

Date:	29 th May 2024	Application Number:	LU-2023-112110-00/SG-2023-112111-00/NC-2023-112112-00
Reporting Planner:	Sarah Exley	Site Visit on:	December 2023

Related Applications:	NIL
------------------------------	-----

Applicant:	NZ Housing Group Gisborne
Property Address:	99a Stanley Road, Te Hapara
Legal Description:	Lot 1 DP 5799 contained in Record of Title GS3D/818
District Plan:	Te Papa Tipu Taunaki o Te Tairāwhiti – Tairāwhiti Resource Management Plan
Zoning:	General Residential
Other Restrictions:	Reticulated Services Boundary Land Overlay 1 Rongowhakaata Area of Interest Te Aitanga a Mahaki Area of Interest
Activity Status:	Discretionary

1.0 INTRODUCTION

1.1 Proposal

Land Use

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

- Six two-storey, two-bedroom dwellings constructed in duplex typology;
- Two single-storey, three-bedroom dwellings constructed in duplex typology;

Access is proposed to the site as follows:

- A 4.0m physical width JOAL (5.7m legal width) providing access for Lots 1 – 8 which has a vehicle crossing physical width of 5.5m (7.2m legal width); and
- A dedicated carpark is provided within each lot; and
- A 1.7m width footpath is provided along the full length of the JOAL.

Under the TRMP Infrastructure General Standards (Chapter 2), where 8 – 10 units are to be served, accessways are required to be a legal width of 6m and physical width of 5.5m. The proposed accessway does not comply with this General Standard, as the proposed accessway will be a legal width of 5.7m and physical width of 4m.

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. This would be a Permitted Activity per rule C6.2.3(2) provided the increased impervious surface and associated stormwater discharge does 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. At the time of writing this assessment, this had not yet been confirmed as achieved, and so the discharge becomes a Discretionary activity per C6.2.3(13).

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 Stanley Road as follows:

- Creation of 8 residential allotments, known as 'Lots 1 – 8';
- Creation of 1 Jointly-Owned Access Lot (JOAL) known as 'Lot 100' for provision of access to be held in equal shares by the owners of Lots 1– 8.

The proposed lot sizes are as follows:

Proposed Lot	Proposed site size	TRMP minimum site size
Lot 1	142.26m ²	320m ²
Lot 2	126.89m ²	320m ²
Lot 3	127.19m ²	320m ²
Lot 4	127.73m ²	320m ²
Lot 5	131.42m ²	320m ²
Lot 6	131.68m ²	320m ²
Lot 7	239.07m ²	320m ²
Lot 8	254.69m ²	320m ²
Lot 100 (JOAL)	309.5m 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 - 8. 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 Tairāwhiti Plan (TRMP) General Standards 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:

- 2m yard setback between Lot 1 and the JOAL not provided;
- 3m yard setback between Lots 2 - 8 and the JOAL not provided;
- Recession plane from Lots 1, 2, 3, 4, 5, 6 and 7 on the JOAL infringed;
- 35% building coverage on each site not achieved (averages 38.3%).

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

Earthworks

Earthworks will be required to strip topsoil and unsuitable material from the building areas, excavations 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:

- 273m³ of cut, and
- 99m³ of fill.

These are permitted activities.

Contaminated Land

Analysis of soils tested for heavy metal contaminants has determined that eight test locations have returned elevated levels of lead and one sample with elevated levels of zinc. 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 5(7)(b) and Regulation 10 of National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS). At the time of writing this notification assessment, the applicant had not provided a Remedial Action Plan and therefore the contaminated land aspect of the proposal had not been resolved.

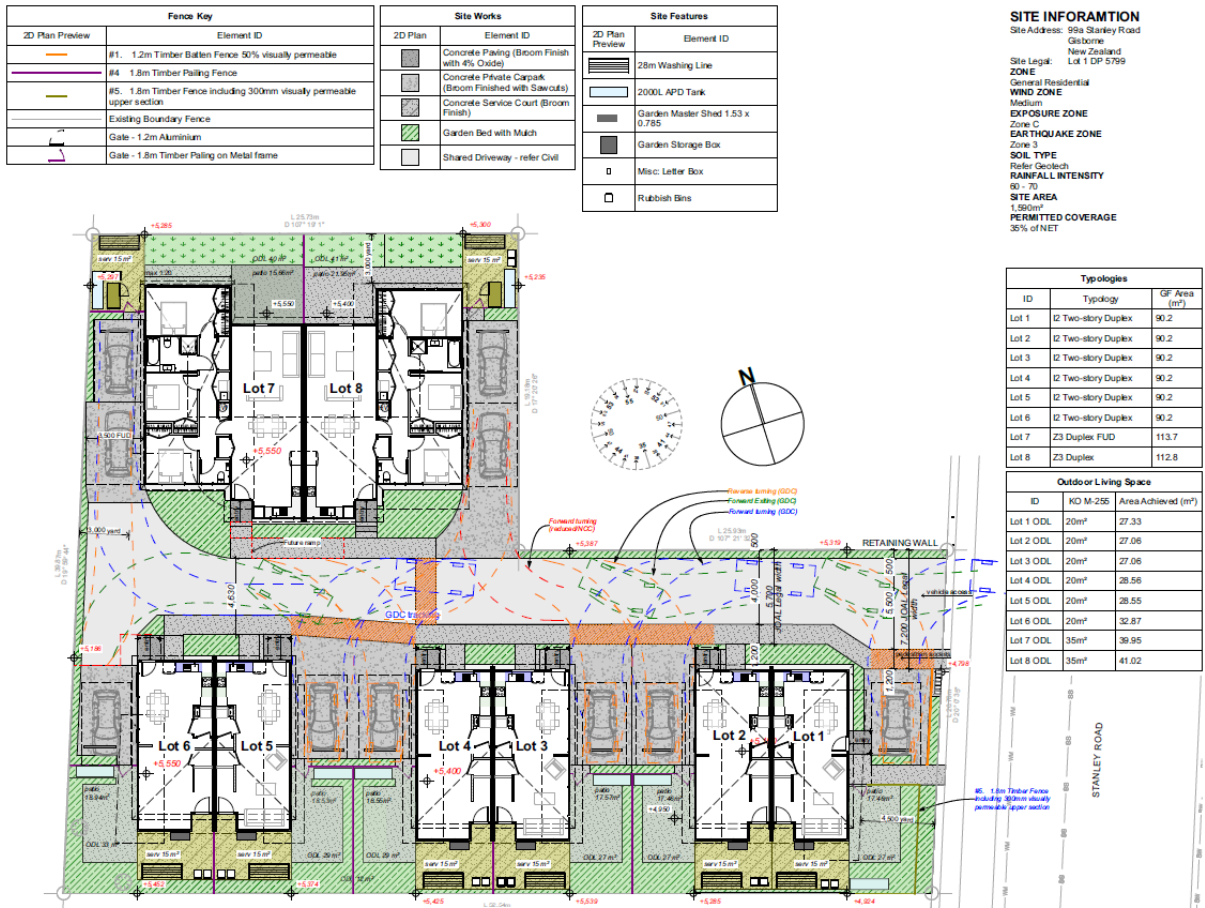


Figure 1 Snip of proposed subdivision and land use scheme plan.

Summary

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

Therefore, 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 accessway width, 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 and the site coverage, yard setback and height recession requirements for residential development, the proposal requires consent as a Discretionary Activity pursuant to Rule C10.1.6 (9).

Rule C6.2.3(13) for point-source water discharge applies as a Discretionary Activity, given that the information provided is incomplete to determine if the discharge can comply with the permitted activity standards including matters regarding attenuation, avoiding downstream flooding effects and contaminant reduction.

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 is 99a Stanley Road, legally known as Lot 1 DP 5799 with an area of 1,590m².

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 100m to the north-east; Gisborne Girls' High School is approximately 450m to the north. The General Residential zone continues for at least 1km north and west but becomes Outer Commercial 600m to the east and Industrial zone 450m to the south.

Within a 10-minute walking distance from the site there are food outlet stores, early child-care centres, a church, Sports Centre and schools as above.

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

The site has 20m frontage to Stanley Road which is classed as a Principal road. The site is located approximately 20m from the intersection with Childers Road (Principal Road) and is approximately 2kms west of the Gisborne CBD. The site is relatively flat.

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.

The site is currently occupied by one dwelling with an accessory building.

A Detailed Site Investigation prepared by EAM Environmental Consultants was provided with the application. The report stated the dwelling is of painted weatherboard construction with a tiled roof. It has aluminium windows. Some asbestos is present in the eaves, and as exterior cladding on the north-facing porch.

The report also outlines that soil sampling was undertaken in eight different locations across the site, with all locations returning elevated levels of lead and one location returning elevated levels of zinc. Lead levels in all eight sample locations were above the residential land use standard applicable per the NES-CS and one sample contained zinc level above the residential land use standard. As such, the site is identified to be a 'piece of land' subject to the NES-CS regulation 5(7)(b).

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.



Image 2 – Aerial photograph of site (blue boundaries) and surrounding area.

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 design storm hydrograph to correctly represent the distribution of rainfall intensity over time and to include attenuation for the 1 in 5-year ARI (20% AEP) event;
- Contaminated land:
 - Updated Detailed Site Investigation with regards to proposed remediation methods;
- Traffic impact assessment;
- Urban design assessment:
 - With regards to density, amenity and landscaping and Crime Prevention through Environmental Design

Responses were submitted intermittently with the latest received from the applicant on 22/04/2024.

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 has not demonstrated compliance with General Standard C2.1.7.1(D) <i>Stormwater systems</i>.</p> <p>The proposal has not demonstrated compliance with General Standard C2.1.7.1(I)8 <i>Access – Multiple site access</i>.</p>

			Therefore, the proposal does not comply with these General Standards.
C6.2.3(13)	<p>The point source discharge of all liquids to land or waterbodies and their margins where the discharge is:</p> <p>a) Not provided for in another rule in this plan;</p> <p>b) Not to Outstanding Waterbodies and Regionally Significant Wetlands identified in Schedules G17 and G18;</p> <p>c) Not a direct discharge to a waterbody or to land in a way that directly enters water above a community drinking water supply intake point;</p> <p>d) Will not result in a water quality objective not being met or a limit/target being exceeded; and</p> <p>e) The discharge is not to a degraded waterbody where the discharge is a new discharge of contaminants which contribute to the degradation.</p>	Discretionary	<p>The proposal has not demonstrated compliance with Permitted Activity rule C6.2.3(2). The rule requires increased impervious surface and associated stormwater discharge does 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.</p> <p>At the time of writing this assessment, this had not yet been confirmed as achieved, and so the discharge becomes a Discretionary activity per C6.2.3(13).</p> <p>The proposal does not contravene points a)-e) of rule C6.2.3(13).</p>
C10.1.6 (9)	Activities which do not comply with	Discretionary	Subdivisions are required to comply with General Standards

	the General Standards and are not listed as Controlled or Restricted Discretionary activities		for C2 – Built Environment, Infrastructure and Energy. The proposal does not comply with standards at C2.1.7 in respect of access and stormwater. Therefore, as the proposal doesn't comply with the General Standards of C2.1.7, and the proposed Lot sizes do not comply with the minimum size required in C10.1.6.1, this rule applies.
DD1.6.1(17)	Construction, addition to or alteration of minor dwelling units, residential dwelling-units and residential accessory buildings which do 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	Restricted Discretionary	The proposal does not comply with: d) Minimum site area e) Recession Planes f) Site coverage g) Yard distances h) Infrastructure, works and services (in respect of C2.1.7 detailed above). Therefore, this rule applies.

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 Resource Management Act 1991 (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 (yellow).

These sites considered adjacent, with effects on these properties to be specifically considered in the s95B assessment further on, are:

- Nos. 97, 98 and 99 Stanley Road;
- Nos. 493, 495, 497, 499, 501, 507, 507A Childers 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:

- Three Lots of 400m² where each unit is detached (noting the applicant would still be short 10m² for a fourth Lot of 400m²); or
- Four dwellings each adjoined to one side (Lots of 320m²);
- Three dwellings (two attached to one side and one attached to two side) plus another 2 dwellings (both attached to one side), for a total of five dwellings.

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

To reiterate, the applicant proposes:

- Eight lots of an average of 128.3m², where each unit is attached on one side to another dwelling-unit.

The applicant has posited a permitted baseline of three detached dwellings with 400m² Lot size each, or four duplex dwellings with 320m² each. However the applicant also posits that each of these lots could additionally incorporate a minor dwelling as a permitted activity and therefore the site could host 6-8 dwellings. I consider this fanciful, noting that without detailed information we cannot assume to know the compliant size of each minor/dwelling or compliance with yard setbacks, site coverages, recession planes and vehicle manoeuvrability and therefore whether or not a permitted baseline for 6-8 buildings is applicable to this proposal.

The applicant has also posited a permitted baseline of “*several conjoined dwellings with no internal separation through the provision of minimum net site areas for dwellings that can be attached on two sides in Rule 1.6.1(2)(b)*”. The applicant reasons that comparatively, the proposal offers mitigation to the bulk of buildings that this permitted baseline would allow.

However, I again consider this baseline fanciful and therefore not an accurate permitted baseline assessment. The dimensions of the site could not host several conjoined dwellings with no internal separation, whilst achieving 320m² net per dwelling attached on one side (either side of the conjoined dwellings) and 250m² net for the dwellings attached on two sides.

I consider the proposed eight lots of an average of 128.3m² a significant departure from the 320m² permitted baseline. 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 the proposed development (eight 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 (of a maximum five dwellings) as outlined above. Taking the above into account, 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.

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

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.

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 five 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 Stanley Road).

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:

- Eight lots of an average of 128.3m², where each unit is attached on one side to another dwelling-unit.

The TRMP specifies a minimum site area of 320m² for the eight attached dwellings.

The TRMP does not provide a definition meaning for what is meant by medium or high-density housing, and while there is no universal standard of application of the terms, the most common definition (or variants thereof) in current use in New Zealand (used by Housing New Zealand and a number of District and City Councils) is: Housing at densities of less than 150m²/unit is high density. Using this meaning, the proposal under consideration is considered high density residential development. The proposal has a density of an average of 128.3m², and it is noted that 128.3m² is significantly less than 320m²/unit required by the TRMP.

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. Finally, the 2m yard setback between Lot 1 and the JOAL is not provided nor are the 3m yard setbacks between Lots 2 - 8 and the JOAL provided.

Similarly, the recession planes from Lots 1, 2, 3, 4, 5, 6 and 7 on the JOAL are infringed. This further indicates a development which is too dense and Lot sizes are insufficient.

At the time of writing this assessment, stormwater attenuation matters had not been resolved. Therefore, I am unable to assess whether the proposed lot sizes are of sufficient size to host any size of proposed attenuation tank without impeding outdoor areas. This matter however does not alter my conclusions in terms of notification of the application.

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, the proposal cannot comply as follows:

- The unit on Lot 1 will infringe its northern 2m side yard setback, being setback by 1.2m; and
- The units on Lots 2 - 6 will infringe their northern 3m yard setback, being setback by 1.2m, and
- The units on Lots 7 - 8 will infringe their southern 3m yard setback, being setback by between 0m and 3m as the boundary curves. The southern-most point of the units will be setback from the boundary by 2m.

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 one older, single-storey dwelling and accessory building. Together these buildings occupy 26.5% 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, excepting 97 Stanley Road which is double-storied, with a recessed top story.

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.

The infringements on recession planes along the common party wall boundaries are dismissed due to their duplex nature. However, the proposed dwellings will infringe the recession planes as follows:

- Lots 1 and 2 breaching the recession plane with the JOAL by 1.12m height; and
- Lots 3 - 6 breaching the recession plane with the JOAL ranging between 1.1m, 2.55 and 2.65m height.

I note that on the remaining internal boundaries, recession plane diagrams technically show compliance however the structures are meeting the maximum recession plane available.

Of the proposed 8 dwellings, 6 are proposed to be two-storied structures. 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 restriction on access to daylight and privacy for the proposed dwellings. The applicant has stated that:

"the use of the pedestrian entry as the main way of entering /exiting the dwellings will enable occupants to provide active surveillance towards the JOAL. Here we note that either the living/dining rooms or bedrooms of those dwellings has been located adjacent to the JOAL so that occupants can provide passive surveillance, whilst also having the outdoor living areas screened via fencing or the front part of the dwelling for privacy."

And:

"The side façades of Units 2 and 6 include only a high-level window in a bedroom and frosted bathroom windows so as to avoid overlooking neighbours. While a standard bedroom window is utilised on the second floor of Units 3 and 4 which have outlook toward the boundary, these dwellings are setback at least 3.8m which mitigates privacy effects towards neighbours".

The application is silent on whether the remaining units 1 and 5 utilise similar mechanisms to avoid overlooking neighbours and I query why there are differing mechanisms used.

While the positioning and the screening of the outdoor living areas may provide some privacy, I am unable to agree this would be of a sufficient nature overall. Taking into account the provision of only the minimum yard setbacks on side and rear boundaries; and the breach in yard setbacks and recession planes on the front boundaries; rooms do overlook into other properties, especially from upper stories, into front yards, other property windows and the rear 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 one older, single-storey dwelling and accessory building. Together these buildings occupy 26.5% 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) 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 greater in site coverage scale than the existing use of the site as well as greater in scale than the surrounding area.

The applicant has incorrectly calculated the proposed site coverages. The TRMP (DD 1.6.1(2)) requires site coverages to be calculated against the Net Area of a site, which according to the TRMP definition is *"the area of a site excluding any access strip used to obtain access to a rear site"*. Therefore, I calculate the site coverages to exceed the permitted 35% as follows:

- Lot 1 (front site): 27.2%
- Lot 2: 37.9%
- Lot 3: 37.8%
- Lot 4: 37.6%
- Lot 5: 36.6%
- Lot 6: 36.5%
- Lot 7: 48.2%
- Lot 8: 44.9%

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. As the Applicant has based their assessment on an incorrect calculation, I am unable to agree that *"the proposed duplex units achieve a balance of open space to building ratio and thus provide for a high level of amenity"*.

The Applicant has stated *"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 JOAL, 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 eight units were constructed – six 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. Furthermore, while the total building coverage of the site (prior to subdivision) reaches 518.5m², which is less than the 35% permitted baseline, it is important to note this building coverage is bulked together along the southern boundary and within the north-eastern corner of the site. The fact that post-subdivision, the building coverage will exceed the 35% permitted baseline on each Lot, indicates that the bulk and location of these dwellings along the southern border and north-eastern corner does not achieve a sense of spaciousness for each resident or for external viewers.

A hard-sealed parking and manoeuvring area contributes to my concern regarding open space and amenity as it cannot offer relief from the bulked nature of this building coverage to residents nor viewers in the surrounding area. It does not add to a sense of open space given that it is proposed to be hard-surfaced with minimal landscaping.

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 measurements are required to be calculated as separate from any outdoor living area.

The Applicant has stated each unit is provided with an individual outdoor service area ranging from 14.79m² to 15.35m². These service areas include rubbish and recycling facilities, a washing line, and for Lot 7 and 8, a small storage shed. All service areas are screened from adjacent land. I consider the service area provided is in line with the TRMP requirements, and the shortfall of 20cm² inconsequential. Lots 1-6 are also provided an outdoor living area of approximately 29m² each, separate from the service areas. Lots 7-8 are provided an outdoor living area of approximately 40m² each, separate from the service areas.

The Applicant has provided a solar study of all Lots, throughout Summer, Winter and the Equinox. I noticed in these Winter studies that all Lots experienced considerable shading cast by their orientation and proximity to one-another. It was only at midday, for a short period, that Lots 1-6 received approximately 10m² unimpeded sunlight and I could not see that Lots 7-8 received any; in the remainder of the morning and afternoon no Lots received sunlight for their ground floors and outdoor living areas. Eventual residents of all Lots will have almost no sunlight in the small backyards during the winter months as demonstrated by the solar studies.

In Summer, I consider the Lots all received sufficient sunlight throughout the day. I do not consider the Equinox diagrams showed sufficient sunlight. In the morning, Lots 2, 4, 6 and 7 cast considerable shade onto their and their neighbours' outdoor living areas. The same is repeated for Lots 1, 3, 5 and 8 in the afternoon. The Equinox also showed considerable, continued shading over all outdoor service areas throughout the day.

The applicant has asserted that "*private outdoor spaces are oriented to the east, west or north of the dwellings so as to maximize sunlight year round.*" I consider this to be an inaccurate assessment. Potentially the orientation has achieved the maximum sunlight available to this number of dwelling units; but I am unable to agree that overall that sunlight is provided in a sufficient manner year-round, considering the solar diagrams provided which show 15m² is not in shadow in Summer, but the majority of the site is in shadow in Winter. It is my conclusion that the provided solar study shows undesirable extents of shading experienced by all lots throughout the majority of the year.

I am unable to conclude that the above outdoor living areas will offer sufficient privacy or sunlight, or mitigation from noise, when considering the above effects of breached setbacks and recession planes. Considering the cumulative effects, the number of dwelling units proposed is too high for the site.

I also note approximately 60% of each Lot's outdoor living area is proposed to be of a hard surface ('patio'). The applicant has submitted a landscaping plan showing <20% of the site will be planted in various species. This is approximately 200m² of 'grass and planting' in sporadic areas, compared to over 750m² (>48%) impervious surface area and 530m² (or ~35%) total building coverage of the whole site.



Figure 2. Snip of proposed <20% site coverage landscaping.

The proposed species comprise a mix of small shrubs, compact hedging and some larger specimen trees. The mix of landscaping does contribute to amenity however I do not consider the proposed landscaping sufficient to mitigate the visual 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 proposal has included a high level of landscaping (including specimen trees and lower growing ground cover plants) to ensure that the presence of buildings does not predominate the site"* and again *"these aspects assists to reduce the overall perceived built dominance of the site"*.

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 consider 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 Stanley Road and the General Residential zone.

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:

"The proposal is a conventional medium density residential infill development which is supported by the National Policy Statement - Urban Design [sic] 2020 and will result in adverse effects that will be less than minor. The proposal represents an appropriate density of development that can be suitably accessed and serviced and will not result in adverse impacts upon the amenity and character of the surrounding area.

(...)

Overall, in terms of the land use component, potential adverse effects of the proposed construction and use of eight dwellings will be less than minor and will not compromise the existing amenity or character of the surrounding residential environment.

Further, as guided by the applicable criteria of the Plan, the effects of the proposed subdivision are less than minor and will result in urban development that is generally consistent with the existing residential character of the surrounding area.

(...)

It is considered that given the relatively minor nature of the infringements and mitigation provided, the proposal will result in less than minor adverse effects and will not be contrary to the Objectives and Policies of the TRMP, or any of the other statutory documents referred to in Section 104(1)(b)."

However as demonstrated above, the National Policy Statement for Urban Development currently has limited relevance to Gisborne as a Tier 3 authority and the application cannot rely on it as a means to consider more dense development. 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.

As demonstrated in the above assessment, I do not agree that cumulatively the infringements can be considered 'relatively minor'. I therefore am unable to agree that the proposal 'is generally consistent with' and 'will not compromise the existing amenity or character of the surrounding residential environment' and I am unable to agree the proposal is not contrary to the Objectives and Policies of the TRMP.

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.

(i) Effects on Infrastructure and Network Services

Stormwater

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 proposed to comply with this. 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.

The applicant has not yet been able to demonstrate compliance with attenuation requirements nor demonstrated the proposal 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.

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

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 Stanley Road by 3 vehicles. This reduced the length of visibility along Stanley Road for vehicles exiting the site. This is especially important considering the proximity to the Childers Road intersection.

Council requested a Traffic Impact Assessment report. Although the NPS-UD did remove minimum parking requirements, it still provides for Council to be able to consider car parking and traffic effects for any resource consents with a discretionary or non-complying activity status. At the time of writing this notification assessment, Council do not consider that the traffic and access impacts have been resolved to a minor or less than minor effect on safety.

Infrastructure and Network Services Conclusion

Water and wastewater 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 and sufficient attenuation to avoid adverse effects on downstream properties. Traffic effects have not been resolved.

(i) Effects from Land Disturbance and Contaminated Land

Analysis of soils tested for heavy metal contaminants has determined that eight test locations have returned elevated levels of lead and one sample with elevated levels of zinc.

Remediation of the soil 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.

(ii) Effects from Natural Hazards

Geotechnical

Council's Geotechnical Engineer has accepted the 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 Waikanae Creek is 620m south of the site; the Taruheru River is approximately 1km from the site and both are subject to a Statutory Acknowledgement for Rongowhakaata. The waterbodies both receive stormwater from the area. Stormwater discharge is therefore a matter for assessment.

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 either watercourse during the development.

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 Waikanae Creek or the Taruheru River.

In addition, as the stormwater attenuation matters have not yet been resolved, I cannot be confident the proposed stormwater discharge will not cause erosion of the banks or bed of the watercourses at, or downstream of, the discharge point.

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

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 party.

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 am unable to conclude that the scale, density and bulk of the proposed development will 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 the 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-2023-112110-00/SG-2023-112111-00/NC-2023-112112-00 shall proceed on a **Publicly notified** basis with affected persons being as follows:

ID	Address	Legal Description
1	97 Stanley Road	Lot 6 DP 2610
2	99 Stanley Road	Lot 1 DP 4046
3	98 Stanley Road	Lot 2 PT3 DP 2634
4	507a Childers Road	Lot 1 DP 8559
5	495 Childers Road	Lot 2 DP 5799
6	493 Childers Road	Lot 1 DP 2634
7	Rongowhakaata Iwi (Rongowhakaata Iwi Trust)	Taruheru River and Waikanae Creek Statutory Acknowledgement

Reporting Planner:



Sarah Exley
Intermediate Consents Planner
Date: 29th May 2024

Peer Reviewer and Approval:



Esther Kowhai
Team Leader District Consents
Date: 29th May 2024

Appendix 1 – Site Visit Photographs



Image 3 – Facing west: The existing vehicle crossing, dwelling in the background. 99 Stanley to the right.



Image 4 – Facing south: Photo taken on the existing driveway. 495 Childers Road in the background.



Image 5 – Facing north: Photo taken on the existing driveway towards Stanley Road.



Image 6 – Facing north-west: Photo taken on the existing driveway towards neighbouring site at 99 Stanley Road.



Image 7 – Facing north: Photo taken on the existing driveway looking at the existing dwelling and garage to the left and 99 Stanley to the right.



Image 8 – Photo taken on the existing driveway looking south.



Image 9 – Facing north: Photo taken standing to the north of the existing dwelling looking toward 97 Stanley Road.



Image 10 – Facing west: The existing garage.



Image 11 – Facing south: The existing dwelling.



Image 12 – Facing south: The existing west rear yard.