

Date:	24 th May 2024	Application Number:	LU-2023-112105-00/SG-2023-112106-00/NC-2023-112107-00
Reporting Planner:	Sarah Exley	Site Visit on:	20th March 2024

Related Applications:	
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Applicant:	NZHG Gisborne Limited
Property Address:	556 – 560 Aberdeen Road, Gisborne
Legal Description:	Lot 2 DP 1585 contained in Record of Title GS2B/162; Part Lot 1 DP 1585 contained in Record of Title GS110/25; Lot 1 DP 1817 contained in Record of Title GS2B/282
District Plan:	Te Papa Tipu Taunaki o Te Tairāwhiti – Tairāwhiti Resource Management Plan
Zoning:	General Residential
Other Restrictions:	Land Overlay 1; Rongowhakaata (Rongowhakaata Claims Settlement Act 2012); Te Aitanga-a-Māhaki Area of Interest; Reticulated Services Boundary; Aberdeen Road – Collector Road
Activity Status:	Discretionary

1.0 INTRODUCTION

1.1 Proposal

Land Use

The applicant seeks resource consent to construct 12 residential units. These units are proposed to comprise:

- Eight two-storey, two-bedroom dwellings constructed in duplex typology;
- Two single-storey, two-bedroom duplex dwellings constructed in duplex typology;
- One detached single-storey, two- bedroom dwelling; and
- One detached single storey three bedroom dwelling.

Two vehicle accesses are proposed to the site as follows:

- A proposed 3m wide single-vehicle crossing in the northeastern corner of the site providing direct access to a parking space provided for Lot 2;

- A 5.5m wide Joint-Owned Access Lot (JOAL) providing vehicle access for Lots 1 and 3 – 12 which has a vehicle crossing width of 5.5m; and
- A dedicated carpark is provided along the western extent of the JOAL for Lots 4 – 12. Lots 1 and 3 include carparking within their own lot.

Under the Tairāwhiti Resource Management Plan (TRMP) Infrastructure General Standards (C2.1.7.1, 18 b) & C2.1.7.1 H1), accessways to serve more than 10 dwellings are required to be served by a public road vested in the Gisborne District Council, with a legal width of 20m and physical width of 10m. As the applicant proposes a JOAL, the applicant does not propose the accessway to be vested with Council and does not comply with these General Standards.

The finished development will comprise over 1,000m² in impervious surface area (buildings and vehicle hard stands) and so a contaminant reduction device is proposed to be installed at the point of stormwater discharge to the reticulated network. Stormwater attenuation is also proposed. These are Permitted activities.

Construction of dwelling units which do not comply with the TRMP Infrastructure General Standards, and dwelling units on a sub-standard site area, are a Restricted Discretionary activity per TRMP rule DD1.6.1(17).

Subdivision

The applicant seeks resource consent to subdivide the property at 556 and 560 Aberdeen Road as follows:

- Creation of 12 residential allotments, known as 'Lots 1 – 12';
- Creation of 1 JOAL known as 'Lot 100' for provision of access to be held in equal shares by the owners of Lots 1 and 3-12; and
- Creation of 9 individual carpark Lots to be amalgamated with the corresponding residential Lot. The carpark lots are to be known as 'Lots 1004 – 1012'.

The proposed lot sizes are as follows:

Proposed Lot	Proposed site size	TRMP minimum site size
Lot 1	156m ²	320m ²
Lot 2	157m ²	320m ²
Lot 3	343m ²	400m ²
Lot 4	280m ²	400m ²
Lot 5	217m ²	320m ²
Lot 6	176m ²	320m ²
Lot 7	114m ²	320m ²
Lot 8	114m ²	320m ²
Lot 9	144m ²	320m ²
Lot 10	118m ²	320m ²
Lot 11	117m ²	320m ²
Lot 12	118m ²	320m ²
Lot 100 (JOAL)	625m ²	

The subdivision scheme plan includes a Schedule of Easements and Easements in Gross. Easements are proposed to facilitate rights-of-way over the JOAL (Lot 100) for Lots 1 and 3 - 12. Rights are also conferred to facilitate three waters supply and the transmission of electricity and telecommunications, as well as party wall easements. An easement in gross is provided

over the JOAL (Lot 100) in favour of Chorus New Zealand Limited for the right to convey telecommunications.

No TRMP General Standards DD1.6.1.1 for yard setbacks, maximum building lengths or recession planes are infringed on *external* boundaries with adjacent properties. There are however multiple *internal* non-compliances of the General Standards. These include:

- 3m yard setback between Lots 5, 6, 7 and 8 and the JOAL not provided;
- 3m yard setback between Lots 6 and 7 not provided;
- 3m yard setback between Lot 8 to Lots 9, 10 and 11 not provided;
- Recession plane from Lot 2 on Lot 3 infringed;
- Recession plane from Lot 5 on Lot 8 infringed;
- Recession planes between Lots 6 and 7 infringed;
- Recession planes between Lots 5, 6, 7 and 8 and the JOAL infringed;
- Recession planes between Lots 8 and 9 infringed;
- Recession planes between Lot 8 to Lots 9, 10, 11 and 12 infringed;
- Recession planes between Lots 10 and 11 infringed;
- Recession planes from Lot 1 and Lot 12 on the JOAL infringed.

There are no building length infringements on internal boundaries for the duplexes.

Subdivision which does not comply with the minimum site size, and subdivision which does not comply with the TRMP Infrastructure General Standards (detailed below), are a Discretionary Activity per rule C10.1.6(9).

Earthworks

Earthworks will be required to strip topsoil and unsuitable material from the building areas, to install the soakage stormwater devices and form building platforms and the JOAL. Additionally, earthworks are required to shape the site such that stormwater runoff is controlled by draining lots to the proposed JOAL and to defined overland flow paths to avoid adverse effects on adjoining properties. The proposed volume of earthworks is in the order of:

- 135m³ of cut, and
- 281m³ of fill.

These are permitted activities.

Contaminated Land

Analysis of soils tested for heavy metal contaminants has determined that ten test locations have returned elevated levels of lead and one sample with elevated levels of arsenic. Remediation of the soil is therefore required. Options set out as potentially feasible to remediate the areas of contamination are:

- In Situ or Ex Situ mixing of impacted material with underlying clean soil or introduced clean soil; or
- Excavation for disposal to landfill; or
- A combination of 1 and 2.

This is a Restricted Discretionary Activity pursuant to Regulation 10 of National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS).

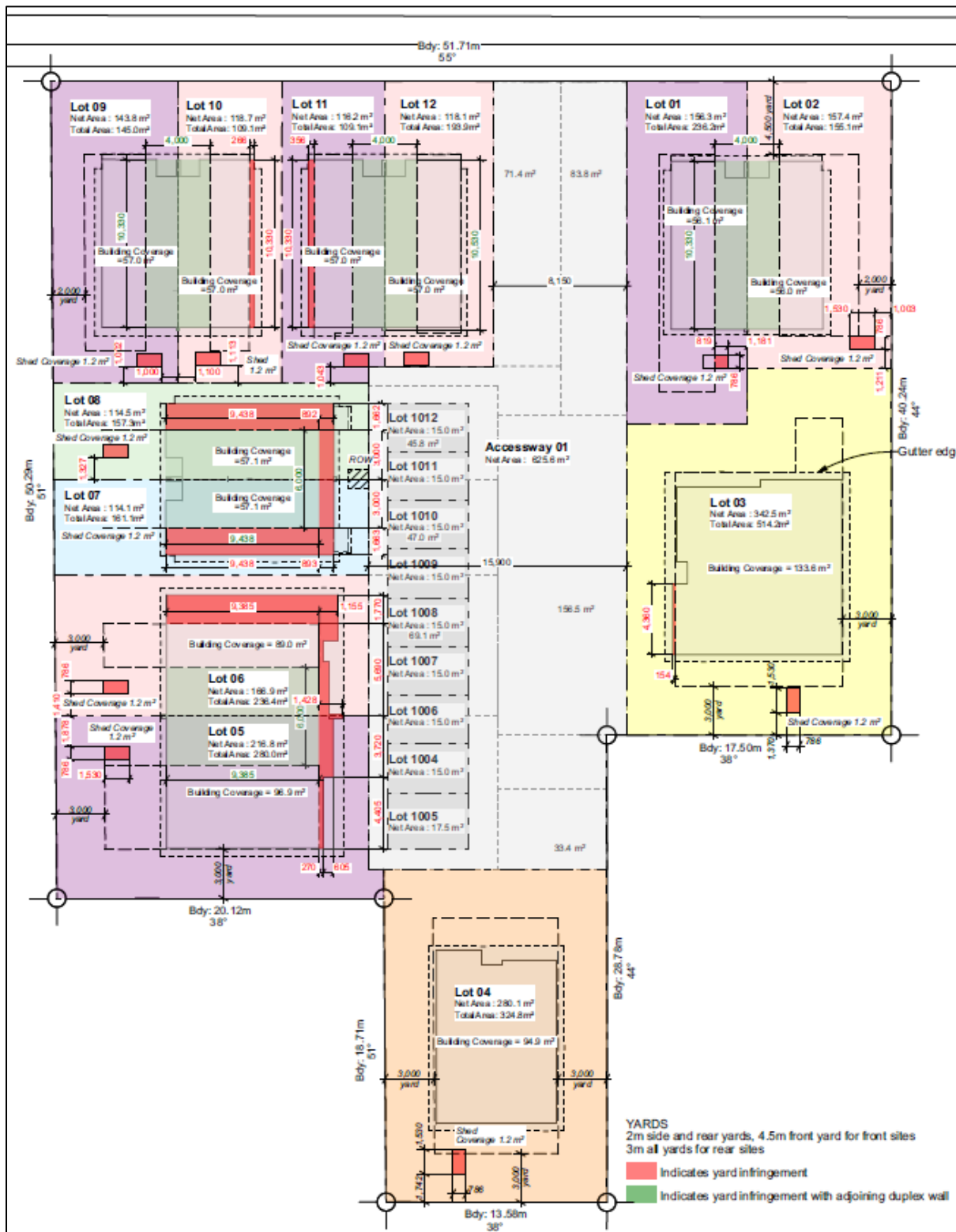


Figure 1 Snip of proposed subdivision and land use scheme plan.

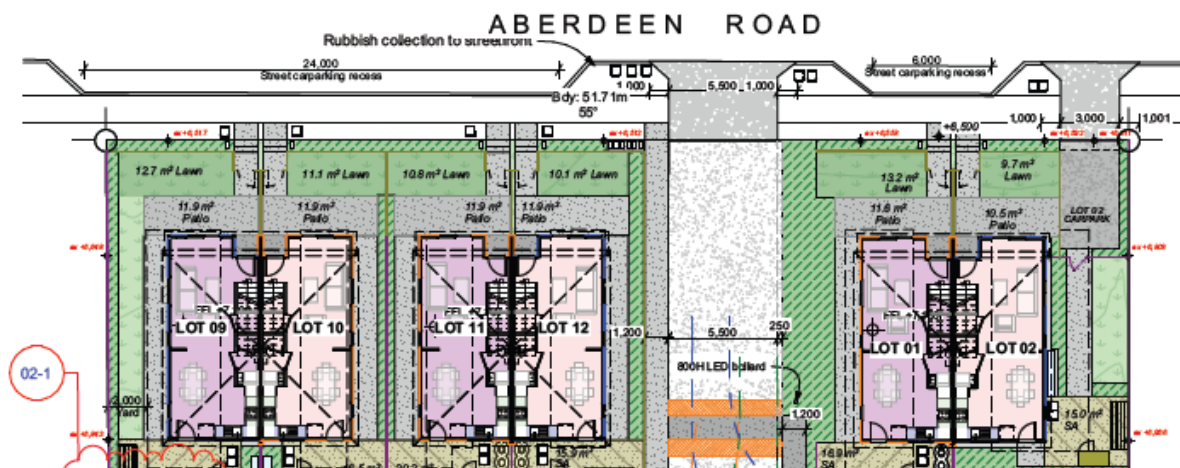


Figure 2. Snip of proposed recessed parking for five vehicles along Aberdeen Road.

Summary

The application seeks dual land use and subdivision approval, although it is proposed that the construction of the dwellings will begin prior to the issue of Section 223 and 224C certification.

Due to infringements to performance standards set out in the General Residential zone General Standards (DD16.1 of the TRMP) regarding minimum site size and not vesting the JOAL with Council, the construction of the dwellings is to be assessed as a Restricted Discretionary Activity pursuant to rule D1.6.1(17).

As the proposed lots to be subdivided are unable to meet minimum net site area requirements for subdivision, the yard setback and height recession requirements for residential development and the JOAL will not be vested with the Council, the proposal requires consent as a Discretionary Activity pursuant to Rule C10.1.6 (9).

Rule C6.2.3(2) for point-source water discharge applies as a Permitted Activity, as while the impervious surface area will total over 1,000m², a contaminant reduction device will be installed.

Resource consent is also required under the NES-CS as a Restricted Discretionary Activity pursuant to Regulation 10.

As set out above, the application requires resource consents for subdivision, land use and remediation of contaminated land. Given the connection between the proposed activity and the consent required, it is appropriate that the consents be bundled and the proposal be assessed as a whole. Accordingly, the application is considered to be a **Discretionary Activity** under the TRMP as this is this most restrictive activity status triggered.

1.2 Description of the Site

The site spans three separate Records of Title at 556 – 560 Aberdeen Road in Gisborne. The lots are legally described as Part Lot 1 DP 1585, Lot 2 DP 1585 and Lot 1 DP 1817 and cover an area of 2,671m².

The site is zoned General Residential. Amenity is an important consideration for development at densities higher than anticipated in the TRMP and 'amenity values' refers to environmental characteristics of an area that contribute to the pleasantness and attractiveness of that area as a place to live, work or visit. The amenity values of Gisborne's General Residential zone include a mix of dwelling densities on the 'lower' end of the density scale; open space; established landscaping, gardens and trees; low noise levels, limited traffic generation and

other characteristics people usually associate with domestic life. Sufficient privacy and access to sunlight are highly valued.

The nearby surrounding area comprises residential dwellings (zoned General Residential), on lots that range in size from 500m² to 1100m². Gisborne Boys' High School is located approximately 700m to the south-east; Gisborne Girls' High School is approximately 300m to the south. Barry Park Reserve recreation field is located approximately 150m to the east. The General Residential zone continues for at least 1km either direction.

Within a 10-minute walking distance from the site there are food outlet stores, an early child care centre, a church, Sports Centre and Te Kura Kaupapa Māori o Horouta Wananga school.

It is noted that neither the application nor the returned s92 information discussed the wider environment at Aberdeen Road, except to note there were several schools nearby.

The site has frontage only to Aberdeen Road which is classed as a Collector road. Aberdeen Road is also on public transport bus route '1A'. The site is located on the southern side of Aberdeen Road, approximately 50m from the intersection with Stanley Road and approximately 2kms west of the Gisborne CBD. The site comprises three land parcels and each one is relatively flat.

The site is currently occupied by three modest, older dwellings and accessory buildings.

The site is within the reticulated services boundary. The site is not subject to any natural hazard overlay (flood or stability). The Heritage Alert overlay is applicable. The site is subject to Land Overlay 1 and Rongowhakaata (Rongowhakaata Claims Settlement Act 2012) Te Aitanga-a-Māhaki areas of interest.

A Detailed Site Investigation prepared by EAM Environmental Consultants was provided with the application. The report outlines that soil sampling was undertaken in twelve different locations across the site, with ten locations returning elevated levels of lead and one location returning elevated levels of arsenic above the residential land use standard applicable per the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES). As such, the site is identified to be a 'piece of land' subject to the NES.

Images 1 and 2 below are aerial photographs of the site and surrounding area. Photographs of the site taken during a site visit are found in Appendix 1 to this report.



Image 1 – Aerial photograph of site (blue boundaries) and surrounding area. The Sports Centre is visible to the northeast, and the Turanganui River is visible further north.



Image 2 – Aerial photograph showing closer detail of site and surrounds.

1.3 Legal Interests in the Property

There are no relevant interests registered on the Record of Title.

1.4 Process Matters

A request for further information was issued pursuant to s92 of the Resource Management Act 1991 (RMA) on 12/01/2024. The request sought clarification on:

- Water, wastewater and stormwater provision:
 - Hydraulic modelling confirming various requirements and confirmation whether any infrastructure within the road reserve will be vested to Council;
 - Demonstration of compliance with C6.2.3(2) regarding attenuation and avoidance of flooding effects downstream;
- Geotechnical assessment;
- Contaminated land:
 - Updated Detailed Site Investigation with regards to proposed remediation methods;
- Traffic impact assessment;
- Urban design assessment:
 - With regards to density, amenity, solar study and Crime Prevention through Environmental Design

A reply was received from the applicant on 26/02/2024.

At the time of writing this assessment, stormwater and contaminated land matters were still unresolved.

2.0 REASON FOR THE APPLICATION

The proposal will be assessed under the Tairāwhiti Resource Management Plan which is considered to be fully operative in relation to this proposal. The following rules are relevant to this proposal:

Rule Number	Rule Name	Status of Activity	Comment
C2.1.7.1	Rules for Provision of Infrastructure for Development (Works and Services)	General Standards	<p>These General Standards apply to both the Land Use and the Subdivision proposal.</p> <p>The proposal does not comply with standards at C2.1.7.1 in respect of access and parking. Specifically, 11 of the 12 units will share a single access, and the access will not be a road that is vested in Council; and the legal and physical width of the access is narrower than permitted.</p>
C6.2.3(2)	The discharge of stormwater from land, roofs, paved areas and roads, or diversion of the same to a public	Permitted	The discharge of stormwater from land, roofs, paved areas and roads, or diversion of the same to a public network, where a development includes an impervious area of greater than 1,000m ² , is provided for as a

	<p>stormwater network, except:</p> <p>a) From industrial or trade premises; or</p> <p>b) Discharges to Regionally Significant Wetlands and Outstanding Waterbodies identified in Schedule G17 (Regionally Significant Wetlands) and G18 (Outstanding Waterbodies) not lawfully established before the date of notification of this plan.</p>		<p>Permitted Activity under Rule 6.2.3(2), provided a contaminant reduction device is used.</p> <p>All other stormwater discharge permitted activity standards are complied with.</p>
C10.1.6 (9)	<p>Activities which do not comply with the General Standards and are not listed as Controlled or Restricted Discretionary activities</p>	Discretionary	<p>Subdivisions are required to comply with General Standards for C2 – Built Environment, Infrastructure and Energy.</p> <p>The proposal does not comply with General Standards at C2.1.7 in respect of access and parking. Specifically, 11 of the 12 units will share a single access, and the access will not be a road that is vested in Council; the legal and physical width of the access is narrower than permitted.</p> <p>The activity is not provided for as Controlled or Restricted Discretionary.</p>
DD1.6.1(17)	<p>Construction, addition to or alteration of minor dwelling units, residential dwelling-units and residential accessory buildings which do</p>	Restricted Discretionary	<p>The proposal does not comply with the rules for Permitted activities in respect of:</p> <p>d) Minimum site area</p> <p>e) Recession Planes</p> <p>f) Site coverage</p> <p>g) Yard distances</p>

	not comply with the rules for Permitted activities in respect of: a) Vibration b) Nuisance c) Building length d) Minimum site area e) Recession Planes f) Site coverage g) Yard distances h) Infrastructure, works and services		h) Infrastructure, works and services (in respect of C2.1.7.1 detailed above).
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An assessment of the proposal's compliance with the relevant rules of the NES-CS has also been undertaken. The following rule is considered relevant to this proposal:

Regulation Number	Regulation Name	Status of Activity	Comment
10	Restricted Discretionary Activities	Restricted Discretionary	The proposal involves subdivision and earthworks therefore the NES-CS must be addressed. A Detailed Site Investigation (DSI) undertaken on the site identifies concentrations of arsenic, cadmium and/or lead exceeds the soil contaminant standards for a residential land-use. Therefore, as this exceeds the applicable standard in regulation 7, this rule applies.

As outlined in the table above, the activities are integral and so the application is bundled. The application is overall considered to be a **Discretionary Activity** under the Tairāwhiti Resource Management Plan.

3.0 SECTION 95A ASSESSMENT FOR THE PURPOSE OF PUBLIC NOTIFICATION

Section 95A(1) of the RMA states that the consent authority must follow the steps set out in that section, in the order given, to determine whether to publicly notify an application for resource consent.

Those steps are set out below, in the order provided in the RMA.

3.1 Step 1. Mandatory public notification in certain circumstances s95A(2-3)

Has the applicant requested that the application be publicly notified?

- No **Go to step 2 ...**
- Yes Publicly notify **S.95A (2)(a) - Go to Decision in section 3.5**

Was further information requested and not provided before the deadline or has the applicant refused to provide the information?

- No **Go to step 2.**
- Yes Publicly notify **S.95A (2)(a) - Go to Decision in section 3.5**

Comment: As above in s1.4 further information was requested and while some matters are still outstanding, the applicant has not refused to provide the information and the deadline has been extended.

The application is made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?

- No – **Go to step 2.**
- Yes - Publicly notify **S.95A(2)(a) - Go to Decision in section 3.5**

3.2 Step 2. Public notification precluded in certain circumstances s95A (4-6)

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

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

- (i) A Controlled Activity?
- (ii) A Restricted Discretionary Activity, Discretionary Activity or Non-Complying Activity but only if the activity is a Boundary Activity?

- No - **Go to step 3.**
- Yes – **Go to step 4** (step 3 does not apply)

Comment: The application is for Discretionary Activity, but subdivision is not a boundary activity. The activity is not subject to a TRMP rule or national environmental standard which would preclude public notification.

3.3 Step 3. If not precluded by step 2, public notification required in certain circumstances

The application is for a resource consent for 1 or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification (not applicable in this proposal);

The consent authority decides, in accordance with section 95D that the activity will have or is likely to have adverse effects on the environment that are more than minor. The following assessment addresses the adverse effects of the activities on the environment, in relation to public notification only:

3.3.1 Adverse effects assessment (sections 95A(8)(b) and 95D)

a) Effects Disregarded

Pursuant to Section 95D(a) of the Act, when forming an opinion for the purposes of Section 95A, Council must disregard any effects on the persons who own or occupy the land in, on, or over which the activities will occur, and on persons who own or occupy any adjacent land. It is at Council's discretion to determine which sites are deemed to be adjacent and which parties are affected. There is no definition of 'adjacent land' in the RMA. The term adjacent has a common meaning which is "close to, but not necessarily adjoining another site". The term adjacent has also been defined by the Courts as lying near or close; adjoining; continuous; bordering; not necessarily touching.

The land considered adjacent to the subject site is shown in Image 3 below.



Image 3 –Aerial photo identifying the subject site and those adjacent properties that have been excluded from the public notification assessment.

The sites considered adjacent (effects on these properties are considered in the s95A assessment for the purpose of limited notification below) are:

- Nos. 551, 553, 554, 555, 559 and 562 Aberdeen Road;
- Nos. 2, 4, 6 and 6A Asquith Street; and

- Nos. 7 and 9 Stanley Road.

Pursuant to Section 95D(b) of the Act, a Council may disregard an adverse effect of the activity on the environment if a plan or national environmental standard permits an activity with that effect. This is commonly referred to as the permitted baseline.

A permitted baseline occurs for the land-use development of:

- Eight lots of 320m² where each unit is attached on one side to another dwelling-unit; or
- Nine lots of 250m² where each unit is attached on two sides to other dwelling units (i.e. three conjoined units), plus one lot of 400m² for a detached unit.

Importantly, this permitted baseline would also require compliance with internal boundaries.

To reiterate, the applicant proposes:

- 10 lots of an average of 143m², where each unit is attached on one side to another dwelling-unit; and
- Two lots of an average of 311m², for two detached units.

I consider the proposed 10 lots of an average of 143m² a significant departure from the 320m² permitted baseline for attached units and even the denser 250m² permitted baseline for twice-attached units. Additionally, the proposal fails to meet permitted baseline requirements for internal recession planes, site coverage, internal yards and access. Taken together these non-compliances indicate that the effects of the proposed development (12 total dwellings with several non-compliances) will be significantly greater than what is permitted by the TRMP and not comparable to a permitted baseline scenario as outlined above. I consider that a permitted baseline is not applicable to the Council's assessment of the adverse effects of the proposal on the environment.

Pursuant to Section 95D(d) of the Act, Council also must not have regard to any trade competition or effects of trade competition.

b) High-level Direction

National Policy Statement on Urban Development (NPS-UD)

The National Policy Statement on Urban Development 2020 (NPS-UD) came into effect on 20 August 2020. The NPS-UD seeks to ensure New Zealand's towns and cities are well-functioning urban environments that meet the changing needs of our diverse communities, to provide for their social, economic, and cultural wellbeing.

Gisborne is classified as a Tier 3 urban environment. While not required, Tier 3 local authorities are strongly encouraged by the NPS-UD to do the things that Tier 1 or 2 local authorities are obliged to do under Parts 2 and 3.

The applicant has considered Policy 1, Policy 5 and Policy 6 of the NPS-UD are applicable to the proposal:

Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(a) have or enable a variety of homes that:

- (i) meet the needs, in terms of type, price, and location, of different households; and*
- (ii) enable Māori to express their cultural traditions and norms; and National Policy Statement on Urban Development 2020 – updated May 2022 11*

(b) have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and

(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport

Policy 5: Regional policy statements and district plans applying to tier 2 and 3 urban environments enable heights and density of urban form commensurate with the greater of:

(a) the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services; or

(b) relative demand for housing and business use in that location.

Policy 6: When making planning decisions that affect urban environments, decision-makers have particular regard to the following matters:

a. the planned urban built form anticipated by those RMA planning documents that have given effect to this National Policy Statement

b. that the planned urban built form in those RMA planning documents may involve significant changes to an area, and those changes:

i. may detract from amenity values appreciated by some people but improve amenity values appreciated by other people, communities, and future generations, including by providing increased and varied housing densities and types; and

ii. are not, of themselves, an adverse effect.

c. the benefits of urban development that are consistent with well-functioning urban environments (as described in Policy 1)

d. any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity

e. the likely current and future effects of climate change.

Comment:

Policy 6 requires a Council to have particular regard to the fact that planned urban built form, as anticipated by RMA planning documents which will give effect to the NPS-UD, may involve changes to an area, including a change in amenity value, and that these changes “are not, of themselves, an adverse effect”. The applicant has explicitly stated that Policy 6 is a relevant matter for this proposal and the proposal's effect on amenity.

However, Policy 6 must be interpreted with reference to “those RMA planning documents that have given effect to this National Policy Statement” and Gisborne District Council has not yet prepared a plan change to give effect to the NPS-UD. While “planning decisions” is defined in the NPS-UD as including a decision on a resource consent, the Environment Court has held that the NPS-UD requires a planning response by councils but not in relation to each individual consent application “in the meantime”¹.

The Council has adopted its first Tairāwhiti Future Development Strategy 2024-2054 (FDS), under the NPS-UD. The purpose of the Tairāwhiti FDS is to provide guidance for where the region's housing and business growth happens over the next 30 years. The FDS outlines broad spatial areas that can support growth if infrastructure is upgraded or added over the short, medium and long term.

¹ Drive Holdings Limited v Auckland Council [2021] NZEnvC 129 at paragraph [23].

While future changes to the TRMP to implement the NPS-UD and the FDS may result to significant changes in planned urban built form, this has not yet occurred, and a statutory process will need to be followed before such changes can be made operative.

Accordingly, the application must be assessed under the operative TRMP General Residential zone rules and standards and assessed in the context of what the TRMP enables at this time.

Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021

The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (RMA-EHS) became law in December 2021. It is designed to increase housing supply in New Zealand's main urban areas by speeding up implementation of the NPS-UD and enabling more medium-density homes through the Medium Density Residential Standards.

The RMA-EHS seeks to remove barriers to development to allow for a wider variety of housing in the main urban centres, that being Auckland, Hamilton, Tauranga, Wellington and Christchurch. The Medium Density Residential Standards allow for building up to three homes of up to three storeys on each site in relevant residential zones without needing resource consent. However, the construction and use of four or more residential units that comply with the density standards, or one to three residential units that do not comply with the density standards, needs a resource consent (land-use consent) as a restricted discretionary activity.

The RMA-EHS requires Tier 1 territorial authorities to prepare and notify a plan change that gives effect to the Medium Density Residential Standards and intensification policies of the NPS-UD. It is not mandatory for Tier 2 and Tier 3 territorial authorities, however, Tier 2 territorial authorities can be required to if there is an acute housing need. Tier 3 territorial authorities can apply to the Minister to be required to apply the same regulations as those that apply to the Tier 1 and some Tier 2 Council's however, Gisborne District Council has not decided whether such an application will be made.

As such, Gisborne District Council is a Tier 3 Council and is not required to apply the Medium Density Residential Standards. Therefore, while the proposal may comply with a number of the proposed standards, there is no requirement for Council to adopt or accept these, even if there is an acute housing need. As such, the RMA-EHS is not relevant for urban intensification in the Gisborne context. In addition, what the applicant proposes constitutes high density, not medium density. This is discussed further below.

c) Assessment of Environmental Effects

The proposal does not comply with four general standards for residential development in the General Residential zone.

As noted above, the proposal has been bundled and the most restrictive activity status has been applied. As a Discretionary activity any potential adverse effects can be assessed as part of this assessment.

My assessment of the actual and potential effects on the environment of allowing the activity is that there are likely to be adverse environmental effects beyond the site and on the wider environment. For the following reasons, I conclude that the activity is likely to have adverse effects on the environment that are more than minor.

(i) Effects on amenity

It is important to consider the level of development anticipated by the Tairāwhiti Plan on a site of this size. While applicants can apply, and Council has granted applications for the creation

and development of substandard sites, these must be assessed on a case by case basis and within the context of the site and surrounding environment.

In terms of the guidance that the TRMP sets for residential activities, the objectives and policies are relevant and can be considered to assist in determining the level of effects on amenity values on the wider environment. The objectives and policies help establish the outcomes sought for the General Residential zone and give context to the assessment of effects.

The following provisions are relevant and I have considered them in undertaking my assessment:

DD1.3.1 Residential Styles Objective

- 1. Enable a diversity of residential styles based on the differing characteristics of areas within the district, and the varied housing needs of the community.*

DD1.3.2 Amenity Values Objective

- 1. Maintain or enhance residential amenity values.*

DD1.3.4 Location and Density Objective

- 1. To enable the community to be mobile, and locate anywhere that does not compromise the capacity of the infrastructure systems to function, the amenity of the residential environment or the highly productive and fertile soils within the region.*

DD1.4.1 Residential Styles Policy

- 1. Provide for flexibility in site development and building design provided that:
 - a) the development integrates the design of residential units and any subdivision of the site;*
 - b) the development presents a high standard of on-site and off-site amenity;*
 - c) the development avoids, remedies or mitigates any adverse effect on the amenity values of neighbouring sites;*
 - d) the development is designed with regard to the character of the area;**

DD1.4.2 Amenity Values Policies

- 1. Manage the adverse effects of activities in residential areas by ensuring that:
 - a) buildings and structures are located so as to avoid, remedy or mitigate any adverse effect on the adjoining properties;*
 - b) the scale of the development is appropriate for the site and the location of the site in the street, and will not cause a loss of residential amenity values for surrounding residents;*
 - c) the safety and amenity values of the neighbourhood are protected;*
 - d) the character and amenity of the residential environment shall be maintained or enhanced and conflicts with adjoining land users avoided, remedied or mitigated.**
- 2. Manage the effects of traffic generated by activities in residential areas by:
 - a) ensuring that adequate on-site vehicle parking and manoeuvring areas are provided for all developments;*
 - b) ensuring that the level of traffic potentially generated by the proposal can be accommodated without compromising the safety of traffic and residents on the district's roads;**

- c) *ensuring that the provision of on-site parking does not significantly detract from the visual appearance of the property or lessen the quality of outdoor living environments and, in these situations, consider whether suitable alternative provision for parking can be made;*
 - d) *giving consideration to the nature of adjacent roads, to ensure that entry, exit and manoeuvring of vehicles onto a public road can be conducted safely from all sites in a residential zone.*
3. *Limit activities in residential areas to those which will not significantly alter the existing background noise level of the surrounding residential area.*
 4. *Preserve access to daylight and privacy for existing dwelling-units on adjoining properties, and for future occupants of any new dwelling-unit by ensuring that:*
 - a) *each dwelling-unit has a private outdoor area orientated to the sun;*
 - b) *buildings or structures are designed and located so as not to cause significant loss of daylight or privacy to adjoining sites.*
 7. *Enable innovative design which reflects the character of the surrounding area by ensuring that:*
 - a) *the scale and design of additions, alterations and new buildings are compatible with the character and amenity, particularly visual amenity, of the site and the surrounding area;*
 - b) *the location, form and scale of new buildings are compatible with that of buildings in the immediate vicinity of the site, and streetscape amenities can be maintained.*

DD1.4.4 Location and Density Policies

1. *New development to be encouraged to areas where the effects on the physical infrastructure and/or life supporting capacity of the district's soils can be avoided, remedied or mitigated.*
2. *Limit the density of development in urban residential areas according to the ability of the stormwater infrastructure system servicing the site to dispose of the potential run-off generated by the coverage of the site with buildings.*

In my opinion it is clear that the TRMP intends to provide some flexibility for residential development, while ensuring that amenity is maintained or even enhanced, and adverse effects are avoided, remedied or mitigated. The location, scale, density and intensity of buildings and development are specifically identified as relevant to the protection of amenity values. There is an emphasis on ensuring new activities are sensitive to, and compatible with the existing environment, and do not fundamentally change the character of an area.

The description of the methods in the TRMP also provides some context for density in residential zones. The methods at DD1.5 clarify that the Inner Residential zone is the intended zone for "denser forms of residential development". However, the methods do leave open the possibility of medium density housing in the General Residential zone if the adverse effects can be avoided, remedied or mitigated.

Tairāwhiti's FDS 2024-2054 under the NPS-UD reiterates that high-density intensification is appropriate for Central Business District and inner-city surrounds. The FDS maintains medium-density may be appropriate for the wider suburbs, such as Elgin and Te Hapara (including Aberdeen Road).

The Applicant's assessment is that while the site sizes constitute high density, the proposal provides a level of outdoor living area, service space and landscaping consistent with medium density and provided an assessment against the Medium Density Residential Guidelines:

"While the density of development may fall into the definition of high density as stated above, it is noted that the proposal largely complies with the recommended density standards provided by MfE for Medium Density housing. (...) As such, while the proposal may present as a density which is more aligned with 'high density', the proposal achieves a level of amenity on site which is sought for medium density living as prescribed by the MDRS guide for territorial authorities."

And:

"(...) the proposal can be determined to meet an appropriate level of amenity sought for medium density residential housing".

While the proposal may meet an appropriate level of amenity for medium density housing, this premise does not inherently mean the development is appropriate for the site, the neighbourhood or General Residential zone in general. As a whole, the TRMP policies above are weighted towards protecting the existing amenity and character of an area. The emphasis is on ensuring new activities are sensitive to, and compatible with, the existing environment.

There may be situations where increased density and a change in building typology is appropriate and fits into the surrounding environment and infrastructure regardless of a medium or high density categorisation.

Therefore, consideration must be given to how the design contributes to the existing level of amenity in the neighbourhood or contributes to a preferred neighbourhood character. Taking into account direction from the objectives and policies, I conclude that the relevant matters for the assessment of effects on amenity are, in no order of importance:

- d) Minimum site area
- e) Recession Planes
- f) Site coverage
- g) Yard distances

Minimum Site Area

The applicant proposes:

- 10 lots of an average of 143m², where each unit is attached on one side to another dwelling-unit; and
- Two lots of an average of 311m², for two detached units.

The TRMP specifies a minimum site area of 320m² for the 10 attached dwellings and 400m² for the two detached dwellings.

The TRMP does not provide a definition meaning for what is meant by medium density housing, and while there is no universal standard of application of the term 'medium density', the most common definition (or variants thereof) of medium density housing in current use in New Zealand (used by Housing New Zealand and a number of District and City Councils) is: Housing at densities of more than 150m²/unit and less than 350m²/unit, or 30-66 dwellings per hectare (dph). Using this meaning, the proposal under consideration is instead considered high density residential development. While the proposal has a density of an average of 180m²/unit, it is

noted that 180m² is significantly less than 350m²/unit and 6 of the proposed 12 lots significantly exceed this density, with an average of 120m²/unit.

Site size is a means of controlling effects associated with density. Such effects could include increased noise – whether from human activity or vehicle traffic; decreased access to sunlight and increased shading; loss of vegetation; and loss of privacy. There is also the potential for increased odour or vermin from outdoor service areas. These effects are expanded upon in the below assessments.

The Applicant has stated: “vehicle access and parking are situated within the JOAL, therefore smaller lot sizes can be utilised as they do not need to accommodate access, parking and manoeuvring spaces.” I do not consider that in this proposal, a shared JOAL will offset a sub-standard sized site. The JOAL results in residents of Lots 9 and 10 having no direct access to their designated carpark in the manner offered to the other Lots, who can access the JOAL through their back fence or front door. Lot 9 and 10 also do not have direct visibility from their dwelling to their carpark. The JOAL also offers no privacy for users in the manner an onsite carpark would. Finally, the 3m yard setback between Lots 5, 6, 7 and 8 and the JOAL is not provided and recession planes from these lots and Lots 11 and 12 are infringed. This further indicates a development which is too dense and Lot sizes are insufficient.

I also consider the proposed lot sizes are not of sufficient size to host the proposed stormwater attenuation tanks without impeding outdoor service or outdoor living areas.

The provisions of the Tairāwhiti Plan provide for a variety of built form while the density/lot size provisions establish a key performance standard which has a significant bearing on the overall density and character of residential development that may be anticipated on a residential site. The density standard must be considered alongside the bulk and location standards (i.e. yard distances, site coverage and recession planes) which control the nature and scale of building form at the boundary interface.

The minimum site area is an important part of maintaining the character and amenity of residential areas. The wording of the objectives, policies and methods reflects this.

Yard Distances

With regards to DD1.6.1(2)(a) Yard Distances (Front sites): Being duplex dwellings, the proposed units on Lots 1, 2 and 9 – 12 will not meet the 2m setback required from ‘other yards’. Additionally, the proposal cannot comply as follows:

- The unit on Lot 10 will infringe its eastern 2m side yard setback, being setback by 1.734m, and
- The unit on Lot 11 will infringe its western 2m side yard setback, being setback by 1.644m.

DD1.6.1(2)(b) Yard Distances (Rear sites): The following infringements will be generated in relation to the 3m setback on ‘all yards’ for rear sites:

- Unit 3 will infringe the 3m setback to the JOAL, being setback by 2.4m for a length of 4.3m,
- Unit 5 will infringe the 3m setback to the JOAL, being setback by 2.73m – 1.58m across the frontage of the dwelling.
- Unit 6 will infringe the 3m setback to the JOAL, being setback by 1.58m and the northern boundary with Lot 7 by 1.33m.
- Unit 7 will infringe the 3m setback to the JOAL, being setback by 2.107m and the southern boundary by 1.44m.

- Unit 8 will infringe the 3m setback to the JOAL, being setback by 2.107m and the northern boundary by 1.44m.

It is noted Lot 7 does not have a storage shed proposed, and so would require additional consent in the future, due to already exceeding the site coverage allowance.

I consider yard infringements, in conjunction with below recession plane and site size infringements, create decreased provision of privacy, provision of sunlight, protection from noise and opportunity for natural vegetation.

Recession Planes

The site is currently occupied by three older, single-storey dwellings and accessory buildings. Together these buildings occupy 21% of the total site area. The nearby surrounding area comprises residential dwellings on lots that range in size from 500m² to 1100m² (all zoned General Residential). These residential dwellings are single-storey.

The layout of the proposed development has complied with the required recession planes and yard setbacks with external boundaries, thus achieving the permitted baseline for shading on adjacent properties. However, the layout is in breach of required yard setbacks and recession planes for internal boundaries.

Due to the duplex layout, Lots 1, 2 and 5 – 12 will infringe the relative height in relation to boundary recession plane along the common party wall boundary. Additionally, the proposed dwellings will infringe the recession planes to the internal boundaries as follows:

- Unit 1 as it relates to the western JOAL boundary by a height of 0.55m for the length of the dwelling and the southern JOAL boundary by 0.31m,
- Unit 2 as it relates to the southern boundary with Lot 3 by a vertical height of 2.5m,
- Unit 7 as it relates to the southern boundary with Lot 6 by a vertical height of 3.25m for the length of the dwelling,
- Unit 8 as it relates to the northern boundary by a vertical height of 2.11m for the length of the dwelling,
- Unit 9 as it relates to the southern boundary by a vertical height of 0.736m,
- Unit 10 as it relates to the eastern boundary by a vertical height of 2.17m for the length of the dwelling,
- Unit 11 as it relates to the western boundary by a vertical height of 1.59m, and
- Unit 12 as it relates to the eastern JOAL boundary by a vertical height of 1.86m for the length of the dwelling and the southern JOAL boundary by a height of 1.7m.

The proposed structures – with 8 units (four duplexes) being two-storied – are significantly greater than the existing development. The TRMP contains no maximum height limit for the General Residential zone. However, the TRMP relies upon its recession planes rules to address potential shading effects on adjacent properties, caused by dwelling height or proximity. As well as shading effects, the recession plane rules also protect privacy. Together, these aspects contribute to amenity. These recession planes protect access to daylight and privacy (amenity) by requiring taller structures to be progressively set back from boundaries.

I consider these infringements create significant restriction on access to daylight and privacy for the proposed dwellings. The applicant has stated that “*onsite privacy will not be compromised as a result of the proposed lot sizes noting that living rooms do not overlook each other.*” I disagree with this as the breach yard setbacks and recession planes mean other rooms do overlook into other properties, especially from upper stories into other property windows and outdoor areas.

Site Coverage

Site coverage in terms of buildings and structures is limited to a maximum of 35%. This is to limit the effects of impervious surfaces as well as provide for open space and amenity for residents. A dense development also affects residents due to increased noise and less space able to provide for natural vegetation, which provides softening features.

The site is currently occupied by three older, single-storey dwellings and accessory buildings. Together these buildings occupy 21% of the site area. The nearby surrounding area comprises residential dwellings on lots that range in size from 500m² to 1100m² (all zoned General Residential) and occupy a similar coverage of the site area; it appears none or few breach the 35% site coverage restriction.

I consider the proposal, although residential in use and character, is substantially greater in site coverage scale than the existing use of the site as well as greater in scale than the surrounding area. Proposed Lots 6 – 11 exceed the maximum coverage of 35% with the following coverages proposed:

- Lot 6: 38.2%
- Lot 7: 36.2%
- Lot 8: 36.2%
- Lot 9: 39.4%
- Lot 10: 52.4%
- Lot 11: 52.4%

This exceedance on already sub-standard lot sizes, in conjunction with infringements on yards and recessions planes, indicates a dense development with lack of open space for each dwelling.

The applicant has stated in particular that:

"Through the compliance achieved with external boundaries by the dwellings and also the open space provided within the centre of the site afforded by the parking and manoeuvring areas, the development will retain a sense of spaciousness when viewed from the surrounding area."

I disagree with this assessment. Spacious means *vast or ample in extent, or roomy*. My assessment of the site in its current form is that its open space is vast or ample (refer Images in Appendix 1), and therefore the site is spacious. If the proposed 12 units were constructed – eight being two-storied – with multiple reduced internal yard distances and exceedances in site coverage, I conclude that the site would cease to have a spacious feel. A hard-sealed parking and manoeuvring area offers no mitigation of such to residents nor viewers in the surrounding area. Additionally, it does not add to a sense of open space given that it is proposed to be hard-surfaced and therefore would visually have the appearance of being 'developed'.

Other factors

All of the dwellings are considered to be provided with outdoor service areas in line with the TRMP permitted baseline of 15m², washing lines and other amenities such as outdoor sheds. Per the General Standards, these are separate in the total area calculated for outdoor service area.

However I cannot conclude that these outdoor areas will offer sufficient privacy or sunlight, or mitigation from noise, when considering the above effects of breached setbacks and recession planes.

The Applicant has provided a solar study of Lots 6, 7, 8, 10 and 11. I noticed in these studies that Lots 5 & 6 experienced considerable shading cast by their orientation and proximity to Lots 7 & 8. In summer, Lots 5 & 6 experienced partial sunlight in the front outdoor areas by 10am, direct sunlight through the living room windows by 1pm but the kitchen was in shade by midday.

The applicant has asserted that "*each site is provided with an area of open space which achieves sunlight at all times of the year.*" While this may be technically accurate, the open space is not the entire open space of each Lot but for the above-numbered Lots is only between 5m²-10m² of open space which is not in shadow. Eventual residents of Lots 5-11 will have almost no sunlight in the small backyards during the winter months as demonstrated by the solar studies. It is my conclusion that the provided solar study shows undesirable extents of shading experienced by Lots 5, 6, 7, 8, 10 and 11 throughout all times of the year.

The applicant has submitted a landscaping plan showing 24% of the site will be planted in various species. This is 642m² of 'grass and planting' in area, compared to over 1,000m² (>37%) impervious surface area and 852m² (or 32%) total building coverage.

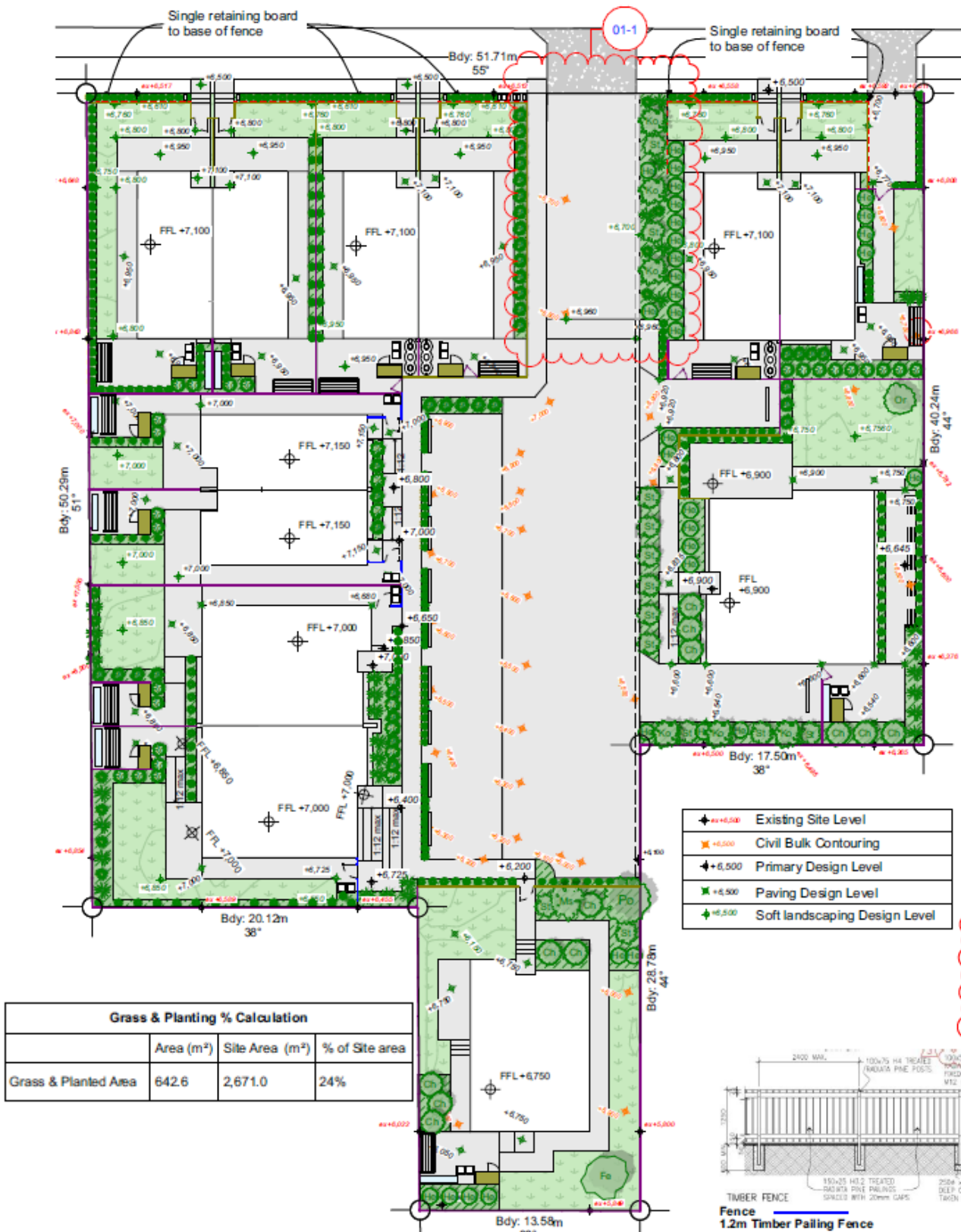


Figure 3. Snip of proposed 24% site coverage landscaping.

The majority of the proposed species are small shrubs or compact hedging. I do not consider the proposed landscaping to mitigate the effects of combined impervious surface area and dense building coverage.

Within the vicinity of the site, there is a mix of street boundary treatments consisting of landscaping, variable fencing heights and styles, and open yards. Landscaping within front

yards is varied, and rear yards generally contain outbuildings of varying size and more extensive plantings. The application asserts that the proposed units will not dominate the streetscape in a manner that reduces the amenity of the wider environment. Further to this, the applicant considers that landscaping of the front yard with shrubs will have a notable softening effect on the buildings when viewed from the street and will contribute significantly to streetscape amenity as well as onsite amenity for residents.

I am unable to agree with the applicant's assessment. The intent of the landscaping is not to completely screen visibility of the buildings however, landscaping should provide a reasonable level of amenity against the bulk and density of the development, not just when viewed from sites external to the property. I do not believe that this can be achieved in a manner which offsets the scale of development nor will the landscaping achieve a similar level of amenity to the present landscaping experienced in the wider environment of Aberdeen Road and the General Residential zone.

Throughout the consent process the Applicant submitted revised plans showing recessed parking on Aberdeen Road and to locate post boxes to the front of the site. There is an effect on further reducing landscaping amenity by removing the grass berm in the road reserve and replacing with an increased sealed surface. This visually adds to the lack of openness and hard-surface dominance of the development.

I do consider the small portion of landscaping to the north-east corner of Lot 4 is of sufficient width, depth and height to provide onsite amenity compared to the size of the dwelling.

Amenity Conclusion

The threshold for considering adverse effects as "more than minor" for the purposes of public notification involves both quantitative and qualitative assessments. The term "more than minor" is not defined in the RMA and must be interpreted contextually, taking into account the scale, nature, and context of the effects. Cumulative effects are also valid, in addition to each direct effect.

The applicant has stated:

"Given the assessment attached and compliance with bulk and location controls achieved, mitigation measures employed result in a development which is consistent with the design elements of the [Hastings Residential Intensification Design Guide] and the District Plan. The proposal can therefore be determined to be appropriate within the surrounding environment and of a level which generates less than minor effects."

However, as demonstrated in the above assessment, I do not agree that there is 'compliance with bulk and location controls', nor has the proposal included 'mitigation measures' which result in a development 'consistent' with the District Plan, let alone the wider environment of Aberdeen Road. It is again noted the applicant did not provide a comprehensive description of the Aberdeen Road environment.

I therefore cannot agree that *'the proposal can therefore be determined to be appropriate within the surrounding environment and of a level which generates less than minor effects'*. I note that the applicant agreed in their application material that the proposal introduces greater density into the immediate locality but has kept their assessment of these matters to the site itself and avoidance of infringements on neighbouring properties, rather than whether a development of such density and internal infringements is consistent with – or 'maintains or enhances' the wider environment.

The District Plan intends to provide some flexibility for residential development, while ensuring that amenity is maintained or even enhanced, and adverse effects are avoided, remedied or mitigated. The location, scale, density and intensity of buildings and development are specifically identified as relevant to the protection of amenity values. There is an emphasis on ensuring new activities are sensitive to, and compatible with the existing environment, and do not fundamentally change the character of an area.

The proposed buildings are a different housing typology from the general urban context of standalone houses in Te Hapara. The scenario presented is unusually large in regard to surrounding scale and intensity, and higher density, multi-unit, double-storey developments are uncharacteristic for the area. In the Gisborne context as well as the Housing New Zealand context, the proposed site sizes are of 'high-density'.

Cumulatively the non-compliances outlined above, indicate that the proposed development, whether of high or medium density, is significantly greater than what is permitted (and therefore anticipated by) the TRMP for this site. As such, I conclude the proposal is likely to have adverse effects on residential amenity values that are more than minor in the context of the surrounding environment.

(ii) Effects on Infrastructure and Network Services

Stormwater

Stormwater from this section of Aberdeen Road and nearby Stanley Road enters Council network and drains to the Taruheru River, approximately 120m north.

The developed site will contain over 1,000m² of impervious surface area. Council requires stormwater discharge on sites such as this, to pass through a contaminant reduction device prior to entering the reticulated network (C6.2.3(2)(e)). The applicant has complied with this. The applicant has also complied with attenuation requirements and has demonstrated they will avoid erosion of the banks or bed of the Taruheru River at, or downstream of, the discharge point and shall not give rise to or exacerbate any flooding of land upstream or downstream of the discharge point in rainfall events up to the 10 per cent AEP or flooding of dwellings on other properties in rainfall events up to the 1 per cent AEP.

I note the applicant is silent on an ongoing management plan for the contaminant reduction device. Council has concerns as to who owns or is responsible for the device, post subdivision. Therefore, at this stage I do not have engineering information to conclude the stormwater effects generated have been mitigated to the point that ongoing management and lifecycle costs have been taken into account and I am therefore unable to draw a conclusion as to whether the proposed stormwater servicing would achieve a minor or less than minor effect on the environment.

Water

The applicant has supplied a conservative hydraulic assessment and confirmed service for water supply as requested. The servicing for water supply will be above minimum level of standard at each dwelling unit. There are sufficient fire hydrants on the water supply network to meet firefighting water requirements for the development.

The information provided confirms an isolation valve, testable backflow protection valves with bulk supply meter will be part of the water connection infrastructure and that these components and the rider main connecting the Aberdeen water main will be vested with the Gisborne District Council. The water infrastructure within the development will be retained in private ownership.

Council's Drinking Water Manager has accepted the proposal and design.

Wastewater

Council's Senior Wastewater Operations Engineer has accepted the proposal and design.

Traffic

The initial parking and manoeuvring plan submitted was understood by Council to create an overflow of parking demand onto Aberdeen Road by six vehicles. This reduced the length of visibility along Aberdeen Road for vehicles exiting the site. This is especially important considering the proximity to the Stanley Road intersection.

In addition it was noted that the proposed private JOAL precluded access by postal or waste-collection vehicles.

Throughout the consent process the Applicant submitted revised plans showing recessed parking on Aberdeen Road and to locate post boxes to the front of the site. This was suggested by Council's Development Engineer as a means to resolve the above issues. The recessed bay will allow 5 cars to park and space for kerb-side waste and recycling-collection without causing undue hazard to oncoming traffic in the live lane.

However it is not practical to rely on a mitigation measure occurring outside of the property boundaries. In addition, there is an adverse effect on further reducing landscaping amenity by removing the grass berm in the road reserve and replacing with an increased sealed surface.

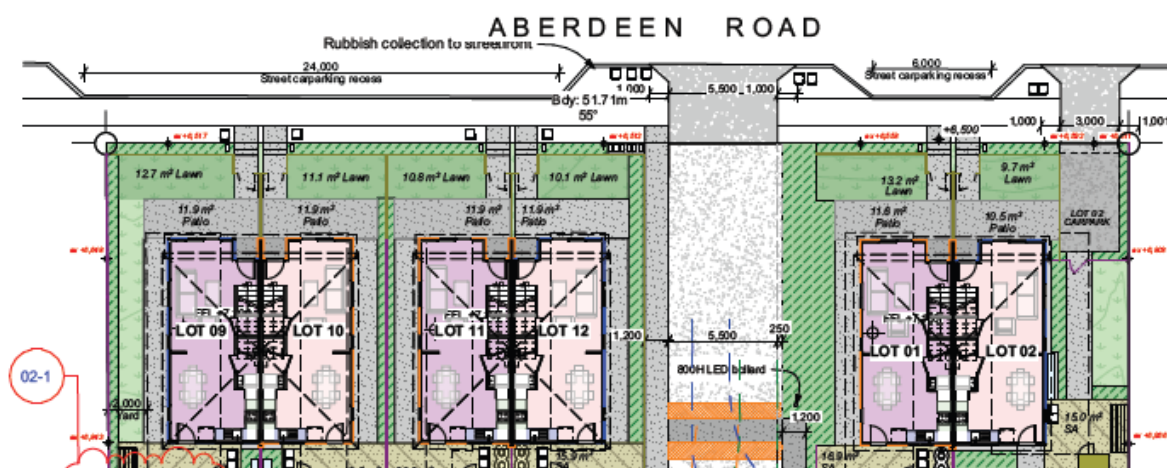


Figure 2. Snip of proposed recessed parking for five vehicles along Aberdeen Road.

Council's Development Engineer considers sight lines are improved for vehicles exiting the accessways and there is sufficient parking provided for the demand created. Council's Development Engineer also considers the demonstrated manoeuvring tracking curves are acceptable and vehicles will be able to exit the site in a forward-facing manner and that Aberdeen Road can accommodate the extra vehicle trips generated

The Development Engineer also accepts the proposed bollard lighting at the rear of the property provides for safe visibility for residents.

Infrastructure and Network Services Conclusion

Water, wastewater and traffic matters have been resolved. As set out above, stormwater matters have not been resolved as having less than minor effect on the environment (with regards to the ongoing maintenance of the contamination reduction device).

While the Development Engineer considers the proposal has created a safe access for residents and other road users, I note there is the added effect of further reducing landscaping amenity. Again, a less-dense site would achieve both safe access for residents and other road users as well as better onsite amenity. At this stage, I consider the traffic access proposal will result in only minor effects on the environment.

(iii) Effects from Land Disturbance and Contaminated Land

Analysis of soils tested for heavy metal contaminants has determined that ten test locations have returned elevated levels of lead and one sample with elevated levels of arsenic. Remediation of the soil prior to construction is therefore required. At the time of this notification assessment, matters regarding the actual remediation of the contaminated soil had not been resolved.

However, remediation of contaminated land, when done appropriately in accordance with conditions, is likely to have a less than minor effect on the environment. The remediation of contaminated land in an appropriate manner, would be a positive effect of the proposal for Gisborne.

(iv) Effects from Natural Hazards

Geotechnical

Council's Geotechnical Engineer has accepted the revised geotechnical investigation and calculations and accepts that the site can host stable building platforms. A specific geotechnical report would be required at building consent stage. The site is within a developed residential area and not subject to the Site Caution overlay.

Step 3 Conclusion

- No - **go to step 4** .
- Yes – Publicly notify **S.95A(7)(a) - Go to Decision in section 3.5**

Comment: As detailed in section 3.3.1 above, I have concluded that effects with regard to section 95D will likely be more than minor. Therefore, public notification is required under Step 3.

3.4 Step 4 Public notification in Special Circumstances - S.95A(9)

Determine whether special circumstances exist in relation to the application being publicly notified and, -

- No – A determination of whether to give limited notification of the application under section 95B is contained within section 4.0 below
- Yes - Publicly notify **Go to Decision in section 3.5**

Comment: 'Special circumstances' are not defined in the RMA. According to case law, special circumstances are those that are 'unusual or exceptional' but may be less than extraordinary or unique (*Peninsula Watchdog Group (Inc) v Minister of Energy* [1996] 2 NZLR 529 (CA)).

Because the conclusion in Step 3 above is that the development is likely to have adverse effects that are more than minor, I consider there is no need to determine if special circumstances exist under Step 4.

3.5 Public Notification Decision

Having undertaken the s95A public notification tests, I recommend that this application be processed with **public notification**.

4.0 SECTION 95B ASSESSMENT FOR THE PURPOSE OF LIMITED NOTIFICATION

The RMA provides at s95B(1) that the consent authority must follow the steps set out in that section, in the order given, in order to determine whether limited notification of an application should be given.

Those steps are set out below, in the order provided in the RMA.

4.1 Step 1. Certain affected groups and affected parties must be notified

95(2) (a) Are there any affected protected customary rights groups?

(b) Are there any affected customary marine title groups?

95(3) (a) Is the activity on or adjacent to, or may affect, land that is the subject of a statutory acknowledgment ?

(b) Is the person to whom the statutory acknowledgement made an affected person?

No - **Go to Step 2**

Yes – Limited notification to each affected group /person **Go to Decision**

Comment: Section 33 of the Rongowhakaata Claims Settlement Act 2012 requires the consent authority (GDC) to have regard to the statutory acknowledgment relating to a statutory acknowledgment area. In accordance with this section, the Council must consider whether Statutory Acknowledgment trustees are affected persons in relation to consent for an activity which is within, adjacent or directly affecting the statutory area.

The application site is within the Rongowhakaata Statutory Acknowledgement Area of Interest and the non-statutory Te Aitanga a Mahaki area of interest. The Taruheru River is approximately 120m from the site and is subject to a Statutory Acknowledgement for Rongowhakaata. The Taruheru receives stormwater from the area. Stormwater discharge is therefore a matter for assessment.

The developed site will contain over 1,000m² of impervious surface area. Council requires stormwater discharge on sites such as this, to pass through a contaminant reduction device prior to entering the reticulated network (C6.2.3(2)(e)).

However, I note the applicant is silent on an ongoing management plan for the contaminant reduction device. Council has concerns as to who owns or is responsible for the device, post subdivision. Without an ongoing management plan, and as these devices can fail, I cannot be confident the contaminant reduction device will ensure less than minor contamination effects on the Taruheru River.

Provided the land disturbance of the contaminated soil is undertaken in accordance with standard erosion and sediment control procedures – certified by Council – there is no reason to anticipate that contaminants will enter the Taruheru River during the development.

I am not able to conclude that the development will not directly affect the Statutory Acknowledgement.

However, even if the development will not directly affect the Statutory Acknowledgement, the Council must also determine under section 95B(3) of the RMA whether the person to whom the statutory acknowledgment relates is an affected person under section 95E. (A person is an affected person under section 95E if the adverse effects of the activity on them are minor or more than minor (but are not less than minor)). An assessment of the potential adverse effects of this proposal is discussed in sections 3.3.1 and 4.3.1. In this context and for the reasons noted

above, I consider that Rongowhakaata is an affected person and that limited notification to Rongowhakaata is required.

4.2 Step 2. Limited notification precluded in certain circumstances

95B(6) (a) The application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes limited notification.

95B(6) (b) The application is for a controlled activity (but not other activities) that requires a resource consent under a district plan (other than subdivision of land)?

No – **Go to Step 3**

Yes – **Go to Step 4**

Comment: These situations do not apply to this application and so the application is not precluded from Limited Notification.

4.3 Step 3. If not precluded by step 2, certain other affected persons must be notified

95B(7) In the case of a boundary activity, determine in accordance with section 95E whether an owner of an allotment with an infringed boundary is an affected person;

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

The following assessment addresses the adverse effects of the activities on the environment, in relation to limited notification:

4.3.1 Adverse effects assessment (sections 95B(8) and 95E)

a) Effects Disregarded

Pursuant to Section 95E(2)(a) of the Act, a Council may disregard an adverse effect of the activity on the environment if a plan or national environmental standard permits an activity with that effect. In section 3.3 above, the permitted baseline deemed to not be relevant.

Pursuant to Section 95E(3)(a) of the Act, a person is not an affected person if they have given (and not withdrawn) their written approval prior to Council making their decision on notification. No written approvals were obtained.

b) Assessment of Environmental Effects

The assessment within this section addresses effects on persons, including those that own or occupy the adjacent properties, and will determine whether limited notification of the application is appropriate. For the purpose of giving limited notification of an application, a person is an affected person if Council determines that the adverse effects on the person are minor or more than minor (but not less than minor).

The applicant has avoided direct infringements on adjacent properties. The yard setbacks and recession planes comply with the TRMP requirements for these external boundaries. However I do not concur with the applicant that this compliance therefore translates to a 'less than minor' effect on adjacent properties.

This greater intensity of development will likely result in a greater number of people resident, and a comparable increase in the frequency, intensity and duration of activities on the site than the TRMP permits. This may include effects related to vehicle movements, noise characteristics, lighting and privacy. The increase in activity at the site that will be obvious to adjacent properties and the effects may not be internalised. Compliance with external

boundary requirements with adjacent properties, of the minimum standard of obligation, does not mitigate such effects.

Given that there are several General Standards non-compliances, and in my opinion there are no sufficient factors which mitigate the effects of these non-compliances, I cannot conclude that the scale, density and bulk of the proposed development will not have less than minor effects on adjoining neighbours.

In addition, the cumulative effects of the non-compliances and the overall high density and dwelling typology is clearly of a different scale and intensity than the relatively low density and single dwelling typology of surrounding environment.

As a whole, the residential zone standards within the TRMP are weighted towards protecting the existing amenity and character of an area. The emphasis is on ensuring new activities are sensitive to, and compatible with, the existing environment. Policy DD1.4.2(a) seeks to manage the adverse effects of activities in residential areas by ensuring that buildings and structures are located so as to avoid, remedy or mitigate any adverse effect on the adjoining properties. I do not consider in the context of this application, that compliance with external boundary requirements will in itself avoid, remedy or mitigate any adverse amenity effect on the adjoining properties.

To reiterate, due to the density the dwellings are unable to comply with height recession planes and yard setbacks on internal boundaries. Each lot and dwelling, post construction and subdivision, will experience more than minor effects on access to sunlight, privacy and amenity, from infringements.

I do not consider the proposal will achieve Policy DD1.4.2(b), which requires that the scale of the development be appropriate for the site and the location of the site in the street and will not cause a loss of residential amenity values for surrounding residents.

As such, it is my opinion that adjoining neighbours, along with the future owners and occupiers of each unit, are potentially affected to at least a minor level, by the scale of the development.

On this basis, I am not satisfied that the adverse effects on amenity values are less than minor and that that the activity is likely to have adverse effects on the environment that are more than minor.

No - **Go to Step 4**

Yes - Limited notification to each affected person **Go to Decision**

4.4 Step 4. Further notification in special circumstances

Determine whether special circumstances exist that warrant notification of the application?

Yes - **Go to Decision**

No - **Go to Decision**

Comment: In addition to the findings of the previous steps, Council is also required to determine whether special circumstances exist that warrants the application being notified to any other persons not already determined as eligible for limited notification (excluding persons assessed under section 95E as not being affected persons). In this instance I consider that there is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary run of things to suggest that notification to any specific person(s) should occur.

4.5 Limited Notification Decision

Having undertaken the s95B Limited notification tests, I recommend that this application be processed without Limited notification.

5.0 SECTION 95 NOTIFICATION RECOMMENDATION AND DECISION

Pursuant to section 95A and 95B, application LU-2023-112105-00/SG-2023-112106-00/NC-2023-112107-00 shall proceed on a **Publicly notified** basis with affected persons being as follows:

ID	Address	Legal Description
1	551 Aberdeen Road	Lot 1 DP 9154
2	553 Aberdeen Road	Lot 1 DP 5166
3	554 Aberdeen Road	Lot 3 DP 1585
4	555 Aberdeen Road	Lot 2 DP 5166
5	559 Aberdeen Road	Lot 1 DP 5166
6	562 Aberdeen Road	PT Lot 23 DP 2177
7	2 Asquith Street	PT Lot 23 DP 2177
8	4 Asquith Street	Lot 22 DP 2177
9	6 and 6A Asquith Street	PT Lot 1 DP 1585 Lot 21 DP 217
10	7 Stanley Road	Lot 5 DP 1585
11	9 Stanley Road	Lot 6 DP 1585
12	Rongowhakaata Iwi (Rongowhakaata Iwi Trust)	Taruheru River Statutory Acknowledgement

Reporting Planner:

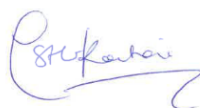


Sarah Exley

Intermediate Consents Planner

Date: 24th May 2024

Peer Reviewer and Approval:



Esther Kowhai

Team Leader District Consents

Date: 24 May 2024

APPENDIX 1 – Site Visit Photographs



Image 4 –Facing west: the subject site to the left and Aberdeen Road to the right.



Image 5: Facing south: 554 Aberdeen Road to the left and subject site to the right.



Image 6: Facing south: the subject site at 556 Aberdeen Road.



Image 7: Facing south-east: 554 Aberdeen Road to the left, intersection with Stanley Road to the right.



Image 8: Facing south: the subject site at 556 Aberdeen Road to the left, 560 Aberdeen Road to the right.



Image 9: Facing south-west: the subject site at 560 Aberdeen Road to the left.



Image 10: Facing south: the subject site at 556 Aberdeen Road to the left and 560 Aberdeen Road to the right.



Image 11: Facing south: the subject site at 560 Aberdeen Road.



Image 12: Facing south: adjacent property 562 Aberdeen Road.



Image 13: Facing north-east: road reserve which would receive carparking overflow. This is now proposed to be recessed to increase visibility for exiting vehicles into oncoming traffic.



Image 14: Facing north-west: road reserve in front of proposed Lots 9-12 and wider amenity of Aberdeen Road (detached, single-storied dwellings).



Image 15: Facing north: from left to right, 559, 555 and 553 Aberdeen Road.



Image 16: Facing north-west: current front yard at 560 Aberdeen Road.



Image 17: Facing south: area for proposed JOAL and Lot 4.



Image 18: Facing south-east: area for proposed Lot 3 and Lot 4 to the right.



Image 19: Facing south-west: area for proposed Lots 5 & 6.



Image 20: Facing west: proposed Lot 9 boundary with 562 Aberdeen.



Image 21: Facing west: proposed Lots 7 & 8 boundary with 2 Asquith Street.



Image 22: Facing south-west: proposed Lot 5 boundary with 4 Asquith Street in the foreground; 6 Asquith Street in the background.



Image 23: Facing south-east: current low density amenity of neighbouring sites.



Image 24: Facing west: current amenity at 9 and 11 Stanley Road.



Image 25: Facing south- Stanley Road.



Image 26: Facing south- Stanley Road.



Image 27: Facing east- Stanley Road.



Image 28: Facing east- Stanley Road.



Image 28: Facing north- Aberdeen Road.



Image 29: Adjacent properties on Asquith Street.



Image 30: Adjacent properties on Asquith Street.



Image 31 Adjacent properties on Asquith Street.



Image 32: Adjacent properties on Asquith Street.



Image 33: Adjacent properties on Asquith Street.



Image 34: Adjacent properties on Asquith Street



Image 35: Adjacent properties on Asquith Street.



Image 36: Adjacent properties on Asquith Street.



Image 37: Adjacent properties on Asquith Street.