

Planners Report 12

Variation 1: Lifestyle Zones and Minden Structure Plan Area

Lifestyle Section – Activity Lists

1.0 Background

- 1.1 This report contains all submission points relating to the Activity List, from Permitted Activities through to Non-Complying Activities. Only three main activities have been reviewed for the Minden Lifestyle Zone, being the minimum land area requirements per additional dwelling, new buildings and subdivision.
- 1.2 Specifically, net land area requirements for more than one dwelling per lot have been reduced from 5000m² to 4000m² in line with the average lot size rule.
- 1.3 New buildings are now listed as Permitted Activities in the Minden Stability Areas (though should apply to entire Minden Lifestyle Zone) if on an approved building site. New buildings require resource consent as a Restricted Discretionary Activity if not on an approved building site.
- 1.4 Subdivision now ranges between Controlled and Restricted Discretionary status depending on Stability Area classification (A, B1, B2, C or none).
- 1.5 To assist with understanding this report, the term “additional dwellings” carries the same meaning as “more than one dwelling per lot” as opposed to the total extra number of dwellings allowed for as it may appear to suggest.

2.0 Issues

- 2.1 Seven submission points were received in opposition to certain activities within the Activity Lists. Three were received in support while four were received in support with amendments. Six further submissions were received.
- 2.2 The main issues raised by submitters can be summarised as follows:

Controlled Activity 16A.3.2 (d)

- 2.2.1 New Zealand Transport Agency (NZTA) opposes the minimum net land areas for additional dwellings on the basis that they do not provide certainty on how many houses can be developed in the Minden Lifestyle Zone. NZTA want additional dwellings to be

Discretionary, having regard to effects on the strategic roading network.

Controlled Activity 16A.3.2 (e)

2.2.2 WBOPDC's submission has highlighted that determining an accurate measurement of slope is too onerous and any major slope issues will be assessed as part of the required geotechnical subdivision report.

2.2.3 Another submitter has suggested that a significant amount of the Minden Lifestyle Zone appears to have had no geotechnical appraisal and therefore the Stability Areas delineated are likely to be approximate. They therefore oppose the 80% requirement. This submitter also opposes the average slope of 12 degrees given it would be hard to assess.

Restricted Discretionary Activity 16A.3.3 (b)

2.2.4 One submitter requests that new buildings and external additions not on an "approved building site" be Restricted Discretionary across the whole Minden Lifestyle Zone, not only within those parts that have been given a Stability Area. This is because many areas are yet to undergo geotechnical analysis and may also have geotechnical constraints.

Restricted Discretionary Activities 16A.3.3 (c) and (d)

2.2.5 The later submitter opposing Rule 16A.3.2 (e) also seeks that 16A.3.3 (c) and (d) be deleted. The outcome being that this will make all subdivision a Controlled Activity within the Minden Lifestyle Zone.

Non-Complying Activities – New

2.2.6 Tauranga City Council want additional dwellings to be limited to 97 and therefore seek that any additional dwelling which exceeds a cumulative total number of 97 shall be Non-Complying. This submission point created Option 3 below.

2.2.7 The SmartGrowth Implementation Committee raised the same concern.

3.0 Options

3.1 Option 1

3.1.1 Retain the Activity Lists as proposed.

3.2 Option 2 - (NZTA)

3.2.1 Delete Controlled Activity 16A.3.2 (d) and provide for more than one dwelling per lot as a discretionary activity, with matters of discretion to include impacts on the roading network.

3.3 Option 3 - (TCC)

3.3.1 Reword Controlled Activity 16A.3.2 (d) to limit total additional dwellings to 97 and add a new Non-Complying Activity 16A.5 (e) for additional dwellings which exceed this cumulative total.

3.4 Option 4

3.4.1 Amend Controlled Activity 16A.3.2 (e) by removing the specific requirements relating to both slope and stability areas, and replacing them with a general requirement to prove compliance with the activity performance standards through geotechnical advice.

Subsequently delete Restricted Discretionary Activities 16A.3 (c) and (d) making all subdivision with the Minden a Controlled Activity.

3.5 Option 5

3.5.1 Amend 16A.3.3 (b) so that new buildings and external additions to buildings not having an approved building site, are Restricted Discretionary throughout the entire Minden Structure Plan Area, not only those areas with a stability rating.

4.0 Advantages and Disadvantages

4.1 Option 1: Retain the Activity Lists as proposed.	
Advantages	Disadvantages
<ul style="list-style-type: none"> Existing activity lists were only general preliminary lists for all Lifestyle Zones and were not responsive to the circumstances of the Minden Lifestyle Zone. Additions provide specific direction for how the Minden Lifestyle can now develop. 	<ul style="list-style-type: none"> Approved Building Site rule does not apply across the entire Minden Lifestyle Zone. Additional dwelling numbers have not been restricted. Submitters have challenged slope and stability calculations that determine Controlled Activity subdivision. Drafting of activity listings (including links) is at times confusing and needs

	to be improved.
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4.2 Option 2: Delete Controlled Activity 16A.3.2 (d) and provide for more than one dwelling per lot as a discretionary activity, with matters of discretion to include impacts on the roading network.

Advantages	Disadvantages
<ul style="list-style-type: none"> Limits additional dwellings to levels where extra traffic movements can be safely accommodated by the existing strategic roading network, before upgrades (as opposed to current limit enforced by density only). Still allows development on a case-by-case basis. Avoids the problems associated with allocating a set number of opportunities amongst a large number of landowners. 	<ul style="list-style-type: none"> More restrictive than a Controlled Activity (Option 3) and creates uncertainty for landowners about whether applications would be granted. Provides no indication on what number of extra additional dwellings may be acceptable – as has been determined for new lots (97). Could restrict the establishment of additional dwellings for an indefinite timeframe (depending on road network upgrades).

4.3 Option 3: Reword Controlled Activity 16A.3.2 (d) to limit total additional dwellings to 97 and add a new Non-Complying Activity 16A.5 (e) for additional dwellings which exceed this cumulative total.

Advantages	Disadvantages
<ul style="list-style-type: none"> Limits the number of additional dwellings to 97 and associated extra traffic movements onto the existing strategic roading network before upgrades (as opposed to current limit enforced by density only). Controlled Activity is less restrictive than Discretionary Activity status (Option 2). Indicates a clear number of additional dwellings that can be granted as a Controlled Activity before they become Non-Complying, consistent with the approach to subdivision. Provides certainty for landowners that development can still occur as of right for that limited time. 	<ul style="list-style-type: none"> Still potentially allows twice as much development as what had been anticipated by NZTA (by limiting new lots to 97). Setting a cap on additional dwellings will create the “first in first served” scenario. Setting a cap leads to issues around how to allocate a limited number of additional dwellings amongst landowners. Could also restrict the establishment of additional dwellings for an indefinite timeframe (depending on the TNL).

4.4 Option 4: Amend Controlled Activity 16A.3.2 (e) by removing the specific requirements relating to both slope and stability areas, and replacing them with a general requirement to prove compliance with the activity performance standards through geotechnical advice.

Subsequently delete Restricted Discretionary Activities 16A.3 (c) and (d) making all subdivision within the Minden a Controlled Activity.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Removing average slope calculation is beneficial. The requirement to have an average slope of 12 degrees or less is considered too detailed and onerous at an activity list level. It also makes it clearer what activity status subdivision is. • Removing the stability qualifier (e.g. 80%) would also make it clearer what activity status subdivision is. • No advantages of allowing all subdivision within the Minden as Controlled. 	<ul style="list-style-type: none"> • No disadvantages of removing average slope calculation. • General wording along the lines of "prove compliance" does not work at an activity list level. The current stability qualifier (e.g. 80%) distinguishes Controlled from Restricted Discretionary subdivision. • Controlled activity applications cannot be declined. This is not appropriate for all subdivision in the case of the Minden where stability issues are well known. It is only appropriate where those risks are minimal, in which case Controlled Activity subdivision have been provided.

4.5 Option 5: Amend 16A.3.3 (b) so that new buildings and external additions to buildings not having an approved building site, are restricted discretionary throughout the entire Minden Structure Plan Area, not only those areas with a stability rating.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Approximately 25% of the Minden Lifestyle Zone has no stability area classification, meaning the risk of instability in these areas is unknown. • It is therefore necessary to require new buildings and external additions in the entire Minden Lifestyle Zone to be Restricted Discretionary and have building sites approved. 	<ul style="list-style-type: none"> • No disadvantages of making this amendment.

5.0 Discussion

5.1 Option1 – Retain the Activity Lists as Proposed

- 5.1.1 The activity lists first prepared under the District Plan Review provided a general picture of which activities would be encouraged or anticipated within the Lifestyle Zones and those activities which would be subject to more consideration. These had always been awaiting review at structure plan stage to be responsive to the individual nature of each lifestyle zone.
- 5.1.2 The main changes made for the Minden Lifestyle Zone have been to provide a more detailed and robust approach to dealing with stability issues at building and subdivision stage. These changes also begin to allow subdivision to occur once an approach is in place.
- 5.1.3 For building, clarity has been provided by adding a new permitted activity for those buildings and additions within an “approved building site”. Those not within an “approved building site” will also now be Restricted Discretionary as opposed full Discretionary which was considered too onerous.
- 5.1.4 Further changes need to be made however because as currently drafted, these provisions only apply to those buildings in the Minden Stability Areas, rather than the entire Minden Lifestyle Zone. This has been raised in submissions and is discussed in more detail under Option 5. More clarity could also be provided to the general drafting of the rules so that the linkages are easier to understand.
- 5.1.5 For subdivision, activity statuses have now been matched to the likelihood of instability, whereas previously all subdivision was Non-Complying in the absence of a structure plan.
- 5.1.6 Controlled Activity subdivision has been allowed for in Stability Areas in cases where the majority of that land being subdivided (80% or more) falls within Stability Area C, and where average is 12 degrees or less. Subdivision is allowed for as a Restricted Discretionary Activity when failing to comply with the above, and is subject to a geotechnical assessment.
- 5.1.7 All subdivision outside of these Stability Areas will automatically be considered as a Restricted Discretionary Activity, and also require geotechnical assessment. This precautionary approach best deals with uncertainty left from not providing a stability rating for all areas.
- 5.1.8 Overall, these new provisions are important to retain because they allow development to begin to occur, while ensuring that risks from instability are mitigated.

5.2 Options 3 and 4 – Additional dwellings.

- 5.2.1** NZTA and TCC have both requested changes on the Controlled Activity Rule 16A.3.2 9 (d) which allows for additional dwellings per every 4000m² of net land area. They both wish to limit the total number of additional dwellings during the first stages of development at the Minden Lifestyle Zone.
- 5.2.2** New Zealand Transport Agency (NZTA) (in Option 3) has suggested that additional dwellings should not be Controlled Activities and rather should be Discretionary Activities. NZTA point out that the current Controlled Activity approach does not limit the number of additional dwellings that can be built in the first stage of development for the Minden Lifestyle Zone, as has been done for new lots (total 97). For them, it creates uncertainty around what impacts there may be on the strategic roading network.
- 5.2.3** Tauranga City Council have picked up on this same issue but instead suggest allowing the first 97 additional dwellings as Controlled Activities, and then making them Non-Complying e.g. from the 98th additional dwelling onwards. Given new lots have in fact been limited to 97, it makes sense to also limit the number of additional dwellings.
- 5.2.4** The Discretionary Activity option would enable Council to decline applications when the amount of additional dwellings has exceeded a number that could be safely accommodated by the existing strategic roading network. Such a wide open assessment however leaves no certainty to anyone that this option is a genuine possibility.
- 5.2.5** The Non-Complying option on the other hand would set a clear expectation that there will be 97 additional dwellings allowed for. The problem with doing this though, is that it effectively doubles the anticipated number of vehicles moments onto the existing strategic roading network. The 97 limit on subdivision was specifically agreed to because it was the upper limit of what would be acceptable. Allowing a further 97 additional lots defeats the purpose of this limit.
- 5.2.6** This option also raises the problem of how to allocate the additional dwellings amongst landowners, which would be necessary to avoid landowners 'rushing' to uptake opportunities before another and/or applying for larger numbers than what they otherwise would have. It would also lead to confusion around how many of the 97 additional dwellings have been granted, are being processed, or are currently being applied for by other applicants. This problem has already been encountered with the 97 limit placed on subdivision, which required quite a lengthy solution (see report 19).

5.3 Option 5 – Removing the specific slope and stability requirements from controlled subdivision rule, and making all subdivision controlled.

- 5.3.1** Controlled Activity 16A.3.2 (e) allows for controlled subdivision in scenarios where the risk of stability is considered low. This is an alternative to a blanket approach where the same level of restriction would be given despite different levels of risk.
- 5.3.2** The specific measurements for stability and slope clearly define what a lower risk of instability is for the purpose of distinguishing this controlled activity subdivision from restricted discretionary subdivision (where the risk is greater).
- 5.3.3** The submitter has suggested (through deletion of 16A.3.3 (c) and (d)) that all subdivision within the Minden Lifestyle Zone should be a Controlled Activity where geotechnical advice can prove compliance with activity standards. The problem with this approach is that applications for Controlled Activities cannot be declined and there may be cases when they need to be where adverse effects cannot be mitigated. Restricted Discretionary status allows applications to be declined.
- 5.3.4** Removing the specific measurements in favour of general wording does not work at an activity list level where activities need to be clearly defined. However, the second bullet point requiring “an average slope of 12 degrees or less” is too onerous and should be removed. Impacts of slope should instead be considered at the time of assessment.

5.4 Option 6 – Approved building site rules applying to all Minden Lifestyle Zone.

- 5.4.1** As drafted, Permitted Activity 16A.3.1 (m) provides for new buildings and external additions to buildings in the **Minden Stability Areas only** when on an “approved building site”. This rule however should have applied to all areas within the Minden Lifestyle Zone.
- 5.4.2** As a consequential amendment, Restricted Discretionary Activity 16A.3.3 (b) also needs re-wording so that new buildings and external additions to buildings are Restricted Discretionary Activities in the entire Minden Lifestyle Zone.
- 5.4.3** These two rules would also benefit from re-drafting to make the links clearer.

6.0 Recommendation

6.1 That the Activity Lists are retained other than as amended below;

6.2 In response to Options 2 and 3

6.3 That Controlled Activity 16A.3.2 (d) is amended as follows;

~~"More than one dwelling per lot in the Katikati and Te Puke Lifestyle Zones subject to performance standards 16A.4.1(g) with a minimum net land area of 3000m² and minimum average net land area of 5000m² (with the exception of the Minden Lifestyle Structure Plan area where the minimum average shall be 4000m²)"~~

And that a new Discretionary Activity is subsequently added to 16A.6.4 as follows;

"More than one dwelling per lot in the Minden Lifestyle Structure Plan Area".

6.4 In response to Option 4

6.5 That Controlled Activity 16A.3.2 (e) is amended as follows;

~~"Subdivision within the Minden Lifestyle Structure Plan area, subject to the performance standards in 16A.4.2 where the site is made up of land zoned stability area A, B or C and where;~~

- ~~• 80% or more of the land to be subdivided is within Stability Area C and;~~
- ~~• the entire area to be subdivided has an average slope of 12 degrees or less."~~

6.6 In response to Option 5

6.7 That Permitted Activity 16A.3.2 (m) is redrafted as follows;

~~"New buildings and external additions to building in the Minden Stability Areas within an Approved Building Site approved through subdivision (See Rule 8.4.2)."~~

"New buildings and external additions to buildings in the Minden Lifestyle Structure Plan area within an *Approved Building Site*"

6.8 That Restricted Discretionary Activity 16A.3.3 (b) is also redrafted to read;

~~"New buildings and external additions to buildings in the Minden Stability Areas (See Rule 8.3.1(c)) including those not complying with Rule 16A.3.1 (m)."~~

"New buildings and external additions to buildings in the Minden Lifestyle Structure Plan Area not within an *Approved Building Site*, subject to the requirements in 16A.6.3".

6.9 The following submissions are therefore:

6.10 Accepted

Submission	Point Number	Name
58	8	NZ Transport Agency
FS 89	7	NZ Transport Agency Opposes 49.24
57	6	Powerco Limited
50	2	SmartGrowth Implementation Committee
49	25, 26	Surveying Services
40	1	Western Bay of Plenty District Council

6.11 Accepted in Part

Submission	Point Number	Name
FS 90	12	Milne, Aaron Supports 9.3
FS 89	8	NZ Transport Agency Supports 9.3
49	23	Surveying Services
9	3	Tauranga City Council
24	3	Te Puna Heartlands

6.12 Rejected

Submission	Point Number	Name
FS 90	11	Milne, Aaron Supports 2.1
49	22, 24, 44	Surveying Services
2	1	Zingel, Howard

7.0 Reasons

7.1 Option 1

7.1.1 The activity listings for new buildings, additional dwellings and subdivision are retained in principle (with amendments) because they direct how subdivision and development can occur within the Minden Lifestyle Zone. They also address zone specific constraints.

7.2 Options 2 and 3

7.2.1 Discretionary Activity status was favoured over Non-Complying for two main reasons;

7.2.2 Firstly, an extra 97 additional dwellings doubles the anticipated growth allowed for the zone as represented by the limit of 97 new lots.

7.2.3 Secondly, because of the difficulty in allocating a small number of opportunities to a large number of landowners as has been experienced with the allocation of new lots.

7.3 Option 4

7.3.1 The average slope calculation is considered to be onerous and is also too vague at an activity list level.

7.4 Option 5

7.4.1 The current drafting of Rules 16A.3.1 (m) and 16A.3.3 (b) is confusing and does not achieve what was intended.

7.4.2 The recommended wording shows that new buildings and external additions within the entire Minden Lifestyle Zone will need to be built on an "Approved Building Site". The current drafting unintentionally restricted this rule to only the Stability Areas, whereas not all areas have such a rating but also need this risk managed.

7.4.3 The wording of both rules has also has been simplified by referring to the definition of "Approved Building Site" (definition shown by italics) which has also been simplified for the ease of administration (see Report 26). This makes the rule easier to understand as one does not have to look back and forward between rules to establish links.