RM200248

Section 95 of the Resource Management Act 1991 - Assessment Report

Part A - Details of Application	
Applicant	Stainless Sports Limited
Property to which the consent relates	35 Jervois Street, Dargaville, Lot 2 DP 407743 (RT 427224)

1.0 Description of Proposal

1. The applicant seeks combined land use and subdivision consent to construct three adjoining 2-bedroom residential units and subdivide the site into three allotments, with each new lot containing one of the dwellings.

2. The proposed lots will have areas as follows:
   - Proposed Lot 1: 303m² (net) 366m² (gross)
   - Proposed Lot 2: 204m² (net) 248m² (gross)
   - Proposed Lot 3: 318m² (net / gross)

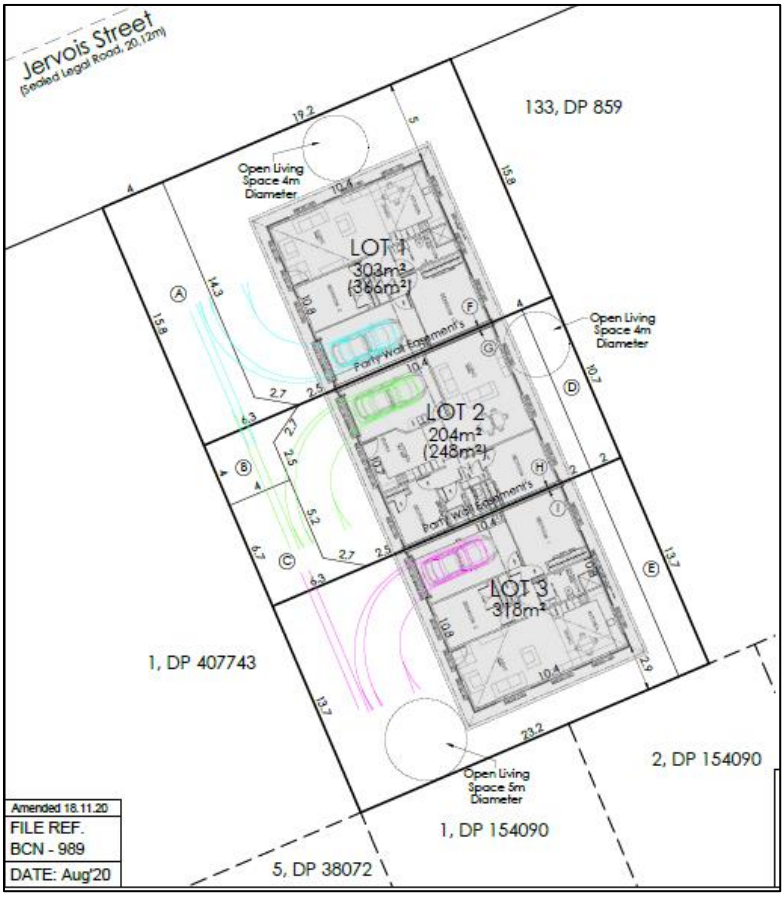

Figure 1: Proposed Site Plan

3. The three units will have floor areas of approximately 112m^2 each and will each contain one internal garage/parking space.

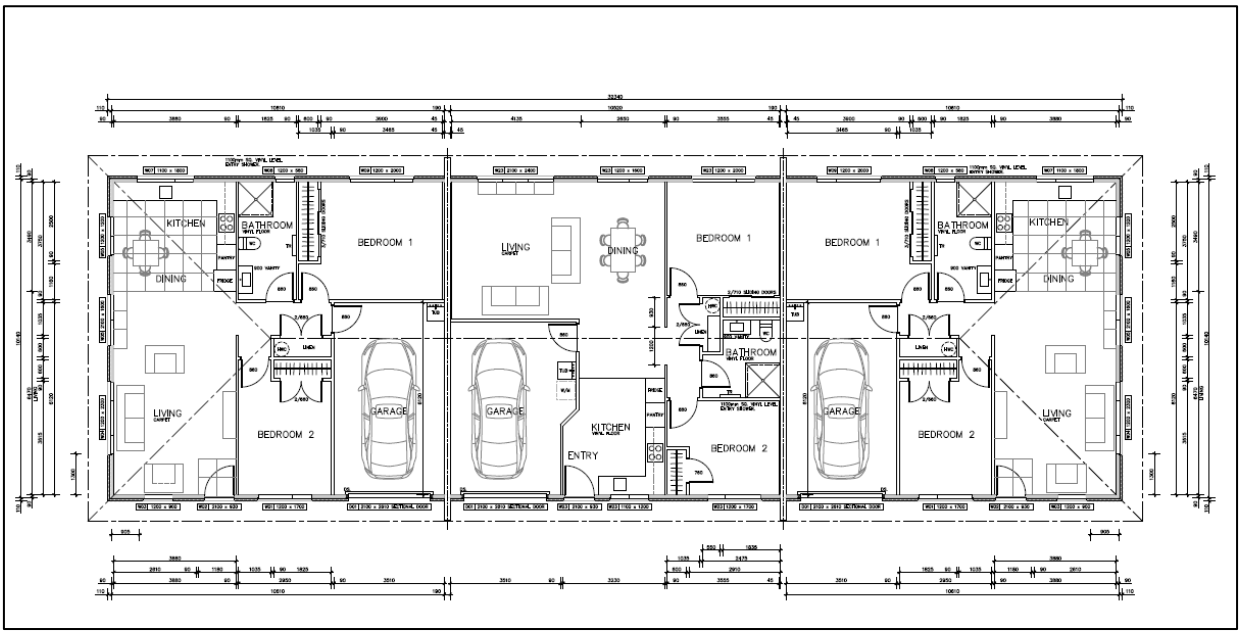

Figure 2: Proposed Floor Plan

4. The building containing the three dwelling units will be clad in brick veneer, with coloursteel roofing and aluminium joinery.

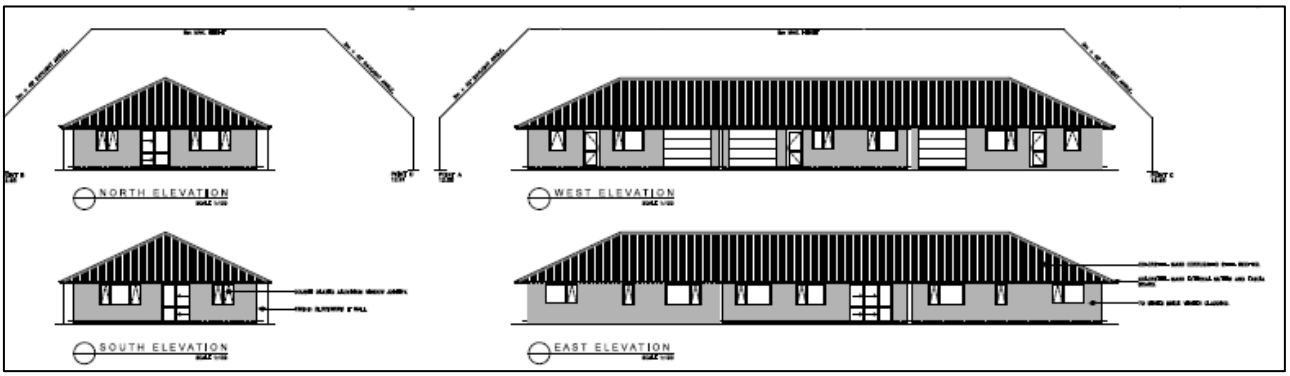

Figure 3: Proposed Elevations

5. The existing dwelling and shed on the application site will be removed to accommodate the proposed development. The existing vehicle crossing, and driveway will be disestablished.

6. A new vehicle crossing will be constructed at the north-western corner of the site accessing onto Jervois Street (State Highway), with a new access driveway running parallel with the western boundary servicing all three allotments. The shared access is identified as Rights of Way A, B and C on the preliminary plan of subdivision.

7. The dwelling units will be connected to the Council's public water and wastewater reticulation systems.

8. A Stormwater Assessment has been prepared by Hawthorn Geddes dated 20 November 2020 and submitted in support of the application ('HG report'). The HG report concludes that runoff from proposed impervious areas (including roofs and driveway/right of way) can be captured via site reticulation to a sub-base granular storage trench, with sufficient capacity to accommodate a 100year ARI event. Final discharge will be to the reticulated stormwater network adjoining the property.

2.0 Written Approvals Received

9. Written approvals have been provided in support of this application from the following parties:
   - E & M Wallace – 33 Jervois Street
   - Katie Tito (occupier) – 37 Jervois Street
   - LINZ Residential (owner) – 37 Jervois Street
   - G Robinson & M Barlow (occupier) – 198A Victoria Street
   - Housing NZ (owner) – 198A Victoria Street.

   Note: The applicant owns 198 Victoria Street.

10. As the application site adjoins and the proposed development will access onto State Highway 12 (Jervois Street) the applicant has consulted with an obtained approval from the New Zealand Transport Agency subject to the following conditions:

    - Obtain an Agreement as to Works from the NZ Transport Agency in order to undertake construction works on the State highway in terms of section 51 of the Government Roading Powers Act 1989. An application to that effect can be made to the NZ Transport Agency's Network Manager (Dale Roberts in this instance).

    - Construction drawings showing full details of the access upgrading works, any associated works, methodology and TMP are forwarded to the NZ Transport Agency's Network Manager for approval at least 15 working days before the commencement of works. The construction drawings will need to show full details of NZ Transport Agency requirements as set out above.

    - A Traffic Management Plan (TMP) in accordance with the latest version of the 'Code of Practice for Temporary Traffic Management' is submitted to the NZ Transport Agency's Traffic Management Coordinator for approval at least 5 working days prior to the commencement of work. The TMP (along with a copy of this letter) shall detail the proposed dates/times of construction and the name of the contractor who will be carrying out the construction of the crossing and associated works. The TMP is required to ensure that the construction or construction traffic would not affect the normal operation of the State highway.

3.0 Kaipara District Plan (Operative 2013) Rule Assessment

11. The following apply to the subject property:

Zoning:	Residential
Overlays:	-
Rules:	Land Use:

<u>13.10.3a 'Dwellings'</u> – Prior to the subdivision being completed, the proposed development does not meet the requirements of this rule as more than one dwelling is proposed per 600m^2 net site area, therefore being assessed as a discretionary activity.

<u>13.10.7 'Setbacks'</u> – The proposed development does not meet the requirements of this rule as the dwelling unit on Proposed Lot 3 will only achieve a rear yard setback of 2.9metres, which prior to the subdivision being completed is not provided for as a rear yard. Further, the proposed three-unit development will create adjoining residential units and therefore there will be an internal boundary setback infringement between the dwellings. Additionally, the dwelling unit on Proposed Lot 3 will only achieve a rear yard setback of 2.9

metres, which prior to the subdivision being completed is not provided for as a rear yard.

Part (g) of this rule also requires buildings to be set back 300m from the intersection of the State Highway and any local road. Any building located anywhere on this site cannot comply with this rule, in relation to the setback from both Onslow and Carrington Streets, therefore being assessed as a restricted discretionary activity.

13.10.8 'Separation Distance from Noise Sensitive Activities' – The proposed development does not meet the requirements of this rule as the proposed units will not be separated more than 300m from the Kauri Coast Community Swimming Pool buildings, therefore being assessed as a restricted discretionary activity.

13.10.11 'Private Open Space' – The proposal does not meet the requirements of this rule as the dwellings on proposed Lots 1 and 2 can only achieve a 4 metre outdoor living circle and the dwelling on proposed Lot 2 will only have an open space of 42m², less than half the floor area of the dwelling, therefore being assessed as a restricted discretionary activity.

13.10.12 'Permeable Surfaces' – The proposed development does not meet the requirements of this rule as pre-subdivision the total impervious surfaces for the site will be approximately 63% and post-subdivision, the impermeable surfaces of the proposed lots would vary from 57.6% to 73%, therefore being assessed as a restricted discretionary activity.

13.10.13 'Building Coverage' – The proposal does not meet the requirements of this rule as the total building coverage over the site will be 35.9% as it will apply to the underlying allotment. Post-subdivision, the building coverage will be as follows:
Lot 1 – 37%
Lot 2 – 54%
Lot 3 – 35%
therefore, being assessed as a restricted discretionary activity.

13.10.25 'Vehicle Access and Driveways' – the proposed driveway does not meet the requirements of this rule vehicles will be required to reverse manoeuvre onto the proposed shared right of way, therefore being assessed as a restricted discretionary activity.

13.10.27 'Parking' – The proposal does not meet the requirements of this rule as each dwelling/allotment will accommodate one car parking space whereas Appendix 25C requires the provision of 2 carparking spaces per dwelling. In addition, vehicles will be required to reverse manoeuvre onto the proposed shared right of way, therefore being assessed as a restricted discretionary activity.

Subdivision:

13.11.1 'General Residential Subdivision' – The proposal does not meet the requirements of this rule as each of the proposed lots will be less than 600m2 in net site area, therefore being assessed as a non-complying activity.

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?

☐ 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 of 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.

☐ Yes Move to Step 4 (special circumstances)

☒ No Move to Step 3

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 on the owners and occupiers of the adjacent properties, identified in Figure 4 below with a star, and as detailed in Table 1, have been disregarded.

Figure 4: Application site and adjacent land.

Table 2: Physical address and legal description of adjacent land.

Physical Address	Legal Description
33 Jervois Street	Lot 1 DP 407743
37 Jervois Street	Lot 133 DP 859
198 Victoria Street	Lot 2 DP 154090
198A Victoria Street	Lot 1 DP 154090

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. Written approvals have been received in support of this application as outlined in Section 2.0 of this report.

C. Permitted Baseline:

Pursuant to Section 95D(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 of right by the plan in question.

For this site, the following activities are permitted by zone:

- Excavation and fill works having a maximum volume of 200m^3.
- Construction of additions to the existing dwelling or replacement of the existing dwelling on the site with a new dwelling complying with the relevant bulk and locations requirements.

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 that environment in the future, based upon the activities that could be carried out as of right or with respect to resource consents that have been granted (where it is likely that they will be given effect to).

The 932m^2 application site located on the southern side of Jervois Street (State Highway 12) within the Dargaville township.

The application site is bordered by residential properties to the east west and south, and directly across the road from Selwyn Park which contains the Kauri Coast Community Swimming Pool buildings and the Dargaville Skate Park.

The site is generally flat in topography and contains an existing dwelling and shed.

The surrounding environment comprises a residential environment characterised by medium to low density residential allotments varying in size from 600m^2 to approximately 1000m^2, the majority of which contain single dwelling units, particularly along Jervois Street.

A residential dwelling and 2x 2-bedroom units are located at 194 Victoria Street; and there is a motel located at 49 Jervois Street.

No other 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.

In this instance, the proposed development is assessed as a non-complying activity, and as such 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

Access and Traffic

The application site adjoins Jervois Street (State Highway 12) which is a Primary Collector Road with a sealed surface in the area of the application site with a speed environment of between 50 to 60km/h requiring sight lines of 45 to 65m.The Annual Daily Traffic (ADT) count is 5506 with 5.6% heavy vehicles (estimate 25/12/2019).

There is an existing vehicle crossing located at the eastern end of the site. A new vehicle crossing location is proposed at the western end of the site. The applicant has consulted with and approval has been received from the New Zealand Transport Agency (NTA) dated 22 September 2020 for the new crossing location subject to the vehicle crossing construction in accordance with Kaipara District Council Engineering Standards.

The Council's Consultant Engineer has assessed the application and confirms that the proposed vehicle crossing location can achieve complying sight lines.

The proposed dwellings are to be accessed via the new vehicle crossing and proposed right of way which would be constructed, as required, in order to meet the Council's Engineering Standards.

From a traffic movement perspective, the traffic intensity factor as outlined in Chapter 25F of the KDP provides a baseline. The KDP states that "*Any activity is permitted if the cumulative traffic generated on any road from all activities on site does not exceed 20 daily one-way movements based on the Traffic Intensity Factor Guidelines in Appendix 25F. However, single dwellings, temporary military activities and construction traffic (associated with the establishment of an activity) are exempt from this standard*".

A dwelling typically has six vehicle movements per unit as discussed in Chapter 25F. Extending this analogy to the current scenario of three dwellings, may therefore result in 12 additional vehicle movements from the site. Considering the formation, speed environment and sightlines these vehicle movements can be accommodated by Jervois Street (State Highway 12) having a less than minor effect.

Although the proposal involves on-site vehicle manoeuvring onto the right of way which is not in accordance with Appendix 25C of the District Plan, vehicles from the development will still be able to leave the parent site accessing onto Jervois Street site in a forward gear.

The Council's Consultant Engineer has assessed the application and considers that due to the straight nature of right of way visibility can be achieved for vehicles reversing from each of the on-site parking spaces and any adverse effects on traffic safety would less than a minor.

Only one parking space is provided per dwelling/lot within an internal garage.

The Council's Consultant Engineer considers that the reduced number of parking spaces is appropriate in this instance due to the size of the proposed 2-bedroom dwellings proposed and the fact that on-street parking is

available on both sides of Jervois Street adjacent to the application site. However, is likely to be increased competition for public parking in the area due to the proximity to Selwyn Park and associated activities, particularly in the summer months when demand for the Community Swimming Pool is high. Therefore, it is considered that the proposed development would have at least minor effects on parking supply of the wider environment.

Character and Amenity Values

The application site is a large residentially zoned lot located on the southern side of Jervois Street (State Highway 12) within the Dargaville township.

The Residential Zone enables the development of residential areas by identifying activities and appropriate performance standards to enable typical medium density residential living to be permitted. This Zone is identified in locations where it is considered the effects of residential activities are compatible with sustainable development, the existing character and amenity of the area and where servicing and community facilities/resources are allocated or provided.

The application site is bordered by residential properties to the east west and south. Immediately surrounding allotments range in size from 600m^2 to 1000m^2, with each containing one residential dwelling.

The application site is located within the Indicative Growth Area for Dargaville in the District Plan and is also identified in the 'Dargaville Spatial Plan' adopted by the Council 2 May 2020 for intensified residential use, however no plan change has occurred for the site or surrounding area as yet.

Residential character effects can occur where there is change is to the fabric of the landscape and/or in aesthetic or sensory aspects of an area as a result of removal of or changes in individual elements or features of that landscape and/or the introduction of new elements, features or changes in land use. Where this results in a change in the spatial character or land use of an area it has the potential to affect the character of an area even if that change is not observed by individual viewers.

It is of particular relevance to identify the scale of what can be expected in an area, and the legitimate expectations of amenity of those who choose to live there. The Residential Zone provides for a density of development at a minimum net site area of 600m^2 per dwelling/allotment for a serviced area such as within Dargaville not within an Overlay.

As previously described in this report, the existing environment comprises a medium to low density pattern of residential development within the Dargaville centre located in close proximity to social infrastructure/community facilities. Allotments in the surrounding area vary in size between 600m^2 and 1000m^2. While it is acknowledged that the wider area contains some multi-unit developments, lots in the immediate area along Jervois Street contain single residential dwellings.

The form and density of land use activities and subdivision can adversely affect residential character values. The performance standards for the residential zone, provides for areas of open space and a low intensity of development and built form. It is considered that these characteristics contribute to residential amenity values.

While the proposed dwellings would adjoin one another and appear to be contained within a single building, the proposed development breaches a number of the relevant performance standards of the District Plan, including building coverage and permeable surfaces, resulting in a sense of 'overdevelopment' of the site.

<u>Amenity Values</u>

It is somewhat debatable as to precisely what 'amenity' is, and how a proposal will affect an environment's existing amenity values, which is a subjective matter that can only be determined after consideration of many values.

The term 'amenity values' arises in Part 2 of the Act, being a matter that particular regard must be had to in the determination of a resource consent application. The definition in the Act 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". Therefore, an assessment of the effects of the proposal on character and amenity values relies on a number of variables.

As discussed previously in this report, it is of relevance to identify the scale of what can be expected in an area, and the legitimate expectations of amenity of those who choose to live there. The Residential Zone provides for a density of development at a minimum net site area of 600m^2 per dwelling/allotment for a serviced area such as within Dargaville and not within an Overlay. Combined with the performance standards for the zone, this provides for areas of open space and a low intensity of development and built form. It is considered that these characteristics also contribute to residential amenity.

A single dwelling and the effects thereof, are anticipated on the application site, however the establishment of a second and third dwelling(s) has the potential to give rise to effects on the amenity of the area by increased density of development.

While the proposed dwellings would adjoin one another and therefore appear to be contained within a single building, the proposed development breaches a number of the relevant performance standards of the District Plan, including building coverage and permeable surfaces, therefore it is considered that the proposed built form would not be consistent with and could be perceived as a complying single dwelling.

Potential adverse effects on amenity also relate to an increased scale and intensity of residential activity, such as increased people activity, traffic noise and effects on privacy and security.

In saying that, amenity values are subjective and potential adverse amenity effects with respect to noise and other nuisance effects associated with the increased scale and intensity of the independently occupied dwellings as proposed would generally be restricted to immediate surrounding properties, all of whom have provided their written approval with respect to the proposed development and hence the effects on these properties must be disregarded.

The immediate surrounding properties, as outlined in Section 2.0 of this report who have given their written approval for the application, would provide a spatial buffer for nuisance effects on wider surrounding residential properties with respect to amenity values.

However, in terms of effects on general amenity, the proposed development enables residential development at an intensity greater than that anticipated by the District Plan and generally established to date within the surrounding environment, resulting in a density of one dwelling per 310m^2 being approximately double that what is provided for in the residential zone and currently exists in the immediate surrounding environment.

The proposed design of the dwellings without separation, would also result in a pattern of built form which is not considered to be compatible with the existing character and amenity of adjoining land uses. As a result, there would be a change in amenity levels on the application site and the surrounding area, most notably the proposal would result in an overall net reduction in open space and general sense of openness.

The development would represent a change in the existing character of the site from that of a relatively large residential site containing one single dwelling to one of a residential complex in a style that is distinctly different from the older and more traditional built form that exists in the surrounding area.

Overall, for the reasons outlined above, it is considered that the proposal results in a subdivision with a density of development not anticipated in the residential zone, which would result in adverse effects on the character and amenity values of the wider surrounding environment to a degree that is more than minor.

Servicing

The proposed dwellings would connect to the Council's public water and wastewater reticulation systems.

As discussed previously in this report, a Stormwater Assessment has been prepared by Hawthorn Geddes ('HG') dated 20 November 2020 and submitted in support of the application. The HG report concludes that runoff from

proposed impervious areas (including roofs and driveway/right of way) can be captured via site reticulation to a sub-base granular storage trench, with sufficient capacity to accommodate a 100year ARI event. Final discharge will be to the reticulated stormwater network adjoining the property.

The Council's Consultant Engineer has assessed the application, including the HG Report and considers that stormwater will be managed via stormwater detention prior to discharging to Council's existing stormwater reticulation and will be attenuated such that post development flows to be no greater than pre-development flows. The Consultant Engineer recommends a condition of consent that stormwater detention shall take into account the HG Report.

Power and telecommunications are available to the boundary of the parent lot.

Overall, appropriate and suitable utilities are available to service the subdivision, which will not constrain the respective utility networks.

Connection to utilities would be subject to approval from the various and required service providers.

Cumulative Effects

On-going and subsequent subdivision and development of land can potentially result in cumulative adverse effects as the volume and nature of development exceeds the carrying capacity of the environment to absorb these effects.

In this case, the proposal is a combined land-use and 3-lot residential subdivision, and it is considered that the density of development proposed being double that anticipated by the District Plan and existing in the vicinity of the application site would exhaust the carrying capacity of the immediate surrounding environment and the proposed change in land use would 'tip the scale' such that there would be more minor cumulative effects on the existing character and amenity values of the wider surrounding environment.

Conclusion

In conclusion, having assessed the actual and potential adverse effects of the activity, it is considered that overall, the proposal will potentially have more than minor adverse effects on the environment. The proposed development enables residential development at an intensity greater than that anticipated by the District Plan and generally established to date within the surrounding environment, resulting in a pattern of built form which is not considered to be compatible with the existing character and amenity of surrounding land uses.

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:

In this instance it is considered that there are no special circumstances that warrant public notification. 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 public notification should occur.

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.
- Under Step 3, public notification is required as the potential adverse effects of the proposed activity would potentially be more than minor as assessed above.
- 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 notified basis.

Reporting Planner *26 January 2021*

Kim Nathan, Consultant Planner

Date

Signed:

Nikki Honan *Date: 27 January 2021*

Resource Consents Team Leader
Kaipara District Council
Signed under delegated authority pursuant to Section 34A of the Resource Management Act 1991.