has been applied to this consent.

11.0 Recommendation

The above assessment demonstrates that any actual and potential effects of the proposal are acceptable and that the proposal is consistent with the relevant objectives and policies of the Whakatāne District Plan. The proposed activity meets the purpose and principles of Part 2 of the Act. Therefore it is recommended that, subject to the conditions listed within the decision to be served under Section 113 of the Act, resource consent for the proposal be granted.

Reporting Planner



Kayla Manson

Approved By:



Resource Consents Planner

Date: 19 September 2019

Senior Planner

Date: 20 September 2019