

## NON-NOTIFICATION RECOMMENDATION AND DECISION

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|-----------------------------------------------------------|------------------------------------|
| <b>Consent Number:</b>                                    | <b>SS-2019-9001-00</b>             |
| <b>Applicants:</b>                                        | <b>Barry Raynes</b>                |
| <b>Site address:</b>                                      | <b>60 Pohutu Street, Whakatane</b> |
| <b>Legal Description of Site:</b>                         | <b>Lot 25 DPS 3057</b>             |
| <b>Site Area:</b>                                         | <b>943m<sup>2</sup></b>            |
| <b>Zoning:</b>                                            | <b>Residential</b>                 |
| <b>Special Features /<br/>Policy Areas /<br/>Hazards:</b> | <b>N/A</b>                         |
| <b>Description of Application:</b>                        | <b>Two lot subdivision</b>         |

### 1. Introduction

Barry Raynes has applied to subdivide his property at 60 Pohutu Street, Whakatane. The subject site is legally described as Lot 25 DPS 3057 and is 943m<sup>2</sup>. The site can be described as a typical full-size residential allotment and currently contains a dwelling, a garage and several small sheds (Figure 1). Surrounding properties are a mix of single dwellings on larger sections and smaller infill development, like that which is proposed by this application. The property directly to the east contains the Golden Pond Home and Hospital, which is a medium-sized retirement village and aged care facility. The surrounding area is predominantly flat.



Figure 1: Subject site and surrounds

The application is seeking to create one additional residential allotment at the rear of the site. The subdivision will result in proposed Lot 1, being 475m<sup>2</sup>, containing the existing dwelling; and proposed Lot 2, being 468m<sup>2</sup>, that contains the garage and other sheds. Both Lots 1 and 2 will gain access via a new right of way, identified as 'A' on the proposed scheme plan of subdivision (Figure 2).

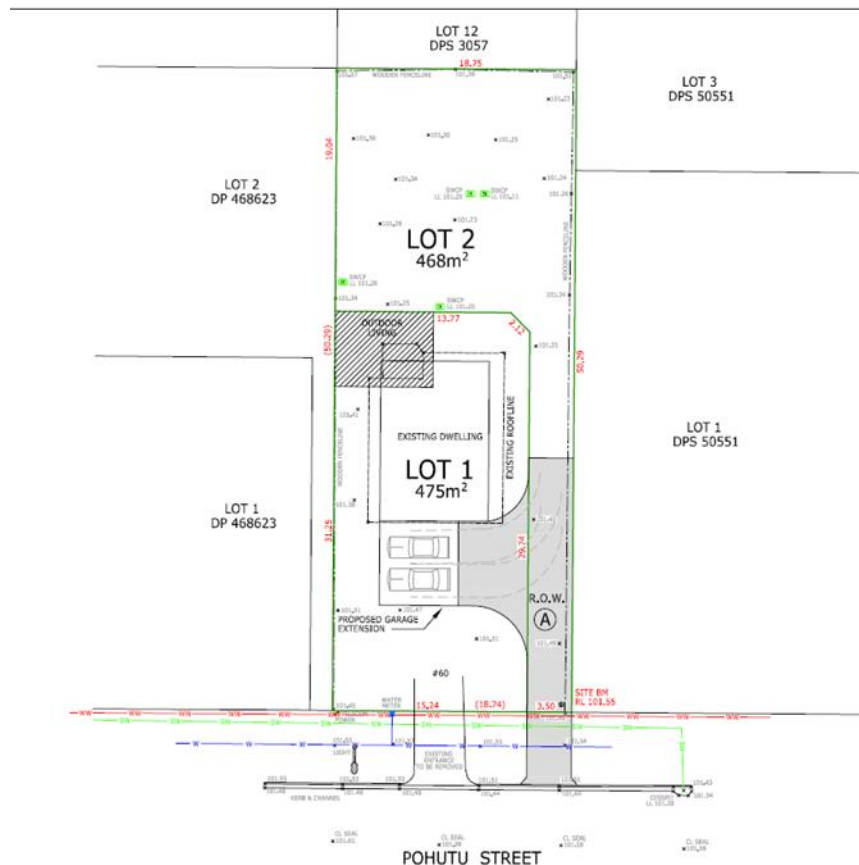


Figure 2: Scheme plan provided with application

The garage will be removed from Lot 2 to allow space for a future dwelling to comply with the Residential Zone development performance standards. In the case of any future non-compliance, resource consent may be required in accordance with the planning requirements of the day.

The design provides sufficient space for onsite parking and manoeuvring on Lot 1. Compliance will be required to be demonstrated when a future building is constructed on proposed Lot 2.

Council water and wastewater connections are available from Pohutu Street for Lot 2. Lot 1 is already connected.

### **Reasons for consent**

In the 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 must be assessed against Rule 12.2.1.1.17, as a subdivision not otherwise provided for, and processed as a Non-Complying activity.

All other matters relevant to the subdivision have been considered and in this regard, the proposal is considered to comply with the District Plan.

Under the District Plan, resource consent is required pursuant to Rule 12.2.1.1.17 – Non-Complying Activity – *Any other form of subdivision not otherwise provided for.*

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## 2. Public notification assessment

Section 95A of the Resource Management Act 1991 (**RMA**) outlines the steps for determining whether a consent application warrants public notification.

### **Step one – mandatory public notification in certain circumstances**

Section 95A(3) sets out criteria that requires mandatory public notification:

- (a) the applicant has requested that the application be publicly notified:*
- (b) public notification is required under section 95C (Note this includes failure to respond to a s.92(1) request)*
- (c) the application is made jointly with an application to exchange recreation reserve land under Section 15AA of the Reserves Act 1977.*

*Do any of the above apply to this application?*

- ☒ No - The applicant has not requested public notification of the consent, and the application does not meet the test in Section 95C of the RMA or 15AA of the Reserves Act 1997 (Go to Step 2).

**Step two - if not required by step one, public notification precluded in certain circumstances**

Section 95A(5) of the RMA sets out the criteria that public notification must be precluded:

*(a) the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes public notification:*

*(b) the application is for a resource consent for 1 or more of the following, but no other, activities:*

*(i) a controlled activity:*

*(ii) a restricted discretionary or discretionary activity, but only if the activity is a subdivision of land or a residential activity:*

*(iii) a restricted discretionary, discretionary, or non-complying activity, but only if the activity is a boundary activity:*

*(iv) a prescribed activity (see section 360H(1)(a)(i)).*

*Do any of the above apply to this application?*

☒ No – Notification is not precluded (Go to [Step 3](#)).

**Step three – if not precluded by step 2, public notification required in certain circumstances**

Section 95A(8) sets out the criteria for determining whether public notification is required:

*(a) the application is for a resource consent for 1 or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification:*

*(b) the consent authority decides, in accordance with Section 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor.*

*Do any of the above apply to this application?*

☒ No – for the following reasons (go to [Step 4](#)):

Sections 95A (8)(a) does not apply as there are no rules or national environment standards relevant to this application;

In relation to Section 95D, Council may consider any effect(s) relevant to the application. The relevant matters are considered below, to determine whether there are any potential adverse environmental effects associated with this proposal.

#### Design and Layout of the Subdivision

The subject site is in a well-established residential area. Surrounding properties are a mix of single dwellings on full size sections and sections which have undergone infill subdivision. Overall the area is described as a typical small-town residential area.

The proposal is seeking to undertake a residential infill subdivision. This type of development is very typical in and around the residential areas of Whakatane. On Pohutu Street, 11 full sized (800m<sup>2</sup> +) properties remain un-subdivided, seven properties are cross-leased, six have been subdivided in a similar fashion to the application at hand and seven properties are too small to accommodate further subdivision compliant with the current District Plan provisions. This intensification as a result of infill subdivision is an outcome that is promoted by the objectives and policies of the District Plan<sup>1</sup>. Intensifying existing residential areas reduces the demand for urban sprawl onto productive farm land and/or land subject to natural hazards.

The District Plan provides design standards regarding the size and shape of new lots. These standards ensure that new lots can contain a dwelling which can achieve an appropriate standard of amenity. Relevant design standards relate to matters such as yard setbacks, site coverage, parking and manoeuvring etc. Lot 2 will have sufficient size for a complying dwelling 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.

The proposal will integrate with the anticipated density provided for by the District Plan and will not be out of character with the surrounding environment. It is my opinion that the proposed design and layout are appropriate in this regard and will not give rise to adverse environmental effects.

#### Residential Character and Amenity

The proposed subdivision will result in one additional rear allotment. The proposed density will not be out of character with the surrounding residential area. For example, the property immediately to the west of the site has undergone infill subdivision and development, as have several properties in the wider area. Future residential use and development of the new lot is unlikely to affect surrounding residential character and amenity.

In terms of internal amenity for future occupiers, Lot 2 has enough space to build a dwelling that complies with the District Plan residential design standards. Lot 1 has an existing dwelling that is compliant except that the outdoor living space is not directly accessible from the main living area of the dwelling. Rather, it will be accessed internally through two bedrooms. This could lead to a decrease in amenity for occupants of this dwelling.

On review, I note that the outdoor living space servicing proposed Lot 1 is north-facing private, and located away from car parking areas. An alternative outdoor area directly accessible from the main

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<sup>1</sup> Relevant Objectives and Policies of the District Plan to this proposal are discussed in Section 6 of the 42a Report

living room could be provided in the front yard. This alternative would be south facing, open to the street and obstructed by vehicle access and parking areas. In my opinion, notwithstanding the internal access issue, the amenity of the proposed northern outdoor living area will be considerably higher than the likely outcome if the alternative option were to be adopted. In any case, the proposal does not preclude the use of the front yard for outdoor living purposes by future occupants.

#### Water Management and Design

Council's Three Waters Engineer has advised that water and sewerage connections are available to both lots. The Engineer recommended the consent conditions listed below, to be adopted in this resource consent.

- That Lots 1 and 2 shall be provided with independent metered water connections in accordance with Sections 6.1.12 and 6.2.3 of the Council's Engineering Code of Practice.
- That Lot 2 shall be provided with independent sewer connections, either in accordance with Standard Drawing SS01, or by constructing a manhole on the existing lateral in accordance with Standard Drawing SS10. If the latter option is adopted a sewer lateral inspection test shall be carried out at the expense of the consent holder. If the test fails the consent holder shall upgrade the lateral to the required standard. Application for a new connection or CCTV inspection of the existing lateral shall be made to the Council prior to any works commencing on site.
- That engineering plans, specifications and calculations providing for the disposal and control of stormwater from the site shall be submitted to the Council for approval prior to the issue of any building consent in accordance with Section 4.1.7 of the Council's Engineering Code of Practice. The design shall take into consideration the provision of both primary and secondary disposal and control systems.
  - Primary—the primary system shall be required to provide an on-site containment or disposal system designed to cater for rainfall of a ten per cent probability of occurring annually.
  - Secondary—the secondary system capable of carrying surface water resulting from a storm with a 1% probability of occurring annually shall be constructed to ensure that surface water shall not enter buildings. Secondary flow paths shall be shown on the design plans.
- That an "as-built" plan of all new and extended services, including soak rings for stormwater disposal shall be provided to Council for approval. The plans shall be in accordance with the Council's Engineering Code of Practice dated April 2008 and shall be certified as being an accurate record of the location of the services, as constructed, by a registered surveyor or other suitably qualified person. The "as-built" plans shall clearly show which assets are to be vested with the Whakatane District Council.
- That all services (including stormwater disposal systems) are to be contained within each lot's boundaries or appropriate easements shall be duly granted or reserved to provide on-going rights of access and maintenance.

- A desktop investigation indicated there is an existing overland flow path through the property. The design and construction of development shall be such that overland flow paths are provided clear of the building areas on each lot. A separate stormwater and flood assessment shall be provided to Council for approval for any fill placed outside the building platform in areas within the lot. Please consult the Council's Three Waters Department prior to the making of an application for building consent.
- The application indicates that the site contains poor-drainage soils. Properties with these conditions shall be provided with an on-site stormwater capacity equivalent to the volume calculated in accordance with Clause 4.1.9 of the Engineering Code of Practice. The storage container shall have a 25mm diameter outlet at the base and a 100mm diameter sealed piped overflow system connected to the street kerb with an approved kerb connection. Where a gravity discharge to the kerb is not feasible, it will be necessary to install a pumped discharge. This system will be subject to the final approval of the Asset Engineer - Three Waters.

#### Advice Notes:

- The current modelled 1% AEP flood level is 102.0m. The permitted Minimum Building Platform Level would be 102.5m pursuant to District Plan Rule 18.2.3.2. At the time of building, the applicant will need to obtain the current 1% AEP flood level from Council.
- In order to connect to Council's reticulated sewer or water supply system, separate applications must be made to the Council.

#### Traffic Movements

Council's roading authority commented on the application, advising that the proposed 3.5m wide right of way, while less than the District Plan Rules, will provide acceptable vehicle access to, and egress from, the lots. The roading authority advised that the proposed accessway and vehicle entrance must be upgraded to comply with Council's Engineering Code of Practice. The roading authority further concluded that the increase in traffic generated by one additional lot will have a negligible effect on the safety and efficiency of the wider transportation network.

The conditions recommended by the roading authority are below.

- That the existing vehicle crossing to the property at 60 Pohutu Street shall be removed and the footpath, berm, kerb and channel reinstated to the satisfaction of the General Manager Planning and Infrastructure.
- That the new shared vehicle crossing to Lots 1 and 2 shall be formed and constructed in accordance with Standard Drawing R08 of the Council's Engineering Code of Practice. The consent holder shall submit a corridor access request (CAR) and a traffic management plan (TMP), through [www.submitica.co.nz](http://www.submitica.co.nz) at least 10 working days prior to any work required being carried out on Pohutu Street. The consent holder shall contact the Council's Transportation Team to arrange for inspection to be carried out prior to placing of the concrete and they will require 48 hours notice to perform the inspection.

- That the shared access way to Lots 1 and 2 shall be formed and constructed in accordance with Standard Drawings R13 of the Council's Engineering Code of Practice. If surfacing Option C (concrete) is chosen, then 665 mesh shall be installed. The consent holder shall contact the Council's Transportation Team to arrange for an inspection to be carried out prior to pouring of the concrete and they will require 48 hours notice to perform the inspection.
- That the vehicle access and manoeuvring areas shall be formed and constructed in accordance with Rule 13.2.14.1 of the Operative Whakatane District Plan so that they do not permit vehicles to carry deleterious material such as mud, stone, chip, or gravel on to the public street.

Based on the recommended conditions, I conclude that the potential adverse effects resulting from the proposed application on the environment will be less than minor.

**Step Four- Are there special circumstances which warrant public notification?**

*\*\*Note if the consent authority determines special circumstances exist, the council must notify the application (it is not discretionary).*

- ☒ No - I do not see that there are any special circumstances that would warrant public notification of this application. Accordingly, I recommended that the application can be **processed without public notification.**

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### 3. Limited notification assessment

Section 95B of the RMA outlines the steps for determining whether a consent application warrants limited notification.

#### **Step one – certain affected groups and affected persons must be notified**

Section 95B(2) and (3) requires the Council to determine whether the application would affect any customary rights groups, marine title groups, land and persons subject to a statutory acknowledgement.

*Do any of the above apply to this application?*

☒ No – (Go to Step 2).

#### **Step two - if not required by step one, limited notification precluded in certain circumstances**

Section 95B (6) sets out the circumstances where the application must be precluded from limited notification.

(a) the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes limited notification:

(b) the application is for a resource consent for either or both of the following, but no other, activities:

(i) a controlled activity that requires consent under a district plan (other than a subdivision of land):

(ii) a prescribed activity (see section 360H(1)(a)(ii)).

*Do any of the above apply to this application?*

☒ No – Limited Notification is not precluded for the following reason/s (Go to Step 3).

Limited notification for this type of application is not precluded by any District Plan rule or national environmental standard. The proposal is a Restricted Discretionary activity, accordingly Section 95B(6) does not apply.

**Step Three: if not precluded by step two, certain other affected persons must be notified**

Section 95B (7), (8) and (9) set out the notification requirement for affected persons.

*(7) Determine whether, in accordance with section 95E, the following persons are affected persons:*

*(a) in the case of a boundary activity, an owner of an allotment with an infringed boundary; and*

*(b) in the case of any activity prescribed under section 360H(1)(b), a prescribed person in respect of the proposed activity.*

*(8) In the case of any other activity, determine whether a person is an affected person in accordance with section 95E.*

*(9) Notify each affected person identified under subsections (7) and (8) of the application*

*Are the adverse effects on a person minor or more than minor (but not less than minor?)*

- ☒ No – There are no affected owners/persons and/or the effects on those person/s are less than minor as outlined below. (Go to [Step 4](#)).

The proposed activity is not a boundary activity nor a “prescribed activity”. Section 95B(7) does not apply to this proposal.

Under Section 95E of the RMA, the Council must disregard certain effects (Section 95E(2)) and effects to persons who have given written approval to the proposed activity (Section 95E(3)).

The Council has not received any written approval from owners of the adjoining properties.

In relation to Section 95E, the Council has considered the following matters:

- The proposed activity is a Non-Complying activity; Council can consider any matter relevant to the application;
- Sections 95E (2)(a) does not apply as there are no rules, national environment standards or statutory acknowledgements relevant to this application;
- There are no statutory acknowledgments which are required to be addressed.

Council may consider any effect relevant to the application to determine whether any persons may experience minor, or, more than minor, adverse effects as a result of the proposal. Council notes:

- The density of the subdivision is contemplated by the District Plan.

- The density will not be out of character with the surrounding environment
- The subdivision will provide acceptable internal amenity for residents of the existing dwelling.
- In terms of amenity for future occupiers of the lots, Lot 2 has enough space available to build a dwelling that complies with residential design standards. Lot 1 has an existing dwelling that is compliant except that the outdoor living space is not directly accessible from the main living area of the dwelling. The proposed outdoor living space is private, north facing and away from the driveway and parking.
- Water connections can be provided to service the future occupiers of both lots.
- Council's roading authority has confirmed that a 3.5m wide right of way will provide acceptable vehicle access to, and egress from, the lots. Council's roading authority further concluded that the increase in traffic generated by one additional residential allotment will have a negligible adverse effect on the transportation network.

Based on the above, in my opinion the proposed design and layout are appropriate, and the potential adverse effects of the proposal on adjoining properties and any other person will be less than minor.

#### **Step Four- Are there special circumstances which warrant limited notification?**

*\*\*Note if the consent authority determines special circumstances exist, the council must notify the application (it is not discretionary).*

- ☐ Yes – I recommend the application be limited notified for the following reasons:
- ☒ No - I do not see that there are any special circumstances that would warrant limited notification of this application. Accordingly, I recommended that the application can be **processed without limited notification.**

#### **4. Recommendations**

This assessment has shown that the proposal does not meet the criteria for public notification and no other persons will be affected by the proposal to a minor or more than minor extent.

I therefore recommend:

- That the application be processed on a non-notified basis in accordance with Section 95A of the Resource Management Act 1991.
- That pursuant to Sections 95 and 37A of the Resource Management Act 1991, this assessment be adopted within 20 working days after the lodgement date of this consent application (31 July 2019), excluding any period that the processing of the applicant has been put on hold in accordance with the RMA provisions.

Reported



and

Recommended by: \_\_\_\_\_

Date: 18 September 2019

Environmental Planner

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### Decision under delegated authority

- ☒ I agree with the recommendation that the application should be processed on a non-notified basis.

This decision is made under delegated authority by:



Delegated Officer: \_\_\_\_\_

Date: 20 September 2019

**Steve Tuck – Senior Environmental Planner**