

**RM200153**

**Section 95 of the Resource Management Act 1991 - Assessment Report**

Part A - Details of Application	
Applicant	J Harrison-Tubb
Property to which the consent relates	13 Wood Street, Mangawhai, Lot 42 DP 39205, RT NA26D/521

**1.0 Description of proposal, site and locality**

**The Proposal**

The applicant originally sought resource consent to subdivide Lot 42 DP 39205 to create the following three lots (Figure 1);

- Lot 1 – 333.5m<sup>2</sup>
- Lot 2 – 330.25m<sup>2</sup>
- Lot 3 – 330.25m<sup>2</sup>

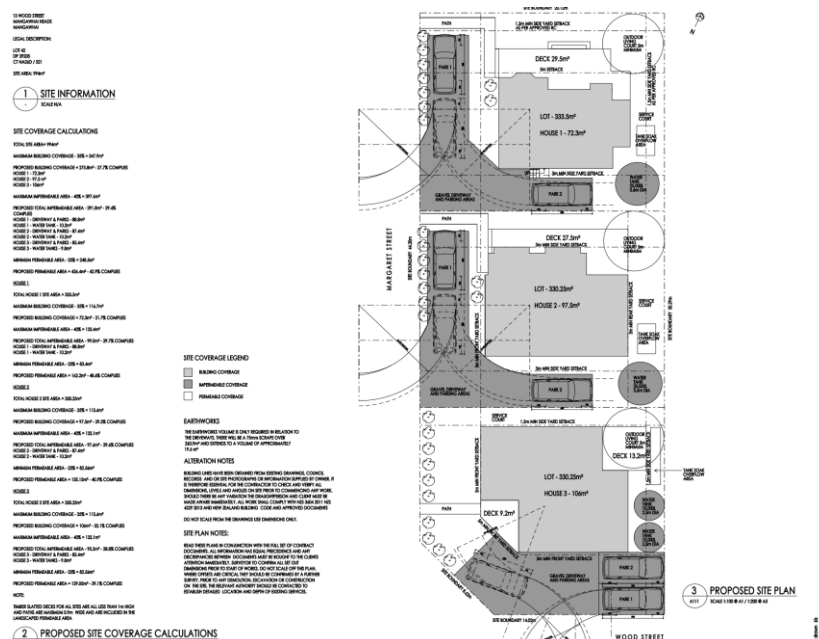


Figure 1. Application as lodged showing proposed Lots 1 – 3 including building footprints and site layout.

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The applicant has amended the application and now seeks resource consent to subdivide Lot 42 DP 39205 to create the following two lots;

- Lot 1 – 430m<sup>2</sup>
- Lot 2 – 564m<sup>2</sup>

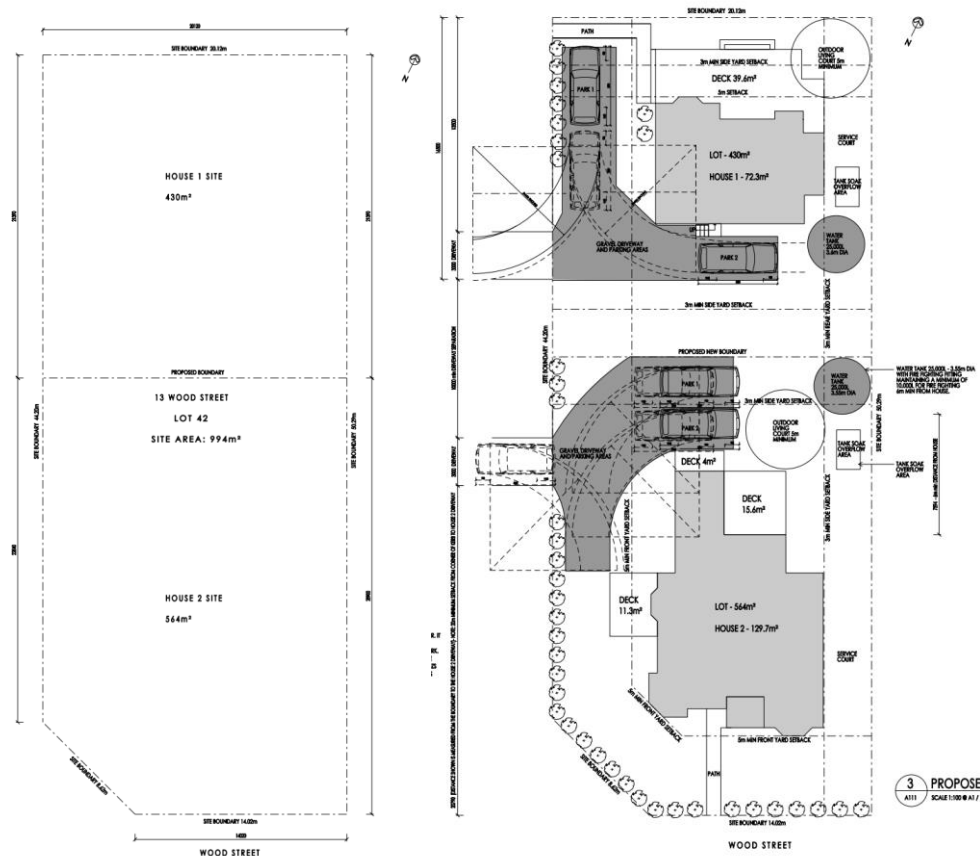


Figure 2. Amended application showing proposed Lots 1 & 2 with building footprints and site layout.

Lot 1 contains an existing dwelling described by the applicant as a 1920's weatherboard bungalow. Resource consent RM200039 for the existing building was granted by Council on 9 March 2020 for a breach of the following District Plan rules;

- Rule 13.10.8 – Separation Distance;
- Rule 13.10.10 – Relocation of Buildings.

The applicant proposes to relocate a second-hand dwelling, also described as a 1920's weatherboard bungalow onto proposed Lot 2. The applicant has provided the following photos (Figure 3), elevations (Figures 4 & 5) and artist's impression (Figure 6) of the dwelling;

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*Figure 3. Photo of the relocatable dwelling for proposed Lot 2 (south elevation).*



*Figures 4 and 5. Elevations of the relocatable dwelling for proposed Lot 2*



*Figure 6. Artist's impression of the relocatable dwelling for proposed Lot 2 (south elevation).*

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The Assessment of Environmental Effects (AEE) submitted in support of the application states that the dwelling has been fully renovated and includes a new kitchen and bathroom, wiring, plumbing, insulation, carpet and paint. A new vehicle crossing is proposed for Lot 2.

As part of a request for further information pursuant to Section 92 of the Act made on 10 September 2020, the applicant was asked whether they were offering any measures, such as consent notices, to restrict development on the lots to the scope of the current proposal and, if not, to consider and assess any further development potential enabled by the subdivision. In response, the applicant submitted an amended AEE on 13 January 2021 that confirmed that the application does not include any measures, such as consent notices, to require any features of the proposal to be maintained in perpetuity or to restrict future development of the sites. Instead the application relies on District Plan rules to restrict future development of the lots.

Subsequently, the applicant indicated via email dated 18 January 2021 that the dwellings on both Lots 1 and 2 would both be painted “in light colours to fit in with the Mangawhai casual beach aesthetic”. In the same email, the applicant stated;

*The road front will be improved with a broadly spaced picket fence with an inviting cedar gatehouse over each of the pedestrian entries. Behind the white picket fence is a row of grizelenia plants with a broad shiny waxy green leaf to contract the white pickets. Between lots one and two and along the eastern boundary there will be an 1800mm tongue and groove style timber fence.*

The applicant confirmed via email dated 21 January 2021 that ongoing retention and maintenance of the colour of the dwellings, fencing and planting would be enforced by way of consent notice. The colour of weatherboards, fencing and gatehouses was confirmed as Resene Sea Fog (N92-005-100) and the colour of the sills and baseboards was confirmed as Resene Ivanhoe (N92-005-100).

The new lot is to be provided with in-ground electricity and telecommunications, a connection to Council's reticulated wastewater system and an on-site (tank) water supply for potable water and fire-fighting.

The applicant has submitted the following specialist reports in support of the application;

- Geotechnical Investigation Report prepared by Geoconsult dated September 2017.

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## The Site

The site is a 994m<sup>2</sup> corner lot zoned Residential (Mangawhai Harbour Overlay) having road frontage with Margaret Street and Wood Street (Figure 7). The site is generally flat and situated slightly lower than the street level. The site contains an existing single-level relocated dwelling (Figures 8 & 9) consented by way of RM200039. There is an existing metalled driveway and concrete vehicle crossing on to Margaret Street servicing the dwelling.



Figure 7. The zoning of the site and immediately surrounding area.



Figure 8. The existing dwelling viewed from Margaret Street.

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Figure 9. The proposed outdoor living area for Lot 1 at the rear of the existing dwelling.

There is a row of small shrubs (*Griselinea* sp.) between the driveway and the front boundary with Margaret Street. The site is otherwise maintained in lawn and contains no other notable vegetation or features.

### **The Locality**

The site is situated in an area of existing residential development within Mangawhai Heads (Figures 10 and 11). However, to the west, the site is in the immediate vicinity of a variety of commercial businesses, such as cafes, bars, restaurants, a pharmacy, a post shop, various retail shops and real estate agencies at the western end of Wood Street.

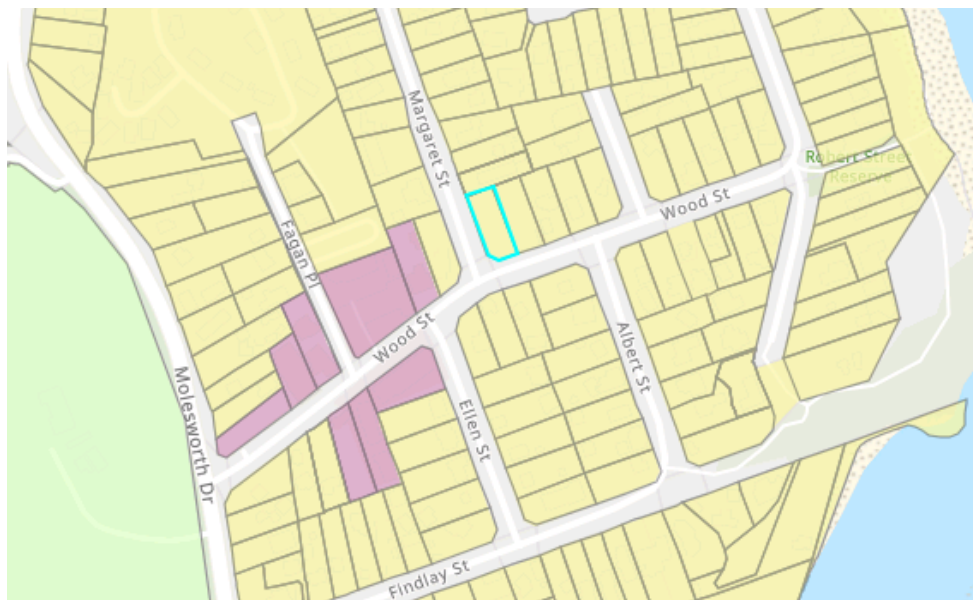


Figure 10. The site and surrounding Residential (yellow), Commercial (pink) and Rural (green) Zones.

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*Figure 11. The site and surrounding neighbourhood.*

The AEE provides a brief description of the site and surrounding area. When describing the area surrounding the site, the AEE (Section 1.3), focuses on a multiunit flat on an 809m<sup>2</sup> lot on Margaret Street and four lots on Wood Street (26, 26A, 28 and 28A) that have been subdivided to a size comparable to the current application.

However, these lots do not reflect the prevailing character of the area. The surrounding residential neighbourhood is an area of long-established residential development consisting typically of lots between 800m<sup>2</sup> and 1100m<sup>2</sup>, usually containing a single residential dwelling, one or more accessory building, driveways that are grass, metal or concrete depending on the age of the dwelling with garaging and/or parking set back from the street frontage, large areas of lawn and in many cases large, well established trees or other amenity planting on the boundaries and adjacent to the road reserve (Figures 11 & 12).

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Figure 11. Properties 15 – 27 Wood Street to the east of the site.



Figure 11. Nearby properties at 16, 17 and 18 Wood Street and 5 Margaret Street.

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## 2.0 Written approvals

No written approvals have been provided in support of this application.

## 3.0 District Plan Assessment

The following apply to the subject property:

Zoning: Residential Zone

Overlays: Mangawhai Harbour Overlay

Rules: Rule 13.11.1 – General Residential Subdivision – The terms of subdivision require lots to meet the minimum lot size of 1000m<sup>2</sup> in the Mangawhai Harbour Overlay to be a Controlled Activity. The proposal does not meet this requirement. Consequently, resource consent is required as a Non-Complying Activity.

Rule 13.10.8 – Separation Distance – The dwelling on proposed Lot 2 would be within 300m of a commercial activity. Consequently, resource consent is required as a Restricted Discretionary Activity.

Rule 13.10.10 – Relocation of Buildings – The dwelling on proposed Lot 2 does not comply with the relevant performance standards of Section 13.10 (in this case Rule 13.10.8). Consequently, resource consent is required as a Restricted Discretionary Activity.

Note: Compliance with all other relevant performance standards of Section 13.10 of the District Plan is achieved for both dwellings with respect to the boundaries of proposed Lots 1 and 2.

Activity Status: Non-Complying Activity

## Part B – Public Notification Decision – Section 95A, 95C, 95D of the Act

### Step 1. Mandatory Public Notification

- a. Has the applicant requested public notification?

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- ☐ Yes - **Publicly notify** application. No further assessment required. Move to Part D
- ☒ No - Continue through Step 1
- b. Is public notification required under s95C (further information request not satisfied or refused)?
- ☐ Yes - **Publicly notify** application. No further assessment required. Move to Part D
- ☒ No - Continue through Step 1
- c. Has the application been made jointly with an application to exchange recreation reserve land?
- ☐ Yes - **Publicly notify** application. No further assessment required. Move to Part D.
- ☒ No - Move to Step 2

## Step 2. Public Notification Precluded in Certain Circumstances

- a. Are all the activities in the application precluded from public notification by a rule in a plan or an NES?
- ☐ Yes - Move to Step 4 (special circumstances)
- ☒ No - Continue through Step 2
- b. Is the application as a whole for a Controlled Activity?
- ☐ Yes - Move to Step 4 (special circumstances)
- ☒ No - continue through Step 2
- c. Is the activity a 'Boundary Activity' (any activity status)?

*An activity is a boundary activity if (a) the activity requires a resource consent because of the application of 1 or more boundary rules, but no other district rules, to the activity; and (b) no infringed boundary is a public boundary.*

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- ☐ Yes - Move to Step 4 (special circumstances)
- ☒ No - Continue through Step 2

### Step 3. Public Notification Required in Certain Circumstances

a. Is any activity in the application subject to a rule or NES that requires public notification?

- ☐ Yes - **Publicly notify** application. No further assessment required. Move to Part D.
- ☒ No - Continue through Step 3

b. Does the activity have, or is likely to have, adverse effects on the environment that are more than minor in accordance with s95D?

- ☒ Yes - State Reasons. **Publicly notify** application. Move to Part D.
- ☐ No - State Reasons. Move to Step 4 (special circumstances)

#### State Reasons:

##### A. Land excluded from Public Notification assessment:

Pursuant to Section 95D(a)(i) and 95D(a)(ii) of the Act, when making a decision in relation to public notification, the Council must disregard any effects on persons who own or occupy land in, on, or over which the activity will occur, or any land adjacent to that land.

In this instance the effects of the owners and occupiers of the application site and the adjacent properties, identified in Figure 13 below with a star have been disregarded.

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Figure 13: Application site and adjacent land.

#### **B. Written Approvals:**

Pursuant to Section 95D(e) of the Act, the Council must disregard any effect on a person who has given written approval to the application. No written approvals have been received in support of this application.

#### **C. Permitted Baseline:**

Pursuant to Section 95(D)(b) of the Act, the Council may disregard an adverse effect of an activity on the environment if the plan or an NES permits an activity on the site with that effect (commonly referred to as the 'permitted baseline' test). The purpose of the permitted baseline test is to isolate and make effects of activities on the environment that are permitted by the plan or NES, irrelevant. The baseline has been defined by case law as comprising non-fanciful (credible) activities that would be permitted as right by the plan in question.

For the application site, the following activities are permitted.

- Non-habitable ancillary residential buildings such as garages, sheds and so forth complying with the relevant performance standards of Chapter 13 of the District Plan (e.g., up to 35% buildings coverage and 40% impermeable surfaces coverage).

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Note: Noise Sensitive Activities as defined in the District Plan include residential use. Consequently, habitable residential buildings such as sleep-outs would require resource consent under Rule 13.10.8 – Separation Distance.

- Home Occupations with up to two non-residential employees complying with the relevant performance standards of Chapter 13 of the District Plan (e.g. 1 park per non-residential employee);
- Commercial or industrial activities complying with the relevant performance standards of Chapter 13 of the District Plan. However, considering the typical scale of such activities, any industrial activity that could comply with bulk and location constraints of Chapter 13, the limitation on traffic movements of Rule 13.10.18 and parking requirements of Appendix 25C is considered fanciful. Regarding commercial activities, for the same reasons commercial activities are considered fanciful with the exception of professional offices, which can operate within small premises.

Note: Noise Sensitive Activities as defined in the District Plan include residential use, motels, hotels and other similar uses and activities. Consequently, boarding houses, home stays or bed & breakfasts that may otherwise be able to be accommodated as a permitted activity would require resource consent under Rule 13.10.8 – Separation Distance.

However, in terms of subdivision, there is no permitted baseline as no subdivision is a Permitted Activity. Additionally, the permitted baseline does not include an additional dwelling as an additional dwelling would require resource consent as a Discretionary Activity under Rule 13.10.3a - Dwellings.

Subdivision and dwellings are considered to be fundamentally distinct in terms of character, use and associated effects from the permitted activities discussed above. Consequently, it is considered that there is no useful or applicable permitted baseline in this instance.

#### **D. Assessment of Adverse Effects on the Environment**

The 'receiving environment' upon which effects are to be assessed comprises the existing and reasonably foreseeable future environment. In identifying the receiving environment, it is necessary to consider the environment as it is at the time of application, and the likelihood of change to the environment in the future, based upon the activities that could be carried out as right or with respect to resource consents that have been granted (where it is likely that they will be given effect to).

The site is zoned Residential (Mangawhai Harbour Overlay) and contains an existing dwelling with associated on-site services. The surrounding area consists of residential buildings and the nearby

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commercial activities along Wood Street. The receiving environment consists of those activities, any other activity that could be undertaken as of right under the District Plan, and any unimplemented resource consents that are likely to be implemented. No information has been provided identifying any granted resource consents, where it is likely that they will be given effect to, that may affect the assessment of this application.

Section 95D(c) of the RMA states the Council must, in the case of a controlled or restricted discretionary activity disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion.

As a Non-Complying activity, the Council is unrestricted in its consideration of adverse effects on the environment from the proposal. Taking into account the details of the proposal, including relevant technical reports provided, and having undertaken a site visit to verify the site conditions and receiving environment, an assessment of potential adverse effects of the activity on the environment is provided below.

## **Assessment of Adverse Effects**

### *Residential Amenity and Character*

The definition of amenity in the Resource Management Act 1991 refers to “those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”. Adverse effects on amenity and character can occur as a result of the addition, removal or changes to those natural or physical qualities and characteristics. Changes have the potential to affect the amenity and character of an area even if that change is not directly visually observable as people’s experience of character and amenity is not a solely visual experience.

When considering amenity and character it is important to consider the existing amenity of the area and the legitimate expectations of amenity of those people in that environment. As discussed in Section 2 of this report, the residential neighbourhood in which the site is situated is an area of long-established residential development consisting typically of lots between approximately 800m<sup>2</sup> and 1100m<sup>2</sup>, usually containing a single residential dwelling, one or more accessory buildings, driveways that are grass, metal or concrete depending on the age of the dwelling with garaging and/or parking set back from the street frontage, large areas of lawn and in many cases large, well established trees or other amenity planting on the boundaries and adjacent to the road reserve. It is considered that these factors contribute to the amenity and character of the surrounding residential neighbourhood.

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Regarding expectations of amenity, the subdivision and land-use rules for the Residential Zone (Mangawhai Harbour Overlay) reflect the community's expectation for the pattern of development in residential Mangawhai. I note that Council adopted the Mangawhai Spatial Plan in December 2020 but no plan change has occurred.

The performance standards of the Residential Zone (Mangawhai Harbour Overlay) provide for a minimum lot size of 1000m<sup>2</sup> with a single dwelling where the sites are serviced with a connection to Council's reticulated wastewater system. Within each lot, up to 35% of the site can be occupied by a dwelling and ancillary buildings such as garages and sheds with an additional allowance (up to 40%) for impermeable surfaces such as driveways and parking. The rules also provide for private outdoor space, setbacks from boundaries and recession planes to ensure built form does not dominate the residential environment. The District Plan also makes an allowance for small-scale non-residential activities (e.g., home occupations / commercial) as well. These performance standards provide for areas of open space and a low intensity of development and built form. It is considered that these characteristics contribute towards residential amenity and character in Residential Zone within the Mangawhai Harbour Overlay.

The proposed development proposes residential development at a density of two dwellings per 994m<sup>2</sup> of the parent lot. This is a density double that anticipated by the District Plan (1 dwelling per 1000m<sup>2</sup>) and a density greater than generally established to date within the surrounding environment (approximately 1 dwelling per 800 - 1100m<sup>2</sup>). The proposal also allows for additional non-residential activities (e.g., home occupations / commercial), although the size and layout of the proposed lots would limit the scale of such activities to activities that could be conducted from within the dwellings (e.g., home occupations or perhaps professional offices).

It is acknowledged that the dwellings on Lots 1 and 2 would be able to comply with the relevant bulk and location performance standards for the zone (with the exception of 13.10.8 – Separation Distance). However, several aspects of the proposal point to over intensification of the lots. Firstly, the proposal makes no allowance for accessory buildings, such as carports, garages or sheds etc. Any building of this nature would be in breach of at least one bulk and location performance standard. Secondly, the proposal also results in uncovered parking being provided along the street frontage (within the site) rather than being setback from the road or within garages as is typical in the surrounding neighbourhood. Thirdly, the area of private outdoor space available on the lots, particularly on Lot 1, is uncharacteristically small when compared to the surrounding neighbourhood as most of Lot 1 is occupied by the dwelling, the driveway and parking areas, and a water tank.

Adverse effects on amenity and character associated with this level of residential development include the dominance of dwellings, a reduction in a sense of spaciousness and open space character, and an

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uncharacteristically high level of residential activity associated with the dwellings, such as people, activity, noise, pets, lighting, parked cars, traffic movements and in the event of home occupations or small commercial activities, signage. This would be particularly true of the site in question as it is located in a visually prominent street corner near the commercial area on Wood Street and is not screened from public view by vegetation, topography or surrounding buildings.

Kylie McLaughlin-Brown of Evolve Planning and Architecture was requested to provide a peer review of the application and to comment on visual amenity and character. The Evolve Report dated 19 January 2021 states;

*As outlined above, the policy framework within the District Plan place particular emphasis on the need to ensure that subdivision and development occurs in a manner that is sympathetic to the amenity and character of the receiving environment, the need to protect and enhance features that contribute to the amenity and character of the surrounding environment.*

*It is my opinion that due to the sites location (streetscape frontage to both Margaret and Wood Street), void of existing vegetation, dwelling typology, density together with limited mitigation measures proposed that the proposed development will not maintain or enhance the amenity values of the site and is not compatible with the existing character of the surrounding residential environment.*

As described in Section 1 of this report, the applicant provided additional details of the proposal on the 18th and 21st of January 2021. In response, Ms McLaughlin-Brown provided the following additional comment by email on 21 January 2021;

*The additional mitigation measures outlined which include colours specified and requirement for a landscape plan as a condition of consent does not change the conclusions reached as I cannot determine if the potential effects can be adequately mitigated from a permanent to a temporary level with the information provided to date.*

*In terms of the level of effects as the application stands (with the limited level of information provided in terms of mitigation) it is my opinion that the potential effects on amenity and character (streetscape character) at a local level (including the immediate adjacent sites and users of this portion of Margaret and Wood Street) will be more than minor.*

Considering the matters discussed above, I conclude that the adverse effects of the proposal on amenity and character, including visual amenity, on the residential environment are more than minor.

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It is also noted that the proposal does not offer any legal mechanisms to ensure the proposal presented to Council would be maintained in perpetuity. For instance, a future dwelling could have a maximum height of up to 8m subject to compliance with recession planes. A commercial enterprise could be established in either dwelling rather than a residence. Also, the dwellings are second-hand relocatable dwellings and could be relocated off the site and replaced with a new dwelling (subject to resource consent for a breach of Rule 13.10.8 – Separation Distance). However, for the purposes of notification, these matters are not considered as the proposal as presented to Council is considered to have more than minor adverse effects on amenity and character, as concluded above.

#### Access and Traffic

Both Margaret Street and Wood Street are sealed Council roads in good condition with sufficient capacity for additional traffic movements. Lot 1 has an existing vehicle crossing and Lot 2 is to be provided with a vehicle crossing that complies with Council's performance standards. The applicant has provided written confirmation via email dated 21 December 2020 from Council's Roding Department that the vehicle crossing for Lot 2 is acceptable. Consequently, any adverse effects on the roading network are considered less than minor.

#### Utilities

The applicant has provided written confirmation from Northpower dated 23 July 2020 that electricity and fibre optic telecommunications are available to the site. Consequently, the site can be provided with utilities and any adverse effects on the environment are considered less than minor.

#### Servicing

The applicant has also provided written confirmation by email (undated) from Terry Roche, Senior Waste Water Manager with Ventia Ltd that the new lot can be provided with a connection to Council's reticulated wastewater system. Consequently, any adverse effects on the environment, including sensitive receiving environments, are considered less than minor.

#### Water

There is no reticulated water supply available to the site but the applicant proposes a 25,000L tank for the new lot with 10,000L dedicated for fire-fighting. The applicant has provided written confirmation from Fire and Emergency New Zealand that this arrangement is acceptable. Consequently, the proposal can be provided a suitable water supply for fire-fighting and potable water. Consequently, any adverse effects, such as fire risk, on the environment are considered less than minor.

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### Geotechnical

The applicant has provided a Geotechnical Investigation Report prepared by Geoconsult dated September 2017. The report concludes that the site is geotechnically suitable for residential development subject to the report's recommendations, which form part of the application. Consequently, the site is considered geotechnically suitable and any adverse effects on the environment would be less than minor.

### Reverse Sensitivity

The site is located on land zoned for residential use in an area of existing residential development, including dwellings that are closer to the existing commercial activities on Wood Street than the proposed new lot. Consequently, the introduction of an additional lot into such an environment would not result in increased reverse conflicts. Additionally, despite the proximity to the Wood Street commercial area, the site was observed during site visits to be generally quiet and noise from commercial activities was not distinguishable above background noise. The applicant has also stated that the proposed dwelling has new insulation and mechanical ventilation to ensure noise in habitable rooms of the dwelling is less than 35dB. Consequently, any adverse effects on surrounding commercial activities are considered less than minor.

### Relocation

The applicant has stated that the proposed relocatable dwelling for Lot 2 has been fully renovated including a new kitchen and bathroom, wiring, plumbing, insulation, carpet and paint. The dwelling would be subject to a Building Consent and a Building Report would be required as part of that process. As part of the Building Consent process, the dwelling would be required to be reinstated to an acceptable standard. Consequently, any temporary adverse effects associated with the relocation of the building are considered less than minor.

### Cumulative Effects

On-going and subsequent subdivision and development of land can potentially result in cumulative adverse effects as development exceeds the carrying capacity of the environment to absorb these effects. As discussed earlier in this report regarding adverse effects on amenity and character, the proposed density of the development is double that anticipated by the District Plan and greater than the general pattern of development around it, the proposal is considered to have a cumulative effect on residential amenity and character that would be more than minor.

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### **Conclusion**

In conclusion, having assessed the actual and potential adverse effects of the activity, it is considered that overall, the proposal will have more than minor adverse effects on the environment.

### **Step 4. Public Notification in Special Circumstances**

a. Do special circumstances exist that warrant the public notification of the application?

- ☐ Yes - State Reasons. **Publicly notify** application. Move to **Part D**.
- ☒ No – State Reasons. Determine whether limited notification is required under s95B.

#### **State Reasons:**

Current case law has defined ‘special circumstances’ as those “outside the common run of things which is exceptional, abnormal or unusual, but they may be less than extraordinary or unique.” In this case, the proposal to subdivide land to create two new residential lots, despite the undersize nature of the lots, and to establish a residential dwelling is not considered to be outside the common run of things, exceptional, abnormal or unusual for the Residential Zone.

It is noted that there was community interest in the proposal with three petitions being sent to Council regarding the existing dwelling and further subdivision. However, case law has determined that community interest alone is not a sufficient basis to conclude that there are special circumstances.

Therefore, in this instance it is considered that there are no special circumstances that warrant public notification.

### **Public notification conclusion**

Having undertaken the s95A public notification tests, the following conclusions are reached:

- Under Step 1, public notification is not mandatory given the applicant has not requested it, there are no outstanding or refused requests for further information, and the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977.
- Under Step 2, public notification is not precluded as none of the specific preclusions apply.
- Under Step 3, public notification is required as the potential adverse effects of the proposed activity are more than minor as assessed above.

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- Under Step 4, there are no special circumstances that warrant the application being publicly notified as discussed above.

It is therefore recommended that this application be processed with public notification.

### Part D - Decision

It is decided that this application be processed on a publicly notified basis.

Reporting Planner



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22/01/2021

Dwayne Daly

Date

Signed



----- 25/01/2021

Nikki Honan

Date

*Resource Consents Team Leader*

**Kaipara District Council**

*Signed under delegated authority pursuant to Section 34A of the Resource Management Act 1991.*

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