

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF an application for resource consent
for a two lot Rural subdivision at 10
Milford Downs Masterton

Masterton District Council Reference
RM240068

DECISION OF THE HEARING COMMISSIONER

14 November 2024

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Introduction

1. This is the decision on a resource consent application made by the Milford Heights Trust for subdivision consent to create 2 rural allotments, alongside a land use consent to allow the existing and a future dwelling to be located on the proposed allotments and to breach the minimum setbacks of the Rural zone in the Operative Wairarapa Combined District Plan (WCDP) 2011. The 1.43 hectare site is located at 10 Milford Downs, Lansdowne, Masterton.
2. The proposal is a Non-Complying Activity under the WCDP and a Controlled Activity under the Proposed Wairarapa Combined District Plan (PDP) (notified on the 11th of October 2023).
3. I have been delegated the authority from Masterton District Council (MDC or Council) to hear and determine this application on behalf of the Council as consent authority.
4. In making this decision I firstly record that, in determining this resource consent I have read and considered the application and further information supplied to MDC, the submissions received and the section 42A report (s42A) report prepared by Ms Roseanne Heyes which incorporates other Council adviser comments. In addition, I have taken account of the applicant's evidence and legal submissions, the submitter's presentations at the 1 October 2024 hearing, and the applicant's further information on wastewater and stormwater disposal received on 16 October 2024.
5. I visited the surrounding area prior to the hearing. I also visited 10 Milford Downs on the day of the hearing. After receipt of an engineering report on waste and stormwater disposal and confirmation of the Council's agreement to the conditions, the proceedings were formally closed by a Minute on 24 October 2024.

The Site and Surrounds

6. The s42A report¹ accurately describes the site and environment surrounding 10 Milford Downs as follows:

The site is located in Lansdowne a suburb of Masterton, to the northwest of the town centre and considered 'rural lifestyle' in nature of land use. The suburb is elevated above the town affording views to the Tararua mountain range to the west and farmland to the east. The subject site (10 Milford Downs) was one of 20 rural lifestyle lots created by a subdivision development in the late

¹ S42A Report paragraphs 9-12

1990's to early 2000's. To the south of the site is the urban boundary, and to the west is a Council recreation reserve and designated highway, beyond. Directly across the road (Manuka Street) is Masterton Golf Course and a public walking trail. Within the golf course land there are two small land parcels owned by MDC and designated for water reservoir purposes (Operative WCDP DM033 and DM033 and proposed WCDP MDC-m-24 & MDC-m-25).

The site comprises one title of 1.43ha (more or less) currently containing a dwelling located towards the northeastern corner of the site. The wider site contains amenity plantings, tennis court and accessory buildings. The current access arrangement is via a Right of Way from Milford Downs, with reciprocal access rights shared with three other properties

The site is legally described as Lot 16 DP 68587 held within Certificate of Title WN37B/893. A number of interests are registered on the Records of Title, including easements and land covenants, none of which affect the assessment of the proposal.

The site is zoned Rural – Primary Production under the operative Wairarapa Combined District Plan (WCDP) and Rural Lifestyle with highly productive land overlay under the proposed Wairarapa Combined District Plan (notified on the 11th of October 2023). No other special management areas apply in consideration of both the operative and proposed plans.

7. The location is shown in the aerial photograph below.



Figure 1: Aerial Photo. Source Google Maps.

The Proposal

8. Ms Heyes² also outlined the proposal based on the applicant's Assessment of Environmental Effects ('AEE').

The proposal is outlined in the application material prepared by Tomlinson and Curruthers Surveyors on behalf of Milford Heights Trust, the proposal consists of: Subdivision Consent to create:

- *2 rural lots from one existing title*
- *Lots sizes: Lot 1 – 0.7350m² (0.735ha) and Lot 2 – 0.6400m² (0.64ha)*

Land Use Consent to allow the existing dwelling and future dwelling on the proposed allotments to breach the minimum setbacks of the Rural Zone.

Access to the lots will be via a 7m wide right of way over Lot 1 in favour of Lot 2 with a new crossing from Manuka Street, constructed to the required standard. Currently the access onto Manuka Street is an informal access, for private maintenance purposes only.

The existing dwelling is to be contained on proposed Lot 1 and is connected to the Opaki water supply and wastewater overflow from the onsite system into the towns sewer main. A fire hydrant is located by the rural access on Manukau Street. Any future dwelling on proposed Lot 2 would be serviced to a rural standard for water and wastewater, with the detailed design provided at building consent stage. Stormwater would be managed onsite with soak pit design forming part of the building consent application, or other acceptable way due to the clay soil. The application includes a proposed subdivision plan (prepared by Tomlinson and Carruthers Surveyors 23-200 V1e, dated 2nd September 2024, which is included in Appendix 1 of this report.

9. It should be noted that an amended Subdivision Scheme Plan was submitted prior to the hearing which was attached to the evidence of Ms Edita Babos (Resource Planner – Tomlinson & Carruthers, for the applicant). This showed amendments in the right of way arrangements so that Lot 1 was entirely accessed from Manuka Street with Lot 2 being accessed via the existing right of way from Milford Downs.

10. The final proposed subdivision scheme plan³ is shown below.

² S42A Report paragraphs 5-8

³ Appendix 1 to the evidence of Edita Babos

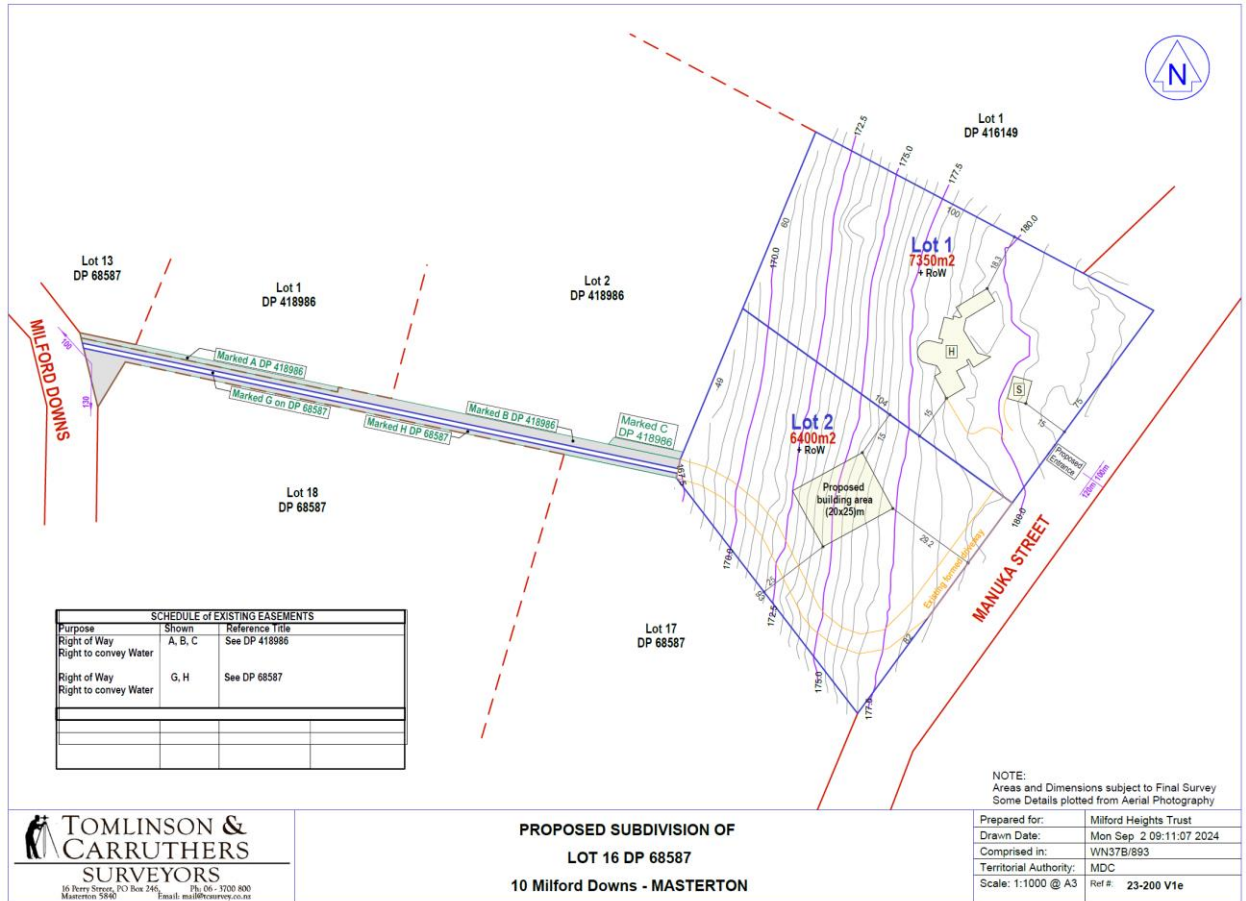


Figure 2: Corrected Scheme Plan.

- The application also included an Assessment of Productive Land Capacity⁴ as the site has LUC Class 3 Productive Soils, meaning the National Policy Statement for Highly Productive Land is also of relevance.

Planning Framework and Activity Status

- There are currently two plans that apply to the proposal being the WCDP and the PDP. In respect of the rules that are relevant to the proposal, it was agreed by Ms Heyes and Ms Babos that the following apply.

Operative Wairarapa Combined District Plan 2011

- The site is zoned Rural in the. Subdivision resource consent is required under Non-Complying Activity Rule 20.1.7 (a) of the WCDP as follows:

⁴ Assessment of land productive capability. 3 July 2024 prepared by Angus Bews Fruition Consultants

20.1.7 Non-Complying Activities

The following are Non-Complying Activities:

Rural (Primary Production) Zone

(a) Any subdivision that does not comply with the minimum standards for Discretionary Activities in Rule 20.1.6.

14. I was also advised by Ms Heyes⁵ that

In addition, although the application identified building setbacks, do not meet the requirements of the operative plan, the application does not include land use consent, rather the application has considered that at the time a new dwelling may be build the lesser setback requirement of 10m, under the proposed plan, will apply. However, for completeness of assessment of effects the requirement for land use consent under the operative WCDP, should be bundled as part of this consent application, in respect to meeting all development standard, for the applicable environmental zone. Accordingly, the following should be applied, Restricted Discretionary Activity Rule 4.5.5 (e) as follows:

4.5.5 Restricted Discretionary Activities

The following are Restricted Discretionary Activities:

(e) Any activity that does not meet one or more of the standards for permitted or controlled activities.

15. The WCDP subdivision standards that are not met by the proposal for subdivision in the Rural Zone include:

- *the minimum lot area of 4 hectares;*
- *minimum 100m or 90m lot frontage for front lots; and*
- *the permitted land use standards for dwelling setbacks.*

Proposed District Plan (notified October 2023)

16. The PDP was notified by the three Wairarapa Councils on 11 October 2023 . I was advised that hearings are currently being held on the PDP and will continue through to May 2025 (tentatively). The hearings stream related to Rural Zones was held on the 14th of October 2024, with a number of

⁵ S42A Report paragraph 16

submission points to be heard relating specifically to the proposed Rural Lifestyle zone (a new zone) that this area is proposed to be a part of.

17. It is noted that matters related to rural subdivision and rural residential activities in the Rural zones have been given legal effect, by Environment Court order from the 11th of October 2023 under S86D of the RMA 1991⁶. Of relevance to this application is SUB-R2 (2) (subdivision of a new allotment). This does not mean that the PDP is operative but was to stop a potential 'gold rush' of applications for rural subdivision under the rules of the WCDP only.
18. Under the PDP, resource consent for subdivision is required under Controlled Activity Rule SUB-R2 (2) where:
 - a. *The subdivision complies with or does not increase any existing or previously approved non-compliance with the underlying zone standards.*
 - b. *Compliance is achieved with:*
 - i. *SUB-S1 (minimum allotment size)*
19. The above relate to matters of rural subdivision that have legal effect from 11th of October 2023.
20. I was advised that given the PDP has a lesser setback requirement for buildings in the Rural Zone (10m) with the land use component being compliant under that Plan.
21. As the PDP rules have immediate effect I must take account of both plans. The PDP is the current policy approach of the three Wairarapa Councils but the rural zone provisions have not been fully tested through decisions made on the PDP hearing process.

Wellington Natural Resources Plan

22. The applicant's advised that relevant consents will be sought from Greater Wellington Regional Council (GWRC) only if necessary in relation to wastewater disposal systems. This would also be a matter of control under the Building Act 2004. I do not consider the potential lack of all consents to develop a single dwelling house inhibits my consideration of whether a two lot subdivision (and related land use consent) is appropriate in this location.

⁶ ENV-2023-WLG-000010

Relevant RMA Provisions

23. Under section 9(1) of the Act:

No person may use land in a manner that contravenes a national environmental standard unless the use—

- (a) is expressly allowed by a resource consent; or*
- (b) is allowed by section 10; or*
- (c) is an activity allowed by section 10A; or*
- (d) is an activity allowed by section 20A.*

24. Under section 9(3) of the Act:

No person may use land in a manner that contravenes a district rule unless the use-

- (a) is expressly allowed by a resource consent; or*
- (b) is allowed by section 10; or*
- (c) is an activity allowed by section 10A.*

25. As stated, the application is for a Non-Complying Activity under the WCDP. My discretion to grant or refuse the application is set out in section 104B of the RMA, which states:

Section 104B – Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority-

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*

Section 104 Considerations

26. Section 104 of the RMA sets out the matters to which I must have regard when considering the application and submissions received. For this application, they are:

- (1)(a) Any actual and potential effects on the environment of allowing the activity;*

27. Actual and potential effects are considered in detail later in this decision.

- (1)(b) Any relevant provisions of -
 - i. A national environmental standard.*
 - ii. Other regulations;**

28. No National Environmental Standards are relevant. Ms Heyes⁷ advised that New Zealand Standards, particularly NZS4404:2010, and the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008 are applicable.

iii. A national policy statement

29. The only relevant National Policy Statement is the National Policy Statement for Highly Productive Land 2020 (NPS-HPL).

iv. a New Zealand Coastal Policy Statement 2010;

30. This is not applicable.

v. A regional policy statement or proposed regional policy statement.

31. The applicable documents are the Regional Policy Statement (RPS) for the Wellington Region 2013 and Proposed Change 1 to the RPS which was notified by GWRC on 19 August 2022. While decisions have been made on PC1 the decisions remain subject to rights of appeal at the time of issuing this decision. In any event I do not consider the RPS to be overly helpful in determining this proposal.

vi. A plan or proposed plan

32. I have considered whether the proposal will be contrary to the WCDP and the PDP and discuss these under my evaluation of to the objectives and policies of the relevant plans.

(1)(c) Any other matter the consent authority considers relevant and reasonably necessary to determine the application.

33. There are no other matters that are relevant or necessary to be considered including any covenants on the land which were raised at the hearing. I discuss the matter of land covenants later in this decision.

Particular restrictions for non-complying activities

34. s104(D) states that a decision maker must only grant consent for a Non-Complying Activity if it is satisfied that either:

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

⁷ S42A Report paragraph 36

35. This is often referred to as the 'gateway' test.
36. My conclusions on s104(1) and s104(D) matters are included in this decision prior to my conclusions.

Notification and Submissions Received

37. As advised in the s42A report the application was publicly notified in accordance with section 95A of the RMA 1991 on 16 July 2024 with the submission period closing on 14 August 2024.
38. Ms Heyes⁸ advised that in addition to the public notice in the newspaper (Wairarapa Times Age) a public notice was physically located on the subject site at 10 Milford Downs, and on the Council website. Fifteen properties and three key stakeholder groups were also served notice of the application. The properties were located with 400m of the subject site and were considered to be adversely affected by the proposed development. The key stakeholder groups directly notified were: Greater Wellington Regional Council, and iwi entities, Rangitāne o Wairarapa and Ngāti Kahungunu.
39. Ten submissions were received with nine in opposition and one neutral. The submissions were received from the following parties:

No.	Submitter	Position	Appeared at Hearing
1	M and G Shaw - 4 Ardsley Lane	Oppose	No*
2	M Weeks & A Tulloch - 11 Ardsley Lane	Oppose	Yes
3	Marc Danzer & Adele Bentley - 14 Milford Downs	Oppose	Yes
4	M & J Bridges - 8 Milford Downs	Oppose	Yes
5	Rangitane o Wairarapa	No concerns	No
6	Aaron Slight 7 Milford Downs,	Oppose	Yes
7	John Cockburn - 26 Milford Downs	Oppose	Yes
8.	Simon O'Donoghue - 28 Milford Downs	Oppose	No
9	David Borman - PO Box 2038, Kuripuni	Oppose	No
10	John Peters - PO Box 2038, Kuripuni	Oppose	No

40. Submitter 1, M and G Shaw, were unable to attend but written submission and planning evidence of Lucy McWilliam of Adamson Shaw Ltd was submitted prior to the hearing.
41. Ms Heyes identified the following issues raised within the submissions:⁹

⁸ S42A Report paragraph 29

⁹ S42A report, para 32-33

- a. Amenity effects – effects on amenity and rural character;
- b. Development effects – effect of lot size;
- c. Cumulative effects – effects of subdivision upon subdivision;
- d. Bulk and location provisions – setbacks, privacy;
- e. Traffic matters – increase in the volume of traffic, traffic safety concerns, demands on road network to upgrade to residential standard;
- f. Infrastructure requirements – servicing and storm water;
- g. Loss of productive soil – requirements of NPS-HPL;
- h. Weighting of Operative plan vs Proposed WCDP – greater weighting to be given to the operative plan;
- i. Existing restrictive covenants – no further subdivision; and
- j. Errors in consent application.

Section 42A Report

42. Prior to the hearing, I received and reviewed the s42A report prepared by Ms Heyes. In concluding whether consent as a non-complying activity should be granted Ms Heyes¹⁰ stated:

In regard to the above, it is considered the application can satisfy the “gateway tests”, noting that either (a) or (b) must be satisfied. In terms of part (a), the adverse effects of the proposed 2 lot rural subdivision, on the wider environment are considered to be no more than minor; In addition it is also considered the terms of part (b), the assessment of the proposal against the WCDP is not contrary to the objectives and policies within that Plan, for the reasons already outlined, including future policy direction under the proposed plan, and matters that have legal effect.

43. Therefore, the recommendation of Ms Heyes was that the proposed 2 lot rural subdivision and land use consent for boundary infringements can be granted with appropriate conditions attached.

¹⁰ S42A Report paragraph 92

The Hearing

44. I held the hearing on 1 October 2024 at the Masterton District Council offices, Lincoln Road, Masterton.

Applicant's evidence

45. At the hearing the applicant, John Carruthers on behalf of the Milford Heights Trust, was accompanied by Legal Counsel Stephen Iorns and Jono Sylvester who gave opening submissions. Ms Babos then provided a brief of evidence that attached the amended scheme plan and a further peer review¹¹ of the Assessment of Productive Land Capacity. Ms Babos¹² was able to conclude:

- *The proposed subdivision of 10 Milford Downs is consistent with the purpose and the principles of the Resource Management Act 1991.*
- *The proposal is not contrary to the objectives and policies of the operative or proposed District Plan and is not inconsistent with the anticipated environmental outcomes and assessment criteria.*
- *The proposed activity is consistent with the Regional Policy Statement and NRP.*
- *The proposed subdivision will make use of a limited resource and create opportunity for an additional dwelling in Masterton.*
- *In accordance with mitigation measures proposed and the agreed conditions will ensure that any adverse effects are avoided, remedied or mitigated.*
- *The application for subdivision consent can and should be granted, subject to agreed conditions, as per the recommendation of the Section 42A report. The Applicant submits that the proposal is in all respects appropriate and worthy of approval. It represents an appropriate use of the land in its surrounding context.*

Submitters Representations

46. Five of the submitters spoke at the hearing.

47. Mike Weeks outlined the primary points of his submission being the ability to service the proposed lots and concerns about additional traffic effects on a rural road. Mr Weeks was also concerned about

¹¹ Review Milford Heights LUC Assessment Ian Milner Land Vision Ltd 11 September 2024

¹² Evidence of Edita Babos Paragraphs 7.1 to 7.6

- effects on amenity and character of the Rural zone while creating a precedent to allow further subdivision that will cumulatively remove existing rural character and amenity values.
48. Adele Bentley and Marc Danzer also expressed similar concern particularly in respect of the sense of spaciousness they currently enjoy from their property that is also accessed off Pukeko Lane a private right of way from Milford Downs.
 49. Mr Bridges immediately adjoins the boundary of Lot 2 proposed. As with the other submitters he expressed concern about rural amenity and explained the reasons why he chooses to live in Milford Downs. Mr Bridges also expressed privacy concerns from the new dwelling into his property. He considered that the subdivision proposal is more of a suburban house 'plonked' in the middle of rural area.
 50. Mr Bridges also commented on the covenant that applied to his property and the expectations he had that the covenant conditions would remain intact.
 51. Mr Slight also had significant concerns about covenants that should be applied while also explaining to me the reasons why he chose Milford Downs to build his home. He also raised concerns about wastewater, stormwater and roading servicing should an increased number of houses be built in the Milford Downs area.
 52. Similarly, Mr Cockburn outlined concerns about servicing, rural character and his interest in *'protecting a very special area of Masterton, of which it's residents are extremely fortunate to have the privileged asset that is becoming extremely rare to obtain'*. He also was raised the issue of the covenants that apply.
 53. I also received submissions from Mr Shaw and planning evidence on his behalf from Ms McWilliam. Neither were able to attend the hearing but I record that I have taken their opinions into account in determining this application noting Ms McWilliam's contrary views on planning acceptability to Ms Heyes and Ms Babos.

Council Representatives

54. In attendance at the hearing and providing summary comments was the reporting officer Ms Heyes. Hearing administrator Sheryn Scanlan assisted me with the smooth running of the hearing process. Ms Heyes confirmed at the conclusion of the hearing that she remained supportive of the proposal for the reasons outlined in her s42A report.

Hearing Adjournment

55. After hearing the evidence from the applicant, the submitters representations, the views of Council officers and a brief applicant's right of reply, I adjourned the hearing. This adjournment was for the applicant to consider providing further evidence on wastewater disposal matters. After the hearing Counsel for the applicant sought leave to provide further evidence on wastewater feasibility, to address the concerns raised by the submitters and assist me with the determination.
56. This was received on 16 October 2024 and included a technical report by Hewison Engineering Ltd on the feasibility of treating wastewater and stormwater generated by the additional lot. That report¹³ concluded:

Based on my knowledge, observations, and calculations I am of the opinion that there are a number of methods available to provide a satisfactory method for the disposal and treatment of waste water generated by the additional lot. In my opinion options 2 and 3 described above would be suitable.

Any additional stormwater generated by the development can be treated using the methods and standards mentioned above.

57. I subsequently sought the views of Council Engineering Staff on the options considered by the applicant for wastewater disposal. These views were received on 24 October 2024 by e-mail. The e-mail stated a preference for option 3 with the septic tank large enough for a few days' retention, control of outlet valve and other technical matters. Councils Development Engineer recommended placing a condition for assessing the wastewater report and stormwater report at Building Consent stage. These conditions were agreed by the applicant and the hearing was subsequently closed.

¹³ Hewison Engineering Ltd – 10 Milford Downs 16 October 2024

Actual and Potential Effects - s104(1)(a)

58. In terms of positive effects these largely fall solely to the applicant financially noting that the proposal will also provide for one additional dwelling in the Masterton District.
59. In respect of other matters, I adopt Ms Heyes¹⁴ categorisation of what the relevant actual and potential effects of the proposed activity on the environment are, being:
- a. Amenity effects – effects on rural character and amenity;*
 - b. Development effects – effect of lot size;*
 - c. Cumulative effects – effects of subdivision;*
 - d. Bulk and location provisions – setbacks, privacy;*
 - e. Traffic matters – increase in the volume of traffic, traffic safety concerns, demands on road network to upgrade to residential standard;*
 - f. Infrastructure requirements – servicing and storm water; and*
 - g. Loss of productive soil – requirements of NPS-HPL.*
60. My assessment of these effects is outlined below.

Rural Character and Amenity Effects

61. Ms Heyes¹⁵ explained that amenity is largely a function of the existing and potential environment. She observed that the existing environment, although zoned Rural - Primary Production under the WCDP is of a Rural Lifestyle nature, with no evidence of land-based activities on the subject site or surrounding environment. However, this does not preclude the requirement to maintain and protect the existing rural environment's amenity, character and openness, from the potential adverse effects of development.
62. I note Ms Heyes' view that in consideration of the above, lot size provides a baseline for maintaining the character, scale and intensity within the rural environment. While the resultant lot size is below the minimum requirement of 4ha in accordance with the WCDP, it is however plain to see that the receiving environment, including 10 Milford Downs is already well below the minimum of 4ha. I also

¹⁴ S42A Report Paragraph 62

¹⁵ S42A Report paragraphs 63 and 64

recognise that the proposed lot sizes are above the minimum requirement of 0.5ha (5000m²) of the PDP, for the Rural Lifestyle Zone.

63. It was outlined by all of the submitters at the hearing that the proposal would result in some change to the existing openness of the area. However in my view such a change is less than minor. A compliant building can be placed on the site with minimal effects on surrounding properties in respect of the levels of amenity those properties currently enjoy. I note in particular, the opinion of Mr Bridges at 8 Milford Downs in respect of privacy. From my site visit I observed that the house at 8 Milford Downs is on a lower level and does benefit from some screening in respect of existing vegetation. There would also be a significant distance between 8 Milford Downs and the location of the proposed house site.
64. I also recognise the non-compliance related to front boundary length requirements under the WCDP. I agree with Ms Heyes¹⁶ that, given the mature hedging along the boundary of Manuka Street, the reduced front boundary length would not be discernible on development of the additional lot. Therefore the effects of a reduced boundary length is considered no more than minor. It is noted the PDP does not specify a minimum requirement.
65. In respect of the effects on rural character, reverse sensitivity matters should be recognised, to protect primary production activities from increased residential development. Ms Heyes observed (and I agree), that the subject site and surrounding environment are not typical of Wairarapa's primary production rural environment. The immediate environment is of a rural lifestyle nature with no primary production land use evident alongside the prominent residential activities. There are in my view no reverse sensitivity effects to rural primary production from the proposal.
66. It is therefore considered the proposed lot size will have a less than minor effect upon the amenity on the environment including adjoining neighbours and on rural character. In my view any potential for rural character in its traditional sense were lost when the Milford Downs area was subdivided in the first place. I also consider that there are less than minor effects on the amenity of adjoining property owners.

¹⁶ S42A Report paragraph 66

Development Effects

67. As outlined by Ms Heyes¹⁷, the lot design and configuration has been determined by the existing dwelling located on higher ground to the northeastern corner of the site, with proposed Lot 2 created from undeveloped land (used for residential amenity purposes) to the south of the dwelling. I note that all development standards can be met for the proposed subdivision with the exception of a 25m setback under the WCDP, given site constraints of infill development (existing buildings/land features). I agree that the effects of the proposed development are no more than minor.

Cumulative Effects

68. All submitters at the hearing raised the matter of effect on rural amenity and the cumulative effects of subdivision upon the local environment. I also note that Mr Iorns legal submissions for the applicant addressed this matter.

69. I agree with Ms Heyes¹⁸ that this 'effect' is a matter that should not be addressed in isolation but rather arises over time and in a combination with other effects. In particular, I concur that in respect to the subdivision proposal on its own, it is unlikely to create an immediate cumulative effect. However the cumulative effects may arise over time through additional subdivision and additional pressures on servicing and the roading network. It is therefore considered on its own one additional lot will not create such a cumulative effect.

70. I also recognise that any future subdivision activity would be subject to a new application and therefore assessment of effects, including cumulative effects, noting that there is a separate application for 9 Milford Downs being considered currently by me. It should also be noted future policy direction under the PDP has considered the matter of the cumulative effects of subdivision under the proposed Rural Lifestyle zoning.

71. In my view far more certainty will be provided once the PDP decisions have been made. However in respect of cumulative effects in respect to the existing planning provisions that apply I consider that there is no effects based reason why this application cannot be approved.

¹⁷ S42A Report paragraph 70

¹⁸ S42A Report paragraph 67

Traffic Matters

72. It should be noted that a revised Scheme plan was submitted prior to the hearing that removed reference to the ROW A (access rights to Lot 2 over Lot 1). This had the effect of ensuring that there is no additional traffic movement on the Right of Way from Milford Downs, given that the existing lots has access rights and these are to be transferred to Lot 2 (only). This would mean that all access to Lot 1 is via the new access from Manuka Street and all access to Lot 2 via the right of way.
73. A number of submitters raised concerns relating to additional demands on the roading network triggering upgrades to a residential standard. I was advised by Ms Heyes on the advice of Councils Development Engineer that one additional lot will not trigger any such upgrade requirements. I agree with this position after visiting the site and locality on two occasions. Therefore, it is considered the effects of development on the roading network are no more than minor.

Infrastructure requirements

74. The matter of servicing pressures (and therefore potentially cumulative effects) was also raised by a number of submitters in respect to the capacity of the sewerage scheme and lot sizes determined under original development (34yrs ago). As outlined previously the applicant commissioned a separate report from Hewison Engineering on waste water and stormwater feasibility in response to these concerns.
75. I am satisfied after confirmation from Councils Development Engineer that an engineering solution is available to service a dwelling on proposed lot 2 in respect of wastewater and stormwater management. I have included the agreed conditions to this effect at the end of this decision.

Loss of Productive Soil

76. I received a report on the impact of the proposal on productive soils and a further peer review of that report as part of the response to the Councils request for further information.
77. I note the conclusion of the first report¹⁹ was that.

The soils in the assessed area are suitable for intensive agricultural or horticultural production with the installation of irrigation and drainage. However, the combination of the lack of available

¹⁹ Assessment of land productive capability. 3 July 2024 prepared by Angus Bews Fruition Consultants

water allocation and property size means that the site would not be conducive to economically sustainable commercial intensive agriculture or horticulture.

78. Further the Peer Review²⁰ concluded

The application has come to a defensible conclusion relating to the NPS-HPL. Productive capacity is not affected by this proposal. In my view the site is.

- *Already too small to be feasibly used for primary production.*
- *Has permanent and unavoidable soil-based limitations.*
- *Does not have irrigation water to overcome known summer dryness.*
- *Surrounded by similar sized and developed properties. Removing any opportunity for amalgamation.*

79. Based on this and given the current land use of rural lifestyle and future policy direction (Rural Lifestyle zoning), the effect of the proposed subdivision has no likelihood of having an adverse effect on the productive capacity of the land. The proposal therefore meets the intent of the NPS-HPL.

Conclusion to Effects

80. Other potential effects on construction and upon Natural Hazards are also less than minor and were not raised in any detail at the hearing.

81. Overall and taking account of the assessment above of the actual and potential effects of the proposal, I consider the effects of the proposal will be no more than minor. Any residual adverse effects associated with the proposal and through its implementation, can be effectively managed through conditions of consent.

Statutory Instruments – s104(1)(b)

82. Ms Heyes provided an analysis of the relevant statutory instruments, particularly the objectives and policies of both the WCDP and PDP which the proposal is required to be assessed against. Ms Babos endorsed Ms Heyes analysis and conclusions in respect of the statutory instruments.

83. As stated, and for completeness the New Zealand Coastal Policy Statement 2010 does not apply and the Wellington Regional Policy Statement is not directly determinative for this application in my view.

²⁰ Review Milford Heights LUC Assessment Ian Milner Land Vision Ltd 11 September 2024

National Policy Instruments

84. The only National Policy Statement of relevance is the National Policy Statement on Highly Productive Land. As I have outlined, I agree that the site is too small and too limited in attributes such as soils and water supply to have any productive land use.

Operative District Plan Objectives and Policies

85. The objectives and policies of the WCDP require particular consideration as they express the intentions of the Council and community in relation to the Rural Zone Area and the outcomes that the community seeks to achieve through the WCDP.

86. I adopt the entire analysis of the reporting officer Ms Heyes who carried out a comprehensive review of the WCDP objectives and policies related to the application. This is in respect of the following objectives and their applicable related policies.

- **Objective Rur1 – Protection of Rural Character & Amenity** I agree that the effects of the proposal on the rural amenity values and character of the area in relation to the receiving environment being one of a rural lifestyle nature, with smaller lot sizes, predominantly for residential activities. Overall, the activity is not contrary to the above objective and its subsequent policies in relation to maintaining rural amenity and values.
- **Objective Rur2 – Provision for Primary Production and Other Activities** I have considered this above in relation to effects assessment noting that the application volunteered a s221 consent notice to manage potential reverse sensitivity effects. Overall, I agree the activity is not contrary to the above objective and its subsequent policies related to activities considered compatible in the rural environment.
- **Objective SLD1 – Effects of Subdivision & Land Development** I agree that the objective and policies relating to subdivision and land development anticipate design and quality of subdivision that is compatible with site characteristics, with a baseline for maintaining character, scale and intensity of development (including servicing capacity), while recognising the qualities of the area. I also recognise that 10 Milford Downs and the surrounding environment is already one of a rural lifestyle nature, with 1ha lots, and certainly not typical of a productive rural landscape in the Wairarapa. I also agree that given the nature of the lot size and predominant land use, that the existing attributes of the rural environment in this location can be maintained.

I note that the relevant policies imply a similar outcome to the NPS HPL that was predated by the WCDP by 11 years. There is recognition that protection of Wairarapa rural environment and

zoning intent, from inappropriate development is implicit. As outlined previously in relation to effects on productive land the proposal is not considered to be contrary to this objective and its subsequent policies.

- **Objective SLD2 – Effects of Servicing Requirements** I have already outlined in respect to servicing that based on the technical evidence and agreement by Council, that servicing the proposed additional lot can be managed with less than minor effects.
- **Objective TT1 – Managing the Road Network** Similarly effects on the roading network are no more than minor.

Proposed District Plan

87. Ms Heyes also carried out a comprehensive assessment of the relevant provisions of the PDP which I also adopt. I do not intend to repeat that analysis other than to record that the proposal is entirely consistent with the relevant Rural Lifestyle Zone objective and policies of the PDP. This consistency is evident in the Controlled Activity Status of the application under that plan rather than a Non-Complying Activity under the WCDP.

88. At this point it is worthwhile outlining my position on the weighting I have given the PDP. I firstly note that the Environment Court has made the rules in the PDP relating to the Rural Zone to have immediate legal effect. From my reading of that determination, this was in relation to potential applications for subdivisions for much larger Rural Lots and directly in respect of concerns about rural land fragmentation rather than in an area that already displays Rural Lifestyle characteristics and has been zoned to that effect in the PDP.

89. However the PDP is not settled. The PDP is currently in its hearing phase so more limited weight can be put on the provisions as the outcome is not known. However, if I had to make an assessment, I would have concluded that the proposal is entirely consistent with the PDP.

Conclusion on Statutory Instruments

90. For the foregoing reasons I consider that the proposal is consistent with the intent of the Statutory Instruments that apply to the site.

Other Matters - s104(1)(c)

91. The only matter to comment on is the submissions made on upholding restrictive land covenants relating to future subdivision. I was advised²¹ that the subject site legally described as Lot 16 DP 68587 held within Certificate of Title WN37B/893 has instrument B150369 (land covenant) registered on the title. Ms Heyes could find no evidence listed in the schedule of restrictive covenants to prevent further subdivision.
92. I am clear that a private land covenant is not a matter for Council enforcement (or consideration in relation to the RMA framework). If there is a legitimate claim against the covenant that would need to be pursued through other mechanisms outside of the resource management process.

Conditions

93. As my decision is to grant resource consent subject to conditions, the conditions are an important part of avoiding, remedying or mitigating adverse effects on the environment and as such have been given due consideration.
94. The planners, Ms Heyes and Ms Babos, conferred on conditions and have agreed a set of recommended conditions which I adopt. This includes the amended condition in respect of wastewater disposal as recommended by Council's development Engineer.

S104 and S104D Assessment

95. Based on the above I consider that the actual and potential effects on the environment of allowing the proposed activity to be acceptable under s104(1)(a).
96. I also consider that the application is consistent with the relevant policy statements and plans as required under s104(1)(b). I have also taken account of other matters as required under s104(1)(c).
97. In respect of s104D 'Particular restrictions for non-complying activities', I consider that the application meets both of the "gateway tests" recognising that either (a) or (b) must be satisfied. In terms of s104D(a) any adverse effects of the proposed 2 lot rural subdivision (and land use consent), on the wider environment are considered to be less than minor.

²¹ S42A Report paragraph 79

98. In relation to part s104D(b), my view of the proposal against the WCDP is that it is not contrary to the objectives and policies within the WCDP, for the reasons outlined above. In respect of the PDP which I must give lesser weight to, I have considered the future policy direction under the proposed plan and matters that have legal effect. Under the PDP the proposal is entirely consistent with that Plan.

Part 2 Considerations

99. In terms of whether the proposal represents the sustainable management purpose of the Act I have outlined above the principal matters and constituent parts of s104. Based on that assessment I have then considered the relevant Part 2 matters. In my view the higher-level purposes and principles of the Act are not determinative to whether consent should be granted.

100. If I had to have assessed Part 2 matters, I would conclude that the proposal meets the sustainable management purpose of the Act.

Decision

101. In accordance with the authority delegated to me by the Masterton District Council, and pursuant to section 104B of the Resource Management Act 1991, I grant resource consent to the application made by the Milford Heights Trust for a two-lot subdivision and associated land use consent at 10 Milford Downs, Masterton subject to the conditions set out in Appendix A (Council reference RM240068).



Lindsay Daysh

Independent Commissioner

Decision dated 14 November 2024

For the Masterton District Council

Appendix A

Conditions

RM240068 - Approved Conditions

Amended Plan

1. That the subdivision scheme plan (prepared by Tomlinson and Curruthers, reference Project No 23-200 V1e, dated 2nd September 2024, is to be amended as follows:
 - The Right of Way reference A is to be removed to clearly identify proposed Lot 2 is to have access rights from Milford Downs via the existing Right of Way only.
2. That the amended subdivision scheme plan shall be provided to Masterton District Council for approval.

Survey

3. Subject to the further conditions of this consent the subdivision shall be undertaken in accordance with the consent application RM240068 (as otherwise amended above), the assessment of environmental effects, and the amended scheme plan (as otherwise amended above), subject to final survey.
4. Obtain and register all the necessary easements for rights of way, water, sewerage, storm water, power and telecom. These easements are to be created by schedule and memorandum and are to be registered against the certificates of title for the lots.

Reverse sensitivity

5. Pursuant to section 221 of the Resource Management Act 1991, the following condition shall be secured by way of a Consent Notice registered on the Titles at no cost to the Council:

Lot 2 is located within a Rural environment. Any purchaser of this allotment should expect noise, smell and activities associated with a working rural environment and should not expect Council to respond to any complaints in respect to permitted rural activities.

Servicing and storm water

6. Pursuant to section 221 of the Resource Management Act 1991, the following condition shall be secured by way of a Consent Notice registered on the Titles at no cost to the Council:
 - a. A wastewater design report/details prepared by a suitably qualified person shall be provided at the time of building consent to erect any new habitable buildings on Lot 2 which certifies that the proposed disposal system and effluent field are suitable for the subject site, which is in accordance with the option 3 of Wastewater section of Wastewater and Stormwater

Servicing Feasibility Report prepared by Hewison Engineering Limited, Reference: H241447, Dated: 16/10/2024. Note that compliance with this report will satisfy this requirement.

- b. Stormwater from buildings, sealed areas and other structures within the development shall be collected, controlled within lot 2. Any application for building consent to erect a new habitable building on lot 2 shall include a 'Site-specific Stormwater Design Report' prepared by a Suitably Qualified Professional, which is in accordance with the recommendations in the Wastewater and Stormwater Servicing Feasibility Report prepared by Hewison Engineering Limited, Reference: H241447, Dated: 16/10/2024, which shall include but not limited to the site-specific soak pit design and on-site storage tank requirements.

Landscaping

7. The consent holder shall retain existing hedge plantings on the boundary of Manuka Street and undertake new planting on the boundary between proposed Lot 2 and adjoining property, 8 Milford Downs. This is to be completed no later than the first planting season following the granting of this consent

Fire safety

8. That a Consent Notice pursuant to section 221 of the Resource Management Act 1991 shall be registered in the Certificate of Title for proposed Lot 2 requiring compliance with the following conditions on a continuing basis:
 - a. Any dwelling to be constructed on proposed Lot 2 shall be provided with a dedicated means of Firefighting Water Source and access to that supply, in accordance with Appendix E of SNZ PAS4509:2008 New Zealand Fire Service Firefighting Water Supplies Code of Practice, prior to issue of a Building Code Compliance Certificate under Subpart 5 of Part 2 of the Building Act 2004 for such building(s) and must thereafter be maintained. This shall be provided at the expense of the land-owner(s).

Right of Way and Vehicle Access

9. Prior to requesting approval under section 224 of the Resource Management Act 1991 the consent holder shall construct a new vehicle crossing to Lot 1, in accordance with the subdivision application, and meet Council specified design outlined in Wairarapa Combined District Plan and NZS 4404:2010 (for a new rural crossing). The vehicle crossing shall be formed with minimum of 300mm culvert is required to ensure flow in the water table is not impeded.

Engineering plans and certification

10. A suitably qualified person shall be engaged to undertake the design and supervision of any works associated with this subdivision and shall certify all of the work on completion. Certifications will be required in accordance with Schedules 1A, 1B and 1C of NZS 4404:2010.

Financial Contributions

11. A reserves contribution, being 2% (plus GST) of the land value of Lot 2 is to be paid in respect of the additional lot in accordance with 23.2.2(a) of the Council's Wairarapa Combined District Plan.

The value of the allotment is to be obtained from a registered valuer by and at the cost of the applicant and shall be no older than 3 months at the time of presentation to the Masterton District Council.

N.B. The maximum amount of total combined contribution for reserves and roading in the Rural Zone shall be \$7,500 (plus GST) per allotment created by a subdivision.

12. A roading contribution, being 3% (plus GST) of the land value of Lot 2 is to be paid in respect of the one additional lot in accordance with 23.4.2(g) of the Council's Wairarapa Combined District Plan.

The value of the allotment is to be obtained from a registered valuer by and at the cost of the applicant and shall be no older than 3 months at the time of presentation to the Masterton District Council.

N.B. The maximum amount of total combined contribution for reserves and roading in the Rural Zone shall be \$7,500 (plus GST) per allotment created by a subdivision.

Advice notes:

1. Please note when applying for your section 224 completion certificate you will need to provide evidence that demonstrates all conditions of this consent have been met.
2. The resource consent is valid for five years from the date consent is granted.
3. If any archaeological site deposits are identified during any development of the land, the owner/contractor should act in good faith and avoid effect to the deposits and contact Heritage New Zealand, Rangitāne Tū Mai Rā, Rangitāne O Wairarapa, and Ngati Kahungunu Ki Wairarapa Taiwhenua immediately. Under the Heritage New Zealand Pouhere Taonga Act 2014 it is an offence to modify or destroy, or cause to be modified or destroyed, the whole or any part of an archaeological site without the prior authority of Heritage New Zealand. The accidental discovery protocol is to be followed.

4. All work or discharge to or within the road reserve requires a Corridor Access Request (CAR). This includes any upgrades to vehicle crossings and the installation of infrastructure, services. A Corridor Access Request (CAR) can be made via the BeforeUDig website or through Council's website. A Traffic Management Plan for the works shall be submitted with the CAR.