

G and S Stilwell Resource Consents 2022-47 and 2022-49

98C Ohiwa Harbour Road, Opotiki

Submission to Hearing Commissioner 25 August 2022

Presented by Linda Conning MRP (1<sup>st</sup> Class Hons) Chairperson Eastern Bay of Plenty Branch

The Society supports the findings of the s42A Report and opposes the application on the basis of

- the number of lots which greatly exceed what is allowed for in the District Plan and
- Inadequate landscape mitigation for buildings on a highly visible site
- Introduction of pests into a biodiversity restoration area

#### Density and lot sizes

A key issue for this application is the number of lots. The applicant's withdrawal of two lots does not adequately mitigate the adverse effects of the development as it still retains a *residential* character, as opposed to the *rural* basis of the zone. I agree with Ms Swan's assessment of the permitted baseline approach.

The Branch rejects the contention by the applicant's planner and landscape expert that the zone, or at least that part of the zone, is *rural-residential* in character. However if this subdivision is approved, *it would become such*. Even with the withdrawal of 2 lots, there would still be 6 lots <0.5 ha and 2 at c. 1.5 ha within an area of 6.24 ha. This is a far cry from the minimum lot size of 4 ha and is a **density** not contemplated by the Plan.

Mr Crossan's evidence on rural production<sup>1</sup> overlooks the **cumulative effect** of loss of what he describes as 'marginal' productive land (an inappropriate description given the significant horticultural development on similar land in the district.)

I also disagree with of Mr Crossan's evidence<sup>2</sup> regarding Discretionary Activity Status. Although this allows for a case by case assessment, it is not envisaged that all such applications would be granted otherwise they would be Controlled or Restricted Discretionary.

The Branch stands by its original submission that the application is contrary to the Objectives and policies, and if approved, would be a catalyst for gold rush of further applications for similar densities.

We note that the District Plan was reviewed in 2016 (although it only became operative last year) and was subject to an extensive appeals process, and the objectives and policies for the coastal zone were significantly tightened to control this type of development. I was personally

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<sup>1</sup> Crossan evidence Para 35

<sup>2</sup> Op cit para 71

involved in mediation on that plan, which was consistent with the Operative RPS policies relevant to the Eastern Bay of Plenty:

- UG 17B Urban Growth management outside of Western Bay of Plenty – efficient use of finite land resource, setting urban limits and providing for efficient, planned and co-ordinated infrastructure (to be deleted under Proposed Plan Change 6).
- UG 18B Managing rural development and protecting versatile land (Class 1-3)
- UG 20B Managing reverse sensitivity effects on rural production activities and infrastructure in the rural area
- UG 23B Providing for the operation and growth of rural production activities

I note that Proposed Plan Change 6 Policy UG 14B<sup>3</sup> Restricting urban activities outside urban environments reinforces the strong direction in the Operative ODP to limit the fragmentation of rural land and to avoid new residential development outside of the existing settlements.

#### Previous subdivisions

Whilst the applicant may consider entitlement to the number of small lots comparable to those previously authorised, it must be distinguished by the facts that

- The District Plan provisions have changed
- The balance lot of those subdivisions were large (92ha and 45 ha respectively)
- Significant revegetation was required.

#### Mitigation

As discussed in the branch submission, the proposed mitigation is insufficient to mitigate any adverse effects even in the revised scheme<sup>4</sup> because it is minimalistic and will have little, if any, ecological benefit because it is narrow and fragmented, and appears to rely partially on an off-site shelter belt. Planted areas need to be fenced off to ensure they are seen as 'a reserve' and not encroached upon.

At the same time there needs to be ongoing active weed control due to the increased number of birds arising from the pest control and the rapid spread of numerous pest plant species such as pampas, mothplant and Phoenix palms.

It is unrealistic to consider that the avocado trees will be managed in perpetuity as they grow very large very rapidly and future owners are likely to remove them completely.

Note the suggestion that covenants are proposed that dwellings are 200m<sup>2</sup>, will contribute unnecessarily to the built form, and this alone signals the undesirability of the number of lots sought.

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<sup>3</sup> UG 14B Restrict the growth of urban activities located outside urban environments unless it can be demonstrated that sound resource management principles are achieved, including:  
(a) The efficient development and use of the finite land resource, and  
(b) Providing for the efficient, planned and co-ordinated use and development of infrastructure  
Policy UG 19B: Providing for rural lifestyle activities – ~~western Bay of Plenty subregion~~ (Replaces Policy UG17B)  
Require that the productive potential of versatile land is not compromised when providing for rural lifestyle activities outside existing and planned urban areas

<sup>4</sup> Campbell Appendix 1

Mr Stilwell's evidence

I acknowledge that the Stilwells are involved in conservation activities, but the Resource Management Act does not, and cannot, reward people with extra lots just for being a good citizen.

I also consider that RMA case law has not supported considerations of economic effects on landowners, although economic effects on the wider social and economic well-being can be. In *New Zealand Rail*<sup>5</sup> Justice Greig noted

"Economic well-being is a factor in the definition of sustainable management in s 5(2). Economic considerations are also involved in the consideration of efficient use and development of natural resources in s 7 (b). They would also be likely considerations in regard to actual and potential effects of allowing an activity under s104(1). But in...these considerations it is the broad aspects of economics rather than the narrower consideration of financial viability which involves the consideration of the profitability or otherwise of a venture "...

Following the Court's reasoning in *NZ Rail*, it is submitted that also in this application, the financial viability of an individual's business activity is not a matter for the Council to consider. The development which is the subject of this proposal is unlikely to provide economic wellbeing on a broader scale i.e. to bring benefit to the wider community, but would be limited to those personally associated with the property.

### **Proposed Conditions**

Notwithstanding Forest and Bird's view that the application should be declined, I comment on the Proposed Conditions.

#### Condition 9 Controls on Lot 8

This Lot is strategically located and building on it would have adverse effects otherwise not mitigated. Forest and Bird does not agree that there should be no landscaping or height, reflectivity and earthworks equivalent to the controls required for Lot 7. Conditions should be consistent to all new titles.

#### S42A report 7.120 and Condition 15 Cats and dogs

I disagree with Ms Swan's opinion about the practicality and enforceability of restrictions on cats and dogs. There is a sizable percentage of the population who prefer not to have such pets as "neighbours", especially cats which are not subject to any regulatory provisions, compared with the Dog Control Act, and especially in areas where there are threatened native ground dwelling birds. I am also aware that it is not only ground dwelling birds that are threatened by cats and I have personal experience of this. If there are restrictions on such pets, the neighbours will be able to enforce them either by peer pressure or by initiating council intervention. Without such restrictions cats can trespass onto other lots with impunity.

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<sup>5</sup> *NZ Rail v Marlborough District Council & Port Marlborough NZ Ltd (169/93)*, at p 14

I note Mr Stilwell's willingness to include restrictions in covenants on any titles<sup>6</sup>, however I do not agree that that approach alone would be satisfactory as it would be left to the Stilwells or their successors to enforce which experience suggests is ineffective. Mr Stilwell has proposed that any dogs within the development will be required to be kiwi aversion trained and contained during the night<sup>7</sup>. As above, such requirements cannot be left to the applicants, and their successors and would have to be backed up by the council. Kiwi aversion training has to be repeated regularly (annually) which is likely to be cumbersome to enforce.

The proposed Advice Note 9 is a weak and an unacceptable alternative to including a condition.

#### Condition 28 and Condition 33 (xi) Eco-sourced plants

It is disappointing that the applicant is seeking to not follow eco-sourcing when many people are working to restore natural vegetation in the area. Apart from upholding genetic integrity, eco-sourced plants are generally more robust.

It is also a fact that since the Covid lockdowns which constrained seed collecting and germination, and the Billion Trees Projects, that trees are in short supply nationally. It takes at least 2 years to produce plants sufficiently well-developed for this type of planting. Nurseries cannot produce them off the cuff but can usually do so if ordered in advance. Plants brought in from other regions are often inappropriate and come from significantly different genetic material. Given the above, Forest and Bird accepts that seed sourced from within the Bay of Plenty can be used.

#### Condition 29

Forest and Bird supports best practice including a Bond against the landscaping conditions.

Condition 30 Any planting should be in place 12 months before s224 certification.

#### Condition 31 Pest management

Any one can prepare a pest management plan, but it should be peer reviewed by a suitably qualified person. A pest management plan should also include plant pests. Consent Notice (xii) and (xiv) should be amalgamated with this condition.

#### Condition 33 Consent notice

(iii) and (v) It is very important that the qualifier "height above natural ground level at the time of subdivision" be retained in this situation where building height is crucial.

(viii) The applicant proposes additional wording for clarity purposes to ensure that it is clear that up to 500m<sup>2</sup> of built coverage is permitted per lot in respect of Lots 10 – 12<sup>8</sup>.

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<sup>6</sup> Crossan evidence para 54

<sup>7</sup> Crossan evidence para 103

<sup>8</sup> Crossan evidence para 101

500m<sup>2</sup> is very large building site coverage, given these lots are intended for residential purposes. I understand that the applicant intends to place covenants on all titles requiring a minimum built area of 200m<sup>2</sup>. I assume this is a means filtering out purchasers with limited means but if correct, this would make the visual effects greater. Encouraging people to build bigger houses is not positive for the environment.

(ix) If shelter belts are 4m tall, buildings will be visible.

Advice Note 8

The Advice Note/Consent Notice should specify more directly that development of the lots may require resource consent for earthworks.

**Decision sought**

To decline stage 2 of the application and include consent notices for Lot 8 and 14 as in the proposed Stage 2 consent conditions.