

Western Bay of Plenty District Council

Minutes of Meeting No. RH15 of the Regulatory Hearings Committee held on 20 December 2018 in the Council Chamber commencing at 11.00am

Present

Independent Commissioner W Wasley (Chairperson), P Mackay, D Marshall, M Murray-Benge, J Scrimgeour, and M Williams

In Attendance

R Davie (Group Manager Policy, Planning and Regulatory Services), C Watt (Consents Manager), C Stone (Intermediate Development Engineer), K Elder (Governance Manager) and M Parnell (Governance Advisor)

Others

Lauren Ford (Consultant Planner, Harrison Grierson), Brent Trail (Managing Director, Surveying Services) and Mathew Nichols (Licensed Surveyor, Surveying Services).

RH15.1 **RC11048(S) - Kenneth and Rosemarie Thompson - Resource Consent to Undertake a Three Lot Subdivision Using Transferable Subdivision Entitlements - 98A Munro Road, Whakamarama**

Chairperson's Introduction

The Chairperson introduced himself and opened the meeting and welcomed those present. He introduced the Committee, outlined procedure and called for introductions from those present.

For the Applicants

Brent Trail, Managing Director of Surveying Services, and Matthew Nichols, Licensed Surveyor of Surveying Services were in attendance on behalf of the Applicant.

For Council

The Environmental Consents Manager introduced the staff present and Lauren Ford, Consultant Planner of Harrison Grierson.

Staff Report

1. The Consultant Planner's report was taken as read and a brief summary of the application was made.

Evidence of the Applicants

2. Mr Brent Trail, Managing Director of Surveying Services presented evidence on behalf of the applicants as set out in para 6.1 of the attached decision dated 20 December 2018 (**Attachment A**).

11.28am The meeting adjourned for the Consultant Planner to look at suggested amendments to conditions.

11.43am The meeting was reconvened.

Staff Comment Following Submissions

3. Ms Lauren Ford Consultant Planner of Harrison Grierson, addressed the Committee. The Environmental Consents Manager and Ms Ford responded to questions as set out in para 6.2 of **Attachment A**.

Applicants Right of Reply

Mr Trail commented that he was regularly asked about right of way responsibility and he understood that, while Council had concerns about them and received complaints regarding them, they were a private responsibility.

Ms Ford outlined amended conditions as set out in para 6.2 (page 7) of **Attachment A**.

Mr Trail thanked the committee for listening to and accommodating the applicant's submission.

Resolved: Williams / Murray-Benge

- a) *THAT the report by the Consultant Planner dated 26 October 2018 is received.*
- b) *THAT pursuant to Sections 104, 104C and 108 of the Resource Management Act 1991, the Western Bay of Plenty District Council grants consent to the application by Kenneth & Rosemarie Thompson to undertake a three lot subdivision using transferable subdivision*

entitlements, being a restricted discretionary activity, located at 98a Munro Road, legally described as Lot 1 DPS 55319 subject to the following conditions:

1. *THAT the activity be carried out in accordance with the subdivision scheme plan prepared by Surveying Services entitled 'Proposed Subdivision of Lot 1 DPS 55319' dated 31/07/2017, Drawing No. 4305.1 and the information submitted as part of this application (except where modified by any conditions of this consent).*
2. *THAT the following financial contributions be paid in respect of the subdivision:*
 - (a) Rural Roding (Kaimai Ward)..... 2 x \$6,937 + GST*
 - (b) District Wide Roding..... 2 x \$533 + GST*
 - (c) Water Supply (Central)..... 2 x \$4,284 + GST*
 - (d) Ecological..... 2 x \$501 + GST*
 - (e) Recreation and Leisure..... 2 x \$5,996 + GST*
3. *THAT with regard to Condition 2, the financial contributions calculated in accordance with the provisions of the Operative District Plan, shall be paid within full within two years of the date of commencement of the consent provided that:*
 - (a) Any financial contribution which is not paid in full within two years from the date of commencement of the consent shall be adjusted so that the amount of the financial contribution required by the resource consent shall be the amount calculated in accordance with the relevant formulae using the updated inputs to those formulae as set out in Council's Annual Plan current at the date of payment.*
 - (b) Any financial contributions not paid within two years from the date of the commencement of the consent shall be (where applicable) paid prior to the issue of a Building Consent under the Building Act 2004, subject to the adjustments referred to in sub-paragraph (a) herein.*
4. *THAT the proposed private way C/F/G be structured in accordance with Council Standard Specification Drawing No's W439 and W440. The water table shall be well defined and potentially armoured to account for the stormwater connections from future buildings on potential Lots 2 and 3 if applicable as determined at the time of engineering plan approval*
5. *THAT over the first 100 metres of ROW B, the southern berm (LHS) of the access way be regraded to create a fall of 5% away from the carriageway for a minimum distance of two metres before rising to meeting original ground level at or before the boundary. The intention is to create a mowable swale which can continue to provide for occasional passing.*
6. *THAT an accurate Council issued RAPID (Rural Address Property Identification) plate be displayed at the vehicle entrance for each new Lot created in accordance with Western Bay of Plenty District Council's*

Rural Property Numbering Bylaw 2005. This condition shall be satisfied prior to the application for 224c certification from Council.

7. *THAT dry 20mm internal diameter water supply pipes to serve proposed Lots 2 and 3 be constructed along private way A/B and proposed private way C/F/G in accordance with Council's Development Code, with the alignment to be selected by the consent holder's representative and the ends capped and clearly pegged. A "paper" as-built drawing should also be provided with the off sets from the adjacent property boundaries shown. The physical connection to Council's watermain shall to be completed as a separate application to Council at the time of Building Consent.*
8. *THAT the existing stormwater system located on existing Private way A/B shall be checked for inlet/pipe capacity and a review shall be undertaken of any scour protection required at the outlet to serve the total design flow (including the addition of two future buildings on proposed Lots 2 and 3). The design shall be detailed on engineering design documents which shall be submitted to Council for approval. Culvert upgrading may be required including a drop structure due to the grate being very susceptible to blockage from leaves.*
9. *THAT stormwater connections shall be provided within the property boundary of the proposed lot 3 to discharge into the wet area located in lot 2 in accordance with Council's Code of Practice. The end shall be capped and clearly pegged. Lot 2 shall, at the time of building, have a stormwater connection discharging into the wet area located therein. Alternatively either lot 2, 3 or both shall have a stormwater connection provide between the property boundary discharging to the water table of G/F/C. The end shall be capped and clearly pegged. This is to be determined at detailed design stage.*
10. *THAT:*
 - a) *Letters are required from power and telecom authorities confirming that the existing power and telecom reticulation in the vicinity of the sites has the capacity to serve future development of the sites to a minimum of a domestic level of service without upgrading.*
 - b) *Where the power and/or telecom reticulation is confirmed not to have the capacity as described above, then the reticulation shall be upgraded by the consent holder at their expense.*
11. *THAT power and telecommunications reticulation be installed to serve the development with the capacity and ability to later provide all proposed residential/commercial lots with individual connections (lead in's). Letters are required to be provided from power and telecom authorities confirming that this condition has been met to their satisfaction.*
12. *THAT pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered on the titles of the proposed Lots 2 and 3, stating: all development (except that all storm water connections shall be made in accordance with condition 9 above) shall*

be undertaken in accordance with the recommendations contained within the report of soils engineer, Michael O'Brien, for O'Brien Geotech Ltd (Project No 622) dated March 2018 or subsequent reports by a suitably qualified geoprofessional or Chartered Professional Engineer in accordance with Council's Development Code.

13. *THAT pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered on the titles of the proposed Lot 3, stating: the discharge of water shall be via the Stormwater connection provided at the time of Council approval pursuant to Section 224(c) of the Resource Management Act 1991. Storm water from the proposed Lot 2 shall discharge directly into the low wet area within the lot.*
14. *THAT the consent holder's representative submit to the Chief Executive Officer or duly authorised officer for approval, with the appropriate engineering inspection fee; construction drawings, specifications, calculations and project cost estimate; covering the stormwater system and the Lot connections into the private way water table, which it is proposed to be built in accordance with Council's Development Code. Construction shall not commence until written approval of the plans and specification has been provided by Council.*
15. *THAT the work required by conditions 4-11 be supervised and certified as complete in accordance with the conditions by the consent holder's representative (refer Section 12.3.9a) to the satisfaction of the Chief Executive Officer or duly authorised officer.*

Advice Notes:

1. *The consent holder should notify Council, in writing, of their intention to begin works prior to commencement. Such notification should be sent to the Council's Compliance & Monitoring Team and include the following details:*
 - *name and telephone number of the project manager and site owner*
 - *site address to which the consent relates*
 - *activity to which the consent relates*
 - *the expected duration of works.*

Notifying Council of the intended start date enables cost - effective monitoring to take place. The consent holder is advised that additional visits and administration required by Council officers to determine compliance with consent conditions will be charged to the consent holder on an actual and reasonable basis as provided for under the Act.

2. *Full compliance with the conditions of consent is necessary to carry out the activity to which this consent relates. Your progress towards satisfying the conditions of consent will be monitored by a Council representative and failure to meet these conditions may result in*

enforcement action being taken in accordance with Council's Monitoring, Compliance and Enforcement Strategy. This may involve the issuing of an Infringement Notice (instant fine) and/or a monitoring fee.

- 3. The consent holder or submitters may Appeal this decision, including any conditions of consent, to the Environment Court within 15 working days of receipt of this decision. Prior to doing so you are advised to engage your own legal advice. Please note, however, that pursuant to Section 116 of the Act that the consent granted and authorised by this decision cannot be given effect to until all Appeals are resolved.*
- 4. Any lack of recorded archaeological sites on the property may be due to one of two factors. This may be because there are no sites present, or there has not been an archaeological survey undertaken on the site. work that may modify, damage or destroy any archaeological site(s), such as earthworks, fencing or landscaping, is subject to a consenting process under the Heritage New Zealand Pouhere Taonga Act 2014.*

The reasons for this decision are as follows:

- 1. That the proposal is in general accordance with the matters outlined in Part 2 of the Act and will contribute to the sustainable management of natural and physical resources through the subdivision and development of land for lifestyle purposes and enable the applicants to provide for their social and economic well-being but ensuring that any effects on the environment are no more than minor.*
- 2. That the proposal on balance in general accord with the relevant District Plan objectives and policies and generally is of a form envisaged by the District Plan.*
- 3. The proposal is consistent with the purpose and principles of the Resource Management Act 1991.*

The meeting concluded at 12.06pm.

RH15

The decision of the Regulatory Hearings Committee meeting held on 20 December 2018 relating to application RC11048(S) - Resource Consent to Undertake a Three Lot Subdivision Using Transferable Subdivision Entitlements - 98A Munro Road, Whakamarama is attached **(Attachment A)**.

IN THE MATTER of the Resource Management Act 1991 (RMA or Act)

AND an application under the RMA to the Western Bay of Plenty District Council by Kenneth and Rosemarie Thompson to undertake a subdivision in respect of property described as Lot 1 DPS 55319 located at 98A Munro Road, Whakamarama.

1. INTRODUCTION

1.1 APPLICATION

The application is to subdivide a 1.41 ha site to create three lots using the District Plan transferable development right provisions. The proposed lots are to be comprised as follows:

- Lot 1, 5,320 m² (Nett 4,140 m²)
- Lot 2, 4,490 m²
- Lot 3, 3,300 m² (Nett 3,050 m²)

It is proposed that all lots are to be accessed via an existing private-way which currently serves 6 lots, including the subject site. Following the proposed subdivision, the private-way will serve a total of 8 lots.

1.2 SITE & SURROUNDING ENVIRONMENT

The subject site is within the Lifestyle Zone and is also within the Minden 1C Structure Plan Area and the s42A report described the site and environment as follows:

“The majority of the site is located within Stability Area – Minden C, and a northern portion of the site (including an area of the existing private-way) is located within Stability Area – Minden A. Approximately 1,700 m² of a northern portion of the site is located within the ‘Minden Lifestyle Structure Plan Area Overland Flow-paths and Local Ecological Features’ overlay.

The site is located on the western side of Munro Road, and is accessed from a private-way off Munro Road. The site comprises an existing residential dwelling and associated

garages/sheds. The topography of the site is relatively flat, sloping up approximately 10 m from the north to the south.

The site is surrounded by other land zoned Lifestyle, along with land used for horticultural purposes.

1.3 APPOINTMENT

I was appointed by the Council as an Independent Commissioner in terms of s34A of the Resource Management Act 1991 (“the RMA”) to chair the Regulatory Hearings Committee, which had a delegation to hear the applicant, submitters and the Council’s reporting officer and to determine the application. The information available to us prior to the hearing included the application, assessment of environmental effects (AEE) report and other information; the submissions and a report prepared by Council’s reporting officer, being the s42A report.

1.4 LIMITED NOTIFICATION

The application was subject to limited notification 10 September 2018 with the submission period closing on 8 October 2018. Notification of the application was made to Mr & Mrs John and Janet Reid; and AA Van Gorp and JMPC Van Gorp-Paulusse.

Matters relating to the limited notification were outlined in the s42A report and the associated notification decision. It is not considered necessary to discuss this matter in this decision as it is not a matter that we have jurisdiction over.

Submissions were received from both parties.

1.5 ACTIVITY STATUS

As noted in the s42A report, the application has elements that have both controlled and restricted discretionary activity status. In accordance with the ‘bundling principle’, the proposal has been considered as a restricted discretionary activity.

1.6 DEFINITIONS

In this Decision we use the following terms:

AEE	-	Assessment of Effects on the Environment report
Applicant	-	Kenneth & Rosemarie Thompson
District Plan	-	Western Bay of Plenty District Plan (Operative)

- RMA - Resource Management Act 1991 and its amendments
- Submitters - Mr & Mrs John and Janet Reid; and AA Van Gorp and JMPC Van Gorp-Paulusse.

2. HEARING

The hearing was conducted on 20 December 2018 in the Western Bay of Plenty District Council Chambers. Appearances were from:

2.1 APPLICANT

- Mr Brent Trail – Managing Director, Surveying Services

2.2 SUBMITTERS

- There were no appearances from submitters

2.3 COUNCIL

- Ms Lauren Ford – Consultant Planner
- Mr Chris Watt – Environmental Consents Manager

2.4 ADJOURNMENT DURING HEARING

During the hearing we agreed to an adjournment to allow Mr Trail, Ms Ford and Mr Watts to discuss matters related to proposed conditions tabled by Mr Trail at the hearing.

Both parties reported back to us when the hearing was reconvened and advised agreement had been reached relating on appropriate draft conditions.

2.5 HEARING CLOSURE

We formally closed the hearing on the day of the hearing after we had concluded that we had sufficient information on which to determine the application.

3. SUBMISSIONS & MAIN ISSUES RAISED

The submissions were received within the statutory time period and are summarised in the s42A report as follows;

Submitter	Summary of Submission	Suggested Outcome
John & Janet Reid	<ul style="list-style-type: none"> • The subdivision will limit their potential to subdivide in the future. • The carriageway does not comply and should be brought up to compliance standards by the subdivider. • The subdivision will contribute to volume of traffic on State Highway 2 which is unfit for the volume using it. 	<ul style="list-style-type: none"> • Driveway must be brought up to compliance standards by the subdivider. • Object to any future subdivision until Munro Road and State Highway 2 are fit for purpose.
AA Van Gorp & JMPC Van Gorp-Paulusse	<ul style="list-style-type: none"> • The subdivision will reduce their property value because the ability to subdivide in the future will be reduced. • The system first in first served is not fair because if they want to subdivide in the future the possibility might not be there. • Change to the rural nature of neighbourhood. • Negative effect of increased use of the private-way by cars and commercial vehicles. • A total stop of subdivisions would be more in line with the views of the local community due to an unacceptable increase of traffic on State Highway 2. 	<ul style="list-style-type: none"> • Reject application.

4. STATUTORY PROVISIONS CONSIDERED

In considering the application, we have had regard to the matters to be considered as set out in s104 of the RMA, recognising the status of the activity as a restricted discretionary activity. Activity status is discussed in section 1.5 of this decision.

We have had regard to the provisions of the District Plan and to Part 2, being the purpose and principles of the RMA.

In respect of a restricted discretionary activity, s104C of the RMA states that a consent authority may grant or refuse consent and if granted, conditions may be imposed under s108 of the RMA.

5. PRINCIPAL MATTERS IN CONTENTION

Having considered the application, submissions and evidence provided, and being guided by the assessment criteria of the District Plan, we consider that the principal issues of contention are:

- Reduction of subdivision potential
- Ability of private-way to accommodate an increase in users
- Stability Area- Minden C

6. SUMMARY OF EVIDENCE

The following summary is not intended to be a full coverage of all matters raised at the hearing. Relevant parts of the evidence presented by the parties are referred to in the Main Findings section of this decision, where it forms a component of the findings by us, in deciding the application.

6.1 APPLICANT

Mr Trail summarised the application and discussed the submissions received opposing the application. He tabled suggested amendments to the draft conditions outlined in the s42A report.

In response to questions, Mr Trail outlined the following:

- The property behind the applicant's had not submitted on the application but had communicated concern about the application. About half of their 1.07 ha section was at maximum slope for a house and it was unlikely that they would subdivide in the future.
- He confirmed that the wetland was on lot 2. There were a few trees in lot 2 and so the easement would be about three metres wide. Tanks to control discharge would be quite appropriate in a residential situation but he considered it would not be necessary in this situation.
- He explained his proposal around condition 4 was because Surveying Services was proposing an alternative to disposing of the water independent of the water table drains.
- There was no impediment to additional lots apart from going through a restricted discretionary application. The current application was a restricted discretionary application as were all applications in the Minden area for this type of activity.
- There were no legal restrictions regarding the additional lots. The right of way was nine metres wide which allowed room for berms and surfaces on the right of way.
- There would be some minor upgrades on the first 100 metres of the right of way. The part that would be shared was about 150 metres after which it took a sharp turn and continued on for approximately 200 - 250 metres.

6.2 COUNCIL

Ms Ford stated that in her opinion the proposal should be approved and noted the following matters relating to draft conditions, and those tabled by Mr Trail;

- Agreed with proposed conditions five and 13.
- Agreed with condition four with the stipulation that it read “if applicable as determined as the time of engineering plan approval.”
- Agreed with condition nine and requested that this be determined at the detailed design stage.
- That condition 14 should remain as stated in the s42A report.

In response to questions, Mr Watts and Ms Ford responded as follows:

- Condition 12 would fall as a result of the changes made to conditions three through nine.
- At the time the report was written, there were 13 lots remaining in the Minden Area Structure Plan out of the initial 103 lots available. This could only be reviewed once the Tauranga Northern Link had been built as the area currently had only two access points and would require additional access points to support more developed lots.
- Generally, private right of way agreements were put in place to govern the sharing of costs of a right of way depending on how well they were constructed. There had been examples where the last person to develop in a right of way had ended up being liable for the cost of the right of way and there were some that very clearly showed shared responsibility for cost. This was a separate private agreement between property owners and was not the responsibility of Council.
- Under the Land Transport Act the general conditions around right of ways was that all home owners had a share of their right of way proportionate to their ownership. In the case of subdivision, the one subdividing carried the cost.
- Condition 14 looked at the disposal of stormwater and the decision regarding this would be made at the engineering design level. Condition 14 triggered the need for the Surveying Services to submit an engineering design calculating the stormwater disposal requirements and investigating the best option for this.
- There was a culvert in the right of way that took stormwater down the bank. Surveying Services asked that they be allowed an alternative option to dispose of stormwater outside of the water table, which would likely need armouring to prevent scouring if the water table was used.
- The civil right of way agreement would also include the maintenance and upgrade of the grass berm and the amenity and usability would be the responsibility of the shared owners. There had been cases where a traffic engineer’s report had been required as part of an application for this kind of activity, but this was not one of those cases as the grass

that would there could be traversed. Passing bays would be considered on a case by case basis. In this case the right of way was relatively straight, sight lines were good, and width was adequate for two vehicles so there were no concerns.

Ms Ford outlined amended conditions as follows:

- Condition 4 would read, “That the proposed private-way C/F/G be structured in accordance with Council Standard Specification Drawing No’s W439 and W440. The water table shall be well defined and potentially armoured to account for the stormwater connections from future buildings on potential Lots 2 and 3 if applicable as determined at the time of engineering plan approval.”
- Condition 9 would read, “That stormwater connections shall be provided within the property boundary of the proposed lot 3 to discharge into the wet area located in lot 2 in accordance with Council’s Code of Practice. The end shall be capped and clearly pegged. Lot 2 shall, at the time of building, have a stormwater connection discharging into the wet area located therein. Alternatively, either lot 2, 3 or both shall have a stormwater connection provide between the property boundary discharging to the water table of G/F/C. The end shall be capped and clearly pegged. This is to be determined at detailed design stage.”
- Condition 14 would read, “That the consent holder’s representative submit to the Chief Executive Officer or duly authorised officer for approval, with the appropriate engineering inspection fee; construction drawings, specifications, calculations and project cost estimate; covering the stormwater system and the Lot connections into the private-way water table, which it is proposed to be built (if applicable) in accordance with Council’s Development Code. Construction shall not commence until written approval of the plans and specification has been provided by Council.”
- Conditions 5, 12 and 13 as recommended by Mr Trail were agreed in full to replace recommended conditions outlined in the s42A report.

In response to a question regarding stormwater, the Mr Watt advised that it was partially correct that stormwater on G/F/C would continue onto A/B. There was an existing cesspit opening into a culvert under where G/F/C and A/B met together and as mentioned in one of the other conditions there was a requirement to report on the entry to that culvert and requirements for upgrade reviewed. The area in question was a low point and so there would be no stormwater back up at A/B affecting the neighbours.

6.3 RIGHT OF REPLY

Mr Trail commented that he was regularly asked about right of way responsibility and he understood that, while Council had concerns about them and received complaints regarding them, they were a private responsibility.

7. MAIN FINDINGS

The application, submissions, s42A report, and the evidence presented highlighted various matters for our consideration.

7.1 DISTRICT PLAN

The District Plan is the primary planning document. The s42A report contained an analysis of the relevant District Plan policies and objectives. Having considered that assessment, we concur with it and that the proposal is considered to be consistent with the objectives and policies of section 8 (Natural Hazards); section 12 (Subdivision and Development), and section 17 (Lifestyle Zone).

7.2 REDUCTION OF SUBDIVISION POTENTIAL

The s42A report outlined that a total of approximately 19 lots (including the subject sites and the two additional lots to be created through the proposal) could be created from the 6 lots currently served by the private-way that would be in compliance with both the minimum lot size, and minimum average requirements set out by Rule 17.4.2 (ii).

Rule 12.4.4.4 (f) (i) states that the maximum number of lots that shall be dependent on a private-way for legal access is 12 lots, therefore it can be determined that the proposal will reduce the subdivision potential of all of the other lots served by the private-way because of the resultant increase in the number of lots that will be dependent on the private-way for access.

There is the potential for an additional 7 lots to be created above the maximum number of lots to be served by a private-way, as specified per Rule 12.4.4.4 (f) (i).

We noted that the proposed subdivision will take the number of users of the private-way to 8. Following the proposed subdivision, the maximum number of lots that shall be dependent on a private-way for legal access (being 12 users) will not be reached. There will still be the potential for an additional 4 lots to be served by the private-way.

Although Rule 12.4.4.4 (f) (i) specifies that the maximum number of lots that shall be dependent on a private-way for legal access is 12, we were advised that non-compliance with this rule would be required to be assessed as a restricted discretionary activity under Rule 12.3.4.1.

Therefore, there is the potential for the private-way to serve more than 12 lots. However, the application would be required to be processed as a restricted discretionary activity, and consent could be granted or refused.

Submitters were concerned that the proposed subdivision will reduce their ability to subdivide in the future. The s42A report outlined that each of the submitter lots could be subdivided an

additional two times following the proposed subdivision, and only then would the private-way reach its capacity of 12 users. However, there is nothing preventing other lots served by the private-way from subdividing before the submitters.

Although the proposed subdivision will reduce the subdivision potential of all other lots served by the private-way, the proposed subdivision will not result in the private-way reaching capacity. Furthermore, there is potential for more than 12 lots to be served by the private-way for legal access in the future.

Having regard to the above discussion, we consider that any effects associated with the reduction in subdivision potential will be acceptable and no more than minor.

7.3 ABILITY OF PRIVATE-WAY TO ACCOMMODATE INCREASE IN USERS

The s42A report outlined that the carriageway width for ROW A & B is only 3 m as opposed to the required 3.5 m but that this is an existing non-compliance.

While a submitter had raised concerns around the negative effect of the increased use of the private-way by both cars and commercial vehicles we were satisfied that the ROW could accommodate the two new proposed lots. In the unlikely event that additional maneuvering is required, a wide grass berm is available outside the bounds of ROW A & B.

Council's Development Engineer stated that the portion of the ROW that will service the proposed lots has enough area to pull to the side for passing.

Ms Ford advised that the private-way can serve up to 12 lots as a permitted activity, and the proposal will result in a total of 8 lots being served by the private-way. Therefore, any effects (e.g. traffic) resulting from the increased use of the private-way will be within what is anticipated for a private-way within the Minden Lifestyle Zone.

Although a submitter stated that the carriageway width does not comply and must be brought up to standard by the applicant, we were noted that the Council's Development Engineer does not consider that the carriageway of ROW A & B needed to be increased in width.

Ms Ford recommended a consent condition requiring the applicant to alter the water tables of ROW A & B, to be more defined as per drawing W439. It was noted that this condition was a compromise for not widening the carriageway and will result in a positive effect through improving the drainage of the ROW.

Both submitters raised concerns surrounding State Highway 2 and its ability to accommodate additional traffic. It is important to note that there are lots available within the Minden 1C Structure Plan Area, and State Highway effects have already been considered.

Having considered all relevant matters and engineering advice provided to us, we consider that any adverse effects as they relate to the carriageway non-compliance of ROW A & B are no more than minor with the imposition of consent conditions

Although the carriageway of ROW A & B is undersized, we consider that it is of a suitable width and design to accommodate any increase in use resulting from the proposal.

7.4 STABILITY AREA-MINDEN C

We were advised through the s42A report that any proposed earthworks are limited to the establishment of the ROW and building sites, and no vegetation is to be removed apart from garden landscaping.

We note that it is proposed that the building sites be set back from existing waterbodies and ephemeral flow-paths.

A portion of the site is located within the Minden Lifestyle Structure Plan Area Overland Flow-paths and Local Ecological Features' overlay but we were advised that the proposed house sites and ROW will be located outside of this area. The proposal will not have an impact on Significant Ecological Features, or other prominent areas of indigenous vegetation.

Ms Ford advised that the proposal is able to comply with all of the activity performance standard set out through Rule 17.4.2 apart from Rule 17.4.2 (a) (i) and noted that this non-compliance was internal to the subject site. Therefore, the applicant had provided themselves with written approval for this non-compliance.

The stability information requirements for Stability Area – Minden C are set out through Rule 8.6 (d). This rule states; *Area C is land not considered to be at risk from instability. A stability analysis or stability assessment would not generally be required.*

Although this rule states that a stability assessment would generally not be required, a stability assessment has been provided in the form of a geotechnical report which has been produced in respect of the proposal. The geotechnical report concluded that the property is suitable for the proposed development. Additionally, a certificate of 'Suitability for Subdivision' has been included in Appendix A of the geotechnical report which has been signed by a category 1 geotechnical engineer.

Having considered these matters we are satisfied that any actual and potential effects associated with the proposal being located within Stability Area – Minden C will be acceptable and no more than minor.

8. OTHER MATTERS

8.1 NATIONAL POLICY STATEMENTS & NATIONAL ENVIRONMENTAL STANDARDS

It is considered that there are no National Policy Statements which are of relevance to the consideration of the application.

8.2 REGIONAL POLICY STATEMENT AND PLANS

The Bay of Plenty Regional Policy Statement (RPS) provides an overview of the resource management issues in the Bay of Plenty region and sets the direction and foundation of the regional and district plans which must give effect to the RPS.

We were not advised of any matters requiring consideration in respect of the RPS or Regional Plans.

8.3 MATTERS RAISED BEYOND WHICH DISCRETION IS RESERVED

One submission raised issues which are not within the matters over which discretion is restricted as defined by Rule 4C.1.5.2. of the District Plan. These matters related to property values and the rural nature of the neighbourhood.

- Property Values

Given that matters related to property values are not considered an “effect” under the RMA, we are unable to give consideration to this matter.

- Rural Nature of Neighbourhood

As noted in the s42A report, the proposed lots comply with Rule 17.4.2 (a) (ii) which specifies minimum lot sizes, and minimum average requirements. We therefore consider that the proposed lots will be of a size anticipated within the Lifestyle Zone, and therefore consistent with the rural amenity anticipated for the area. We note however that this matter does not fall under the matters over which discretion is reserved and therefore cannot not give any consideration to this matter in terms of our assessment of the proposal.

9. PART 2: RESOURCE MANAGEMENT ACT 1991

- **Section 5 – Purpose**

Section 5 details the purpose of the Act which is to achieve sustainable management. Sustainable management is defined as '*... 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 well-being and for their health and safety while - ...*'.

The proposal will enable the use and development of natural and physical resources being the land resource and allow the applicant to provide for their social and economic well-being yet minimising any effects on the environment through the imposition of appropriate consent conditions.

Therefore, the proposal is considered to meet the purpose of the RMA.

- **Section 6 - Matters of National Importance**

This section of the RMA outlines matters of national importance that should be recognised and provided for. No matters of relevance were brought to our attention.

- **Section 7 - Other Matters**

Section 7 outlines various matters that decision makers shall have regard to in achieving the purpose of the Act, and the following are considered of relevance being;

- *The efficient use and development of natural and physical resources*
- *The maintenance and enhancement of amenity values*
- *Maintenance and enhancement of the quality of the environment*

Having considered the assessment contained in the s42A report and application documentation, we are of the view that the proposal is an efficient use of natural and physical resources given the Lifestyle zoning of the subject site; would not result in significant adverse effects on the quality of the environment or amenity values of the locality. Accordingly, it is considered to be consistent with s7 of the Act.

- **Section 8 - Treaty of Waitangi**

This section requires those involved in exercising RMA functions and powers relating to managing the use, development and protection of natural and physical resources shall take into account the principles of the Treaty of Waitangi.

No matters were highlighted requiring our consideration in respect of section 8 matters, and therefore granting consent to the proposal will not in our opinion compromise the principles of the Treaty of Waitangi.

10. CONCLUSION

We have considered all matters placed before me including all application documentation, evidence, submissions and subsequent statements of evidence made by the parties at the hearing, the s42A report and associated reports from Council staff, together with the relevant RMA and District Plan provisions.

We are satisfied that the proposal is consistent with the overall policy and objective framework of the District Plan, and that subject to the imposition of appropriate conditions, any effects of the proposal can be adequately mitigated, avoided or remedied.

Therefore, the granting of consent is considered to be appropriate.

11. DECISION

THAT pursuant to sections 104, 104C and 108 of the Resource Management Act 1991, the Western Bay of Plenty District Council grants consent to the resource consent application by Kenneth & Rosemarie Thompson to undertake a three-lot subdivision using transferable subdivision entitlements, being a restricted discretionary activity, located at 98a Munro Road, legally described as Lot 1 DPS 55319 subject to the following conditions:

1. *THAT the activity be carried out in accordance with the subdivision scheme plan prepared by Surveying Services entitled 'Proposed Subdivision of Lot 1 DPS 55319' dated 31/07/2017, Drawing No. 4305.1 and the information submitted as part of this application (except where modified by any conditions of this consent).*
2. *THAT the following financial contributions be paid in respect of the subdivision:*
 - (a) Rural Roding (Kaimai Ward) 2 x \$6,937 + GST*
 - (b) District Wide Roding 2 x \$533 + GST*
 - (c) Water Supply (Central)..... 2 x \$4,284 + GST*
 - (d) Ecological 2 x \$501 + GST*
 - (e) Recreation and Leisure..... 2 x \$5,996 + GST*
3. *THAT with regard to Condition 2, the financial contributions calculated in accordance with the provisions of the Operative District Plan, shall be paid within full within two years of the date of commencement of the consent provided that:*
 - (a) Any financial contribution which is not paid in full within two years from the date of commencement of the consent shall be adjusted so that the amount of the financial contribution required by the resource consent shall be the amount calculated in accordance with the relevant formulae using the updated inputs to those formulae as set out in Council's Annual Plan current at the date of payment.*

- (b) *Any financial contributions not paid within two years from the date of the commencement of the consent shall be (where applicable) paid prior to the issue of a Building Consent under the Building Act 2004, subject to the adjustments referred to in sub-paragraph (a) herein.*
4. *THAT the proposed private-way C/F/G be structured in accordance with Council Standard Specification Drawing No's W439 and W440. The water table shall be well defined and potentially armoured to account for the stormwater connections from future buildings on potential Lots 2 and 3 if applicable as determined at the time of engineering plan approval*
 5. *THAT over the first 100 metres of ROW B, the southern berm (LHS) of the access way be regraded to create a fall of 5% away from the carriageway for a minimum distance of two metres before rising to meeting original ground level at or before the boundary. The intention is to create a mowable swale which can continue to provide for occasional passing.*
 6. *THAT an accurate Council issued RAPID (Rural Address Property Identification) plate be displayed at the vehicle entrance for each new Lot created in accordance with Western Bay of Plenty District Council's Rural Property Numbering Bylaw 2005. This condition shall be satisfied prior to the application for 224c certification from Council.*
 7. *THAT dry 20mm internal diameter water supply pipes to serve proposed Lots 2 and 3 be constructed along privateway A/B and proposed privateway C/F/G in accordance with Council's Development Code, with the alignment to be selected by the consent holder's representative and the ends capped and clearly pegged. A "paper" as-built drawing should also be provided with the off sets from the adjacent property boundaries shown. The physical connection to Council's watermain shall to be completed as a separate application to Council at the time of Building Consent.*
 8. *THAT the existing stormwater system located on existing Privateway A/B shall be checked for inlet/pipe capacity and a review shall be undertaken of any scour protection required at the outlet to serve the total design flow (including the addition of two future buildings on proposed Lots 2 and 3). The design shall be detailed on engineering design documents which shall be submitted to Council for approval. Culvert upgrading may be required including a drop structure due to the grate being very susceptible to blockage from leaves.*
 9. *THAT stormwater connections shall be provided within the property boundary of the proposed lot 3 to discharge into the wet area located in lot 2 in accordance with Council's Code of Practice. The end shall be capped and clearly pegged. Lot 2 shall, at the time of building, have a stormwater connection discharging into the wet area located therein. Alternatively, either lot 2, 3 or both shall have a stormwater connection provide between the property boundary discharging to the water table of G/F/C. The end shall be capped and clearly pegged. This is to be determined at detailed design stage.*
 10. *THAT:*

- a) *Letters are required from power and telecom authorities confirming that the existing power and telecom reticulation in the vicinity of the sites has the capacity to serve future development of the sites to a minimum of a domestic level of service without upgrading.*
- b) *Where the power and/or telecom reticulation is confirmed not to have the capacity as described above, then the reticulation shall be upgraded by the consent holder at their expense.*
11. *THAT power and telecommunications reticulation be installed to serve the development with the capacity and ability to later provide all proposed residential/commercial lots with individual connections (lead in's). Letters are required to be provided from power and telecom authorities confirming that this condition has been met to their satisfaction.*
12. *THAT pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered on the titles of the proposed Lots 2 and 3, stating: all development (except that all storm water connections shall be made in accordance with condition 9 above) shall be undertaken in accordance with the recommendations contained within the report of soils engineer, Michael O'Brien, for O'Brien Geotech Ltd (Project No 622) dated March 2018 or subsequent reports by a suitably qualified geoprofessional or Chartered Professional Engineer in accordance with Council's Development Code.*
13. *THAT pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered on the titles of the proposed Lot 3, stating: the discharge of water shall be via the Stormwater connection provided at the time of Council approval pursuant to Section 224(c) of the Resource Management Act 1991. Storm water from the proposed Lot 2 shall discharge directly into the low wet area within the lot.*
14. *THAT the consent holder's representative submit to the Chief Executive Officer or duly authorised officer for approval, with the appropriate engineering inspection fee; construction drawings, specifications, calculations and project cost estimate; covering the stormwater system and the Lot connections into the private way water table, which it is proposed to be built in accordance with Council's Development Code. Construction shall not commence until written approval of the plans and specification has been provided by Council.*
15. *THAT the work required by conditions 4-11 be supervised and certified as complete in accordance with the conditions by the consent holder's representative (refer Section 12.3.9a) to the satisfaction of the Chief Executive Officer or duly authorised officer.*

Advice Notes:

1. *The consent holder should notify Council, in writing, of their intention to begin works prior to commencement. Such notification should be sent to the Council's Compliance & Monitoring Team and include the following details:*

- *name and telephone number of the project manager and site owner*
- *site address to which the consent relates*
- *activity to which the consent relates*
- *the expected duration of works.*

Notifying Council of the intended start date enables cost - effective monitoring to take place. The consent holder is advised that additional visits and administration required by Council officers to determine compliance with consent conditions will be charged to the consent holder on an actual and reasonable basis as provided for under the Act.

2. *Full compliance with the conditions of consent is necessary to carry out the activity to which this consent relates. Your progress towards satisfying the conditions of consent will be monitored by a Council representative and failure to meet these conditions may result in enforcement action being taken in accordance with Council's Monitoring, Compliance and Enforcement Strategy. This may involve the issuing of an Infringement Notice (instant fine) and/or a monitoring fee.*
3. *The consent holder or submitters may Appeal this decision, including any conditions of consent, to the Environment Court within 15 working days of receipt of this decision. Prior to doing so you are advised to engage your own legal advice. Please note, however, that pursuant to Section 116 of the Act that the consent granted and authorised by this decision cannot be given effect to until all Appeals are resolved.*
4. *Any lack of recorded archaeological sites on the property may be due to one of two factors. This may be because there are no sites present, or there has not been an archaeological survey undertaken on the site. work that may modify, damage or destroy any archaeological site(s), such as earthworks, fencing or landscaping, is subject to a consenting process under the Heritage New Zealand Pouhere Taonga Act 2014.*

The reasons for this decision are detailed in the preceding discussion but can be summarised as follows:

1. *That the proposal is in general accordance with the matters outlined in Part 2 of the Act and will contribute to the sustainable management of natural and physical resources through the subdivision and development of land for lifestyle purposes and enable the applicants to provide for their social and economic well-being but ensuring that any effects on the environment are no more than minor.*
2. *That the proposal on balance is in general accord with the relevant District Plan objectives and policies and generally is of a form envisaged by the District Plan.*

3. *The proposal is consistent with the purpose and principles of the Resource Management Act 1991.*

William Wasley
Independent Commissioner Chair on behalf of the
Regulatory Hearings Committee

Date 20 December 2018