

**DECISION OF THE GISBORNE DISTRICT COUNCIL**

**RESOURCE MANAGEMENT ACT 1991**

<b>Applicants:</b>	NZHG Gisborne Limited
<b>RM reference:</b>	LU2023-112111-00
<b>Location:</b>	99A Stanley Road, Gisborne
<b>Proposal:</b>	An application under Section 88 of the Resource Management Act 1991 (RMA) for land use and subdivision consent for an eight unit residential development, site works, access (Joint owned access lot) and on-site carparking arrangements.
<b>Type of Consent:</b>	Subdivision and Land Use
<b>Legal Description:</b>	Lot 1 DP 5799
<b>Operative District Plan Zoning:</b>	General Residential
<b>Activity Status:</b>	Discretionary Activity (Overall)
<b>Notification:</b>	1 June 2024
<b>Commissioner</b>	Dr Lee Beattie
<b>Site Visits:</b>	18 & 20 Sept 2024
<b>Date:</b>	18 Dec 2024
<b>Decision:</b>	<b>CONSENT IS GRANTED</b>

**IN THE MATTER OF** an application by NZHG Gisborne Limited to application under Section 88 of the Resource Management Act 1991 (RMA) for land use and subdivision consent for an eight-unit residential development, site works, access (Joint owned access lot) and on-site carparking arrangements at 99A Stanley Road, Gisborne.

Council File: LU2023-112111-00

**Hearing Date:**

Thursday 20 Sept 2024 in Gisborne

**Appearances for the Applicant:**

Ms Lara Blomfield: Legal Counsel;

Mr Sol Atkinson: Architect;

Mr Takudzwa Mapeta: Traffic Engineering;

Mr Johan Ehlers: Civil Engineering;

Mr Jon Farren: Noise;

Jason Strong: Contaminated Soils; and

Ms Phillipa Beachen: Planner.

**Appearances for Submitters:**

There were no submitters present at the Hearing;

**Appearances for the Gisborne District Council**

Ms Sarah Exley: Senior Consents Planner;

Ms Awhina White: Consents Manager;

Mr Robin Beale: Development Engineer; and

Dr Dave Bull, Contaminated Land.

The hearing was closed on 15 Oct 2024

**DECISION OF GISBORNE DISTRICT COUNCIL  
HEARING COMMISSIONER DR LEE BEATTIE  
APPOINTED PURSUANT TO SECTION 34A OF THE RMA**

**INTRODUCTION, BACKGROUND AND PROPOSAL**

1. Dr Lee Beattie (Chair) has been granted delegated authority by the Gisborne District Council ('the Council') under s.34A of the Resource Management Act 1991 ('the RMA') to hear and determine the application by NZHG Gisborne Limited ('the Applicant') for land use and subdivision consent for an 8 unit residential development, site works, access (Joint owned access lot: JOAL) and on-site carparking arrangements at 99A Stanley Road, Gisborne.
2. This application was heard over a day and was followed by a very similar application from the same applicant in a different location within the district (556 – 560 Aberdeen Road: LU2023-112105-00), where many of the issues explored here were also similar to those explored and covered as part of that hearing. In this decision I shall reference comments from Mr Shane McGhie (Council's Principal Policy Planner), Ms Portia McKenzie (applicant) and many of the procedural points from that hearing are also relevant to the outcomes from this hearing.
3. The proposal has been described in detail within Ms Beachen's's AEE supporting the application. In essence, the applicant seeks resource consent (Land Use and Subdivision) to construct six two-storey (two-bedroom units in duplex form) and two single story (three bedroom in duplex form) residential units. All the residential units would be serviced by a single joint owned accessway (JOAL) from Stanley Road. Resource consent is also required under the National Environmental Standard for Assessing and Managing Contaminants on site, which I understand relates to the use of lead-based paint on site.
4. The application site is located at 99A Stanley Road, Gisborne. The site and the surrounds have been described in detail in Section 1.4 of Ms Exley's s.42A report. There was no real disagreement between the parties over the location description and I have therefore adopted Ms Exley's description for the purposes of my decision. However, I consider it appropriate for me to acknowledge a few factors about the site (the area of the proposed new building platforms and accessway and beyond) which I feel are relevant to my consideration of this application.
5. The site and its surrounding area are characterised by a range of different building styles, forms and heights (both single storey and two storey dwellings). At 495 to 501 Chiders Road (directly to the South of the site) there are four single story terrace dwellings on smaller sites. At 97 Stanley Road there is a two-storey dwelling, with a vehicle crossing that occupies the whole road frontage, with a large garage at the rear of that site. To the west of the site is the vehicle accessway (approximately 3m wide) providing access to a residential dwelling at 507A Chiders Road which has a block wall (approximately 2 m high) along the common boundary with the application site. There is also Gisborne Boys High School located to the North.
6. As a general observation the housing present in the local environment appeared be larger dwelling forms on smaller sites, create a more 'urban' feel to this part of District than was

present at 556- 560 Aberdeen Road, especially around the Stanley/Childers Road roundabout. During my site visit on the afternoon (about 5.00pm on 18 Sept 2024) and before the hearing for 556-560 Aberdeen I noticed there appears to be a high level of on street car parking spaces available for use in Stanley Road. This was also the case when I revisited the site at 2.00pm on Friday 20 Sept 2024. During my two site visits I gained a good appreciation of the property and the wider environment, including from the submitters' properties (acknowledging no submitters were present at the hearing).

7. In reaching this decision I have considered:

- (i) The application, the AEE and all supporting document and plans;
- (ii) The Council officer's (Ms Exley) s.42A report, together with the supporting reports attached;
- (iii) The pre-circulated evidence from the Applicant;
- (iv) The written submissions from the submitters to the application;
- (v) The submissions (from the applicant's Legal Counsel Ms Lara Blomfield) and evidence provided at the hearing by all the parties;
- (vi) The responses to my questions during the hearing process from all parties;
- (vii) The applicant's right of reply;
- (viii) My site visits;
- (ix) The relevant provisions of the Operative Tairāwhiti Resource Management Plan (District Plan Section);
- (x) National Environmental Standard for Assessing and Managing Contaminants; and
- (xi) National Policy Statement on Urban Development 2020.

8. I would like to thank all parties for the professional and courteous way that the hearing was undertaken. Finally, I would like to thank Mr Mac Burgess (Council's hearing Advisor) for all his assistance and help during the hearing process.

## **NOTIFICATION, SUBMISSIONS & STATUTORY MATTERS**

9. The application was publicly notified on 1 June 2024 with submissions closing on 2 July 2024. Three submissions were received, all in opposition. A summary of these submissions is set out in section 4 of Ms Exley's s.42A report.

10. The site is located within the Tairāwhiti Resource Management Plan's (TRMP) General Residential Zone. Acknowledging that the TRMP is a Unitary Plan, covering all the region's resource management plans, including the Regional Policy Statement (RPS), regional coastal plan, regional plan and district plan.<sup>1</sup> There was little reference made to the Regional Policy Statement section of the TRMP, with the planners (and other experts) focusing their consideration on the relevant District Plan sections of the TRMP, a point I agree with. As a result,

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<sup>1</sup> Gisborne District Council 2024, <https://www.gdc.govt.nz/council/tairawhiti-plan/chapters-and-appendices>, viewed 4 Nov 2024

I have concentrated my consideration on the relevant District Plan provisions of the TRMP.

11. There was no disagreement between any of the parties over the consents required (being a Discretionary Activity overall), or over the relevant District Plan's objectives and policies (the General Residential, Infrastructure, Works, and Service Issues and Subdivision sections) to this application and accordingly, these have been adopted for my decision. In saying this, there was some discussion about the issue of bundling of the land use and subdivision consent together and the timing of the two, just as there was for the application at 556-560 Aberdeen Road. In consideration of this, I raised the recent Environment Court decision in *Protect Aotea v Auckland Council* during the course of the hearing with the parties.
12. Ms Lara Blomfield in her right of reply suggested her interpretation of the appropriate way for me to apply this to my consideration of the application<sup>2</sup>. In essence, she suggested that I should take a holistic approach to my assessment of the effects on the environment from the land use, subdivision and management of contaminated soils activities, especially in dealing with any conditions of consent that may be imposed, but these activities should not be bundled together, as bundling could not override provisions of s.104C of the RMA<sup>3</sup>, as the Land Use activities were a Restricted Discretionary Activity and my areas of consideration for them must be limited to these matters covered in Rule DD1.6.1(17).<sup>4</sup> However, Ms Exley<sup>5</sup> suggested there was still the issue surrounding the non-compliance with the District Plan's general provisions contained in Chapter C2 (General Standards C2.1.7.1(H)(2) in respect of clear and unobstructed sight lines), which fell outside the areas contained in assessment criteria of Rule DD1.6.1(17). Ms Blomfield was of the view<sup>6</sup>, as was Ms Beachen, that this standard was not engaged (consent not required) as the crossing was not new and this provision did not apply. Given this issue was in contention, I believe it's appropriate for me to explore this issue within my decision below.
13. At this stage, I think it's appropriate for me to set out my view on how I should consider the application, as I did the application at 556-560 Aberdeen Road. With a combined land use and subdivision application there is always the question of which comes first, the land use or the subdivision. In this case, it seems logical to me that the Land Use consent element should come first for the building forms (given these were shown and applied for) and then consider the issues arising from the subdivision consent, as these impacts would result from the buildings activities themselves and sole subdivision application was not sought.
14. This approach would have removed the issue of the internal height to boundary infringements onto the JOAL, as the impact of the building forms would then be taken from the external boundaries in the first instance. In saying this, I would like to stress I have considered the application as proposed (a combined application, just in the logical fashion as I have set out below) including, to a limited degree, the impact of the internal height to boundary infringements. I am also conscious of Ms McKenzie's (applicant's) comments I received in the 556 to 560 Aberdeen Road (LU2023-112105-00) hearing over the potential requirement with

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<sup>2</sup> Paragraph 13 of Ms Blomfield's right of reply dated 4 Oct 2024

<sup>3</sup> Paragraph 13.1 of Ms Blomfield's right of reply dated 4 Oct 2024

<sup>4</sup> Paragraph 14 of Ms Blomfield's right of reply dated 4 Oct 2024

<sup>5</sup> Paragraph 39 of Ms Exley's s.42a report dates 30 August 2024

<sup>6</sup> Paragraph 17 of Ms Blomfield's right of reply dated 4 Oct 2024

future social housing providers to deliver an integrated housing outcome (land use and subdivision).<sup>7</sup>

15. In moving forward and to resolve this issue, I agree with Ms Blomfield's approach to this, and find that I should consider the land use activities in accordance with Rule DD1.6.1(17) and then explore whether the District Plan's general provisions (Chapter C2) infringement apply, and if they do, what would be the impact on this application. As a result, I have considered the application in the following order:

- The land use activities in accordance with Rule DD1.6.1(17);
- The issues surrounding the infringements of the general provisions in Chapter C2 (sight lines);
- The contaminated soils matter under the National Environmental Standard for Assessing and Managing Contaminants;
- Any outstanding subdivision matters, including any issue under s.106 relevant to this consent application;
- Assessment of the relevant District Plan policy frameworks and the NPS:UD; and
- A considering the application in the round, positive effects and reference to Part 2 of the RMA if required.

16. While it was clear to me that the application could, or was to be used for social housing, this appeared not to feature as a major element of the evidence I received on the application. I explored this during the hearing (as I did for 556 to 560 Aberdeen Road: LU2023-112105-00) and while all the planning witnesses agreed social housing would be a s.5 matter<sup>8</sup> (to differing degrees) under the RMA this did not form an integral part of their assessment on the application. They chose to focus on the impacts of the activities (housing) themselves. This was also reflected in the legal submissions I received. As a result, I have considered the application as it was presented to me as set out in the applicant's AEE.

17. Now turning to the issue of car parking and the relevant provisions under the National Policy Statement: Urban Development (NPS:UD). There was no disagreement between any of the parties that the Council is a Tier 3 Council under the NPS: UD. Nor was there any disagreement that the NPS: UD required councils to remove their minimum car parking standards from their district plans. In in this regard, I found McGhie's (Council's Principal Policy Planner) evidence very helpful<sup>9</sup> where he confirmed that the Council had removed the minimum car parking standards from the District Plan and there was no requirement to provide car parking for this

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<sup>7</sup> Ms McKenzie's responses to my questions during the hearing on 19 Sept 2024.

<sup>8</sup> Ms Beacham and Mr McGhie (Hearing for 556 to 560 Aberdeen Road: (LU2023-112105-00), with Ms Exley suggesting she did not have sufficient experience to answer this question in a meaningful way (Page 7: Officers Hearing Notes dated 19 September 2024 at the hearing for 556 to 560 Aberdeen Road: (LU2023-112105-00) ). I thank Ms Exley for her honest and professional response.

<sup>9</sup> In response to my questions in the hearing for 556 to 560 Aberdeen Road: (LU2023-112105-00).

type of development in the District. This point was also highlighted to me by Ms Blomfield<sup>10</sup>. I also agree (as discussed above) with her (Ms Blomfield) when she questioned whether car parking and traffic issues fell within my consideration of the Land Use activity element under Rule DD1.6.1(17).

18. I acknowledge there were significant discussions between the planners (both Ms Exley and Ms Beachen) over whether on-site (and the level of) car parking would form part of a well-functioning urban environment required under the NPS: UD's Objective One and supporting policies in locations like Gisborne, given the level of meaningful public transport in the district.<sup>11</sup> Much of this discussion was a direct result of my questioning and exploration of this matter with them given the significant weight that Ms. Exley had given to this issue in her s.42a report. An issue I will explore in more detail below.
19. While I can see some logic and practicality to this argument, this is not the approach taken by the NPS: UD, nor the Council's (to give effect to the NPS: UD<sup>12</sup>) decision to remove minimum car parking standards from the District Plan. As I will explore in detail below, the applicant could and would be entitled to apply for a car free development (Land Use consent) and this issue would not have come into consideration.

#### **LEGAL SUBMISSIONS & EVIDENCE**

20. I had the benefit of Ms Exley's s.42A report which was circulated prior to the hearing and taken as read. Ms Exley recommended refusal of consent, with the rationale for this approach set out in her report. She maintained this view at the close of the hearing and which was confirmed in her subsequent hearing notes she provided to me dated 20 Sept 2024. In essence, she was of the view that the scale, nature and design of the residential development compromises the amenity values and character of the surrounding properties, including the adverse effects arising from the internal accessway design and additional traffic generation on the roading network, and the proposal was inconsistent with the objectives and policies of the TRMP.<sup>13</sup>
21. Ms Exley's report was supported by a number of internal and external expert's reports, covering development engineering, geotechnical issues, three waters, land use policy, compliance and monitoring and contaminated land matters. These experts are listed at paragraph 4 of Ms Exley's s.42a report. Finally, I would like to acknowledge the comprehensive and detailed nature of Ms Exley's s.42a report.
22. Expert evidence from the Council officers, the applicant and the parties was pre-circulated and read before the hearing. I note that the following is a summary of the key issues raised and must be read in conjunction with the actual legal submissions, pre-circulated evidence and evidence presented at or after the hearing. To reduce repetition, I will concentrate on matters relating to the areas of contention between the parties. A full set of all the evidence is available

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<sup>10</sup> Paragraph 18 of Ms Blomfield's right of reply dated 4 Oct 2024

<sup>11</sup> I was advised by Ms Exley that public transport stopped after 5:00 PM.

<sup>12</sup> Answers to my questions from Mr McGhie

<sup>13</sup> Ms Exley's summary at page 2 of her s.42a report dated 30 August 2024.

on the Council's internet site, including the recordings from the hearing.

23. **For the Applicant**

24. **Ms Lara Blomfield** (Counsel) provided me with detailed opening legal submissions addressing the application, including the changes undertaken since notification that were designed to address some of the matters raised in Ms Exley's s.42A report. She covered the design response and how this would mitigate the impacts on the adjacent properties, fall within the character of the surrounding environment and had included feedback from Kainga Ora's social housing urban unit for the successful provision of social housing. She explored in detail the matters in contention and in the matters in disagreement which I found very helpful in considering this application.

25. She then explored the proposal in terms of its relevant statutory process, a point as I've discussed above, that evolved during the hearing process. She then considered the impact on the adjacent properties in terms of privacy, shading, fencing and noise and addressed the issues of on-site car parking, vehicle access and servicing. She also considered the positive impacts of the proposal which provided for the efficient and effective use of the site and for the provision of social housing. She considered the relevant impacts of the District Plan and the NPS:UD and how, based on Ms Beachen's (and others) evidence the application was appropriate in land use and policy terms.

26. Finally, Ms Blomfield provided me with a draft set of conditions should I be of a view to grant consent.

27. **Mr Sol Atkinson** (Architect) spoke to his evidence in chief (which was taken as read). He helpfully walked me through his design thinking for the proposal. He also explained how his design thinking was influenced by comments he had received from the Kainga Ora social housing urban design team. He covered issues raised within the s.42 report including issues surrounding the permitted baseline,<sup>14</sup> shading, visual privacy, daylight and sunlight access to the adjacent properties and how the proposed building forms would not adversely affect the adjacent properties residential amenity in terms of density, privacy and sunlight access. He then answered my questions regarding the style and typological approaches used and how, in his view this was an appropriate design solution for the site in its context.

28. **Mr Takudzwa Mapeta** (Traffic Engineer) spoke to his evidence in chief (which was taken as read). In doing so, he covered the traffic crash statistics and traffic engineering issues relevant to this section of Stanley Road and the intersection with Childers Road (roundabout to the south) and Gladstone Road (to the North). He highlighted, that in his view, there was sufficient capacity within the existing roading network to accommodate this form of development and that the application would not generate any noticeable adverse traffic effects on the wider reading network. He then considered the issues of vehicle access and considered that the width was appropriate given the level of vehicle movements likely to be generated by this level of development. In doing so he highlighted the provision of the wider two-way access at the road

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<sup>14</sup> Acknowledging these issues were covered in far more detail within Ms Beachen's evidence, as is appropriate given these were planning issues, but she did rely on the very helpful architectural drawings provided by Mr. Atkinson to advance her professional opinion in this regard.

edge to address any potential movement conflicts, including courier vehicles. He spent some time exploring the sightline issues for vehicles entering and leaving the site and it was his view that the impact of this would be minimal.

29. He covered the issues raised by the submitters, including the use of on street car-parking which I was of the view, that there was sufficient space available in this section of Stanley Road and beyond to accommodate any over flow carparking that may be generated from this development, especially given the level of on-site carparking proposed.
30. **Mr Jason Strong** (Contaminated Soils) spoke to his evidence in chief (which was taken as read). He explained to me the discovery protocol the applicants were proposing to use and how this would address any on site contaminated soil issues. We explored the issue of where the contaminated materials would go, and he advised, as he set out in his evidence in chief, that the Wairoa Landfill confirmed their willingness to accept the material. He then addressed some issues raised by Dr Bull about his methodological approaches and confirmed that he was confident in the way he had undertaken his assessment and that the appropriate protocols were in place to address the contaminated soil issue.
31. As it transpired through the course of the hearing for 556 to 560 Aberdeen Road (LU2023-112105-00), it appeared to me that both Dr Bull and Mr Strong did come to an agreement over how this contaminated soil issue should be addressed, including on this site, as I will discuss below.
32. **Mr Johan Ehlers** (Civic Engineering) spoke to his evidence in chief (which was taken as read). He maintains his view that the site could be adequately serviced in terms of wastewater and water supply and that any stormwater and flooding issues could be adequately addressed through the appropriate use of conditions of consent. He then answered a number of my questions about the site and also addressed a number of the concerns expressed by the submitters about the potential flooding and stormwater issues.
33. He then considered the vehicle clearance issue which has been raised by Mr Beale and the provision of 300m clearance as opposed to the Council's recommended approach of 600mm. In his view this was an appropriate response in this location and consistent with the approach taken by other councils. In his view there were no reasons to prevent granting consent in terms of servicing and engineering issues.
34. **Mr Jon Harren** (Noise) spoke to his evidence in chief (which was taken as read). He confirmed his view that in the worst-case scenario the application would comply in terms of traffic and construction noise effects with the relevant District Plan standards, with the suggested conditions of consent (with the construction management plan). He then also addressed issues raised by the submitters in terms of noise and maintained his view that there were no reasons in terms of noise which would warrant refusal of consent and that the application would not lead to any further noise beyond what currently existed.
35. **Ms Phillipa Beachen** (Planner) spoke to her evidence in chief (which was taken as read). She addressed a number of issues that had come up during the hearing, outlined the proposed changes to the application, and responded to matters raised by the submitters. In doing so, she

brought to my attention the age of the TRMP's District Plan section given this weight should be afforded to the NPS:UD which represented up-to-date planning policy. This has also influenced the Council's Future Development Strategy seeking to address the District's future growth for the next 30 years.

36. She then covered the issue of density and how density in itself was not an adverse effect and how I should be guided by the effects generated from the proposal, and not by the level of density. She then, based on the helpful drawings from Mr Atkinson, considered the permitted baseline argument for the site and in her view, what would be a realistic and non-fanciful permitted development for the site using the existing District plan standards. This would enable the provision of 4 primary dwelling units, with 3 minor dwelling units resulting in a total of 7 dwelling units across the site and 18 bedrooms.<sup>15</sup>
37. Ms Beachen then spent some time in her evidence considering the issues of the impacts of yards setbacks, recession planes, site coverage, lot design and layout, noise, sunlight and daylight access, shading and building dominance upon the adjacent properties. In her view these were all acceptable in effects term and she did not support the view expressed by a number of the submitters that the proposal would be inconsistent with and adversely effect the existing character of the local environment. In her view it would be consistent with the existing character and also with the provisions provided for in the General Residential zone which provide for two story dwellings. She then considered the issues of traffic, including the proposed level of on site carparking, and the vehicle access and concluded that these were also acceptable in planning terms.
38. Ms Beachen provided me with a detailed consideration of the relevant District Plan policy provisions including those within the General Residential zone, Infrastructure, Works and Service Issues and Subdivision sections of the District Plan and how the proposal was consistent with these relevant objectives and policies. Finally, she suggested that I should have regard to the NPS:UD, including Policy one that sought to enable a wide range of different housing typologies which are required to contribute to a well-functioning urban environment. I found her responses to my questions very helpful to my consideration of the application.

### **Council**

39. Ms Sarah Exley (Senior Consents Planner) provided me with her position on the application though her helpful hearing notes at the end of the hearing which maintained, as discussed above her view that the proposal was unacceptable in effects and land use policy terms for the rationale I have set out above. I raised the issue of how the Court of Appeals decision in Davidson v Marlborough District Council 2019 should be applied given the age of the District Plan and whether recourse to Part 2 under the RMA was open to me. On reflection she agreed this was the case, but this did not change her view.
40. I would like to acknowledge at this stage that the issue of recourse to Part 2 did not feature heavily in the planners assessment of the application either for the council and the applicant.

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<sup>15</sup> Paragraph 34.5 of Ms Beachen's evidence in chief dated 6 Sept 2024

Both agreed that recourse was open to Part 2, as did Ms Blomfield should I require it<sup>16</sup>.

41. I explored the issues of car free developments with Ms Exley and what would be the appropriate level of car parking on site for an application of this type in the District. In doing so, she maintained her view that even though the District Plan had removed minimum car parking standards, a level of on-site car parking should be provided, especially given the nature of the activity proposed, and to do otherwise could create adverse traffic effects. We also explored a range of issues surrounding the impact upon the neighbouring properties, the design and appearance of the dwellings and their impact on the streetscene. I would like to thank Ms Exley for her candid answers to my questions and I found her responses very helpful to my consideration of the application.
42. **Mr Robyn Beale** (Development Engineer) had provided technical advice to Ms Exley's s42a report, which covered the appropriate level of on site car parking, vehicle access and the impact the proposal could have on the roading network including the impact upon on-street car parking. Mr. Beale covered the issue of onsite carparking and suggested that at least two more car parking spaces on site should be provided to meet the car parking demand. He acknowledged that the District Plan had removed the need for minimum car parking standards but this did not take away from his view that this development would still be required to meet its car parking demand on site and not have this accommodated in the street.
43. He then covered the issue of vehicle access, the appropriate level for vehicle clearances, and his concerns over the sightlines for safely entering and exiting the site and for service vehicles. We also explored the issue of rubbish collection and what the impact of this would be for the 8 dwellings. I would also like to thank Mr Beale for his honest answers to my questions and his detailed experience and understanding of the District was clearly evident to me as it was in the hearing for 556-560 Aberdeen Road.
44. Dr Dave Bull (Contaminated Land) joined us over MS Teams and talked to his analysis that informed Ms Exley's 42 a report. By the time of the hearing it was clear to me that both Dr Bull and Mr Strong had come to an arrangement over how these issues could be appropriately addressed for the site.

#### **Applicant's right of Reply**

45. Ms Blomfield provided me with her right of reply on 4 October 2024, which also included an updated scheme plan, and a detailed analysis of the vehicle clearance movements for the proposal. It also included the Commissioner's decision for 675 to 683 Gladstone Road (date 22 Jan 2022) for my consideration.
46. In her right of reply she provided me with her submissions as to how I should interpret the permitted baseline arguments and explained in her submission why Ms Exley had incorrectly applied this and how this had incorrectly influenced her view on the overall application.
47. Then she considered the issue of bundling and how this should be applied to this application. Ms Blomfield then spent a significant amount of time considering the traffic access, sightline

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<sup>16</sup> Paragraph 59 of Ms Blomfield right of reply dated 4 Oct 2024

and on street car parking issues to address the concerns raised by Ms Exley and Mr Beale. In essence it was her submission that these issues could be adequately addressed and that the appropriate level of on-site car parking had been provided, just as the issues surrounding soil contamination could be addressed.

48. She then addressed the issue of noise and how these effects could be appropriately addressed as suggested by Mr Harren. She explored the issues of the NPS:UD and how this should be applied and had become a relevant factor in terms of the 675 to 683 Gladstone Road Commissioner's decision and then she suggested that Part 2 was open to me should that be required.
49. Finally, it was her submission that the application, based on the evidence, was appropriate in effects and land use terms and was warranted consent subject to the conditions that Ms Beachen had proposed.

#### **PRINCIPAL AREAS IN CONTENTION AND ASSESSMENT**

50. As discussed above, it was common ground between the parties that the overall application was a Discretionary Activity. However, as I have considered above, and to ensure I address the consents required correctly, I propose to use a six-step assessment approach to my evaluation of the application. That is, I will consider the application in this order:
  - The Restricted Discretionary Land Use activities in accordance with Rule DD1.6.1(17);
  - The infringements of the general provisions in Chapter C2 (if required);
  - The contaminated soils matter under the National Environmental Standard for Assessing and Managing Contaminants (RDA);
  - Any outstanding subdivision matters, including any issues under s.106 relevant to this consent application;
  - Assessment of the relevant District Plan policy frameworks and the NPS:UD; and
  - A consideration of the application in the round, including its positive effects and any reference back to Part 2 of the RMA that may be required.
51. It was clear to me that most of the issues relevant to this application were in contention to one level or another between the parties. In saying this, I will be guided by the quality and professional nature of the evidence I have received in evaluating the issues in contention. Before I move into my assessment, I have taken the 'Hawthorn' approach<sup>17</sup> as the appropriate way to consider the receiving environment for this application, which would include those activities which are permitted as of right or are lawfully established. In this scenario the receiving environment would include residential developments at the appropriate density that meet supporting relevant development control standards, such as recession planes, yard

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<sup>17</sup> *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA

setbacks, building length and site coverage controls and the local environment as characterised by a range of different building styles, forms and heights (both single storey and two storey dwellings) I have described above.

52. Turning to the issue of the permitted baseline, it was clear the planners had a fundamental disagreement over this, and how it should be applied. I think Ms Exley came the closest when she suggested the permitted baseline could be 8 units depending on the typology proposed<sup>18</sup> with a car parking free development (land use). However, in my reading of the density standards (Rule DD1.6.1(2), if the units were attached side by side, with a car free development (no need for JOAL), it would enable 6 residential units (site area of 1,590sqm / 250sqm = 6.36, rounded down to 6). I would like to note that while I have considered both of their arguments, I have considered the application as it is with the impacts it will generate upon the neighbouring properties and the wider environment.
53. Finally, as a general observation it appears to me that a lot of time has been spent considering the impacts surrounding on-site car parking provisions. While I understand both the planners concerns (to differing degrees) over the need to provide on-site car parking, this seems at be odds with the national policy direction given in the NPS: UD and the Council's decision to remove on-site car parking requirements.

#### DD1.6.1(17)matters

54. As discussed above, I have considered the Restricted Discretionary Activity Land Use consent aspect of this application against the assessment criteria as set out in Rule DD1.6.1(17). Rule DD1.6.1(17) limits my discretion to the areas of vibration, nuisance, building length, minimum site area, recession planes, site coverage, yard distances, infrastructure services and servicing, the gross floor area for an accessory building and the need for financial contributions. It seems to me that the last two parts of these assessment criteria are not relevant to this application as there are no accessory buildings proposed, nor did I receive an application or request for any financial contributions. In addition, the impact of the recession planes would be assessed from external legal boundaries as opposed to the internal ones, since these would follow as part of the subdivision consent. In saying this, even if these were to apply at the Land Use consent stage, the applicant owns the whole site, and would, as Ms Blomfield points out, simply give themselves consent for these infringements. The only issue would then be what is the impact of these internal infringements on the externally adjacent sites from increased bulk and massing enabled by the infringements.
55. Finally, it would also seem logical to apply the site coverage assessment as taken over the whole site.

#### *Vibration*

56. Turning to the issues surrounding vibration, while I acknowledge this issue was mentioned in passing by a number of the submitters, I am guided by the professional evidence of Mr Beale

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<sup>18</sup> Ms Exley's hearing note of 20 Sept 2024.

and Mr Ehlers and neither of them raised this as an issue of concern. I would agree with this approach and issues surrounding these potential adverse vibration effects (if any) could be appropriately addressed through the conditions that are imposed. As a result, I find that the application meets this limb of the assessment criteria.

#### *Nuisance*

57. In terms of nuisance effects, I did not receive any direct evidence from any of the witnesses, including the planners, under this category. However, looking at Rule DD1.6.1.1 (General Standards), sub section A (Nuisance) to seek guidance of the intention of this part of the assessment criteria, this issue appears to be restricted to the issues of nuisance from vehicles, including heavy vehicles, motor caravans and recreational vehicles. While I'm unsure if this is what is actually intended, it would appear to me to be 'drawing a long bow' to include wider ranging amenity effect issues that could arise on adjacent properties under this part of the assessment criteria. In my experience the issues surrounding nuisance predominantly relates to noise effects (nuisance from) and the impacts of outdoor activities on the adjoining properties. In this regard, I favoured the evidence of Mr Farren and find that the impacts from noise generated from this proposal would be consistent with both the minimum District Plan standards for noise and would also be in line with what would be expected by further permitted residential development on this site, or the impacts from further intensification<sup>19</sup>. This view is also shared by Ms Beachen<sup>20</sup>. As a result, I find that the application meets this limb of the assessment criteria.

#### *Building Length*

58. In my reading of both planners' evidence there appears little discussion about the impacts of the building length as an individual discussion point. However, it is covered in other parts of their evidence where they talk about visual privacy, visual dominance and the impact of the buildings form on the adjacent properties. In my view, the building length control forms part of the overall package of development controls or performance standards that seek to address the overall impacts of the bulk and massing of buildings on the site to ensure an acceptable level of amenity (sunlight and daylight access, visual privacy, overlooking and visual dominance) is provided for the adjacent sites. With this, as Ms Exley sets out, the District Plan does not seek to control height and seeks to control bulk and massing through yard setbacks, building length and recession plane controls to define and enable an acceptable level of amenity that can be expected to be provided for adjacent properties.
59. As I will consider below, the application complies with the relevant District Plan's recession plane controls (from the external boundaries) and the majority of the yard setback controls. However, this still leaves the question of building dominance and the combined impact of building bulk and mass and how this relates to the adjacent sites. In this regard I accept and agree with Ms Beachen's view<sup>21</sup> and Mr Atkinson's<sup>22</sup> views on this matter, who are of the view

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<sup>19</sup> Paragraph 12 of Mr Farren evidence in chief dated 2 Sept 2024

<sup>20</sup> Paragraph 70 of Ms Beachen's evidence in chief dated 6 Sept 2024

<sup>21</sup> Paragraph 192 of Ms Beachen's evidence in chief dated 6 Sept 2024

<sup>22</sup> Paragraph 28 of Mr Atkinson's Evidence in Chief dated 6 Sept 2024

that these issues have been adequately addressed by the design, layout, orientation articulation and breaking up of the building forms, building separation between the adjacent properties and the recession plane controls. Moreover, I do not consider the building forms proposed will be inappropriate in this residential context, which as I have considered above is different the context for 556 to 560 Aberdeen Road (LU2023-112105-00).

#### *Recession Planes*

60. The application complies with the District Plan's recession plane controls on the site's external boundaries<sup>23</sup>. I accept that the height to boundary control or recession plane controls are part of a wider package seeking to control the bulk and massing of the dwelling and their associated impact on the adjoining property. In this case the proposal meets these controls and I agree with Ms Beachen's<sup>24</sup> and Mr Atkinson's view on this matter and find that the design and layout of the building forms, including their distance set back from the common boundaries, would provide an acceptable level of sunlight and daylight access, visual privacy and the prevention of overlooking effects to the adjacent properties in this context. I also accept that the recession plane infringements are towards the JOAL which also mitigates their impact on any internal amenity issues that may arise. As a result, I find that the application meets this limb of the criteria.

#### *Minimum Site Area*

61. As Ms Exley points out, the District Plan does not define what medium density is in terms of the District and this term is clearly contextual, as what would be medium density in Gisborne would likely be considered low density in the metro centres such as Auckland and Wellington.<sup>25</sup> I also agree with Ms Beachen that density in itself is not an adverse effect and that I should be considering the effects that arise from the density proposed<sup>26</sup>. In saying this, it's clear to me from my reading of the Residential zone statement that the District Plan is seeking to manage density through a step through process, with higher density located closer and towards the Town Centre, lowering the density as you move away from the centre.
62. In this case the proposal is located within the General Residential Zone which does enable a range of residential typological responses including single detached, duplexes and potentially terrace style development at different levels of density. These are set out in Rule DD1.6.1(2). In this regard, I agree with Ms Beachen's overall approach to the application and find that the proposed layout, orientation of building forms and design response would not create adverse density effects which could be considered unacceptable in this location (as opposed to other locations such as 556 to 560 Aberdeen Road (LU2023-112105-00)). As discussed, the proposal will be going into a local environment that is characterized by a range of different building forms.
63. Along with this, I acknowledge that while the assessment criteria does not directly address the issue of the impacts on design response on the streetscene. I believe, in this context, the

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<sup>23</sup> Paragraph 115 of Ms Exley's s.42a report dated 30 August 2024.

<sup>24</sup> Paragraph 51 of Ms Beachen's Evidence in Chief dated 6 Sept 2024

<sup>25</sup> Paragraph 68 of Ms Exley's s.42a report dated 26 August 2024

<sup>26</sup> Paragraph 30.1 of Ms Beachen's Evidence in Chief dated 6 Sept 2024

proposal provides an appropriate and positive design response in this part of the streetscene.

64. As a result, I find that the application meets this limb of the criteria in this location.

*Site Coverage*

65. Turning to the issue of site coverage, if this is taken across the whole site, there was no disagreement between the planners that the site coverage control of 35% would be met<sup>27</sup>. However, as currently proposed lots 7 and 8 do not meet this site coverage control. In this regard I favour Ms Beachen's approach to the application and find in this context that the level of site coverage is appropriate and will not adversely affect the adjacent properties and/or the wider environment. In my view the proposal provides sufficient outdoor space for each of the units to achieve an acceptable level on-site amenity and private open space. While not a determining factor I do also accept Ms Beachan's point that there are sufficient outdoor space options within easy walking distance of this proposal.

66. As a result, I find that the application meets this limb of the criteria.

*Yard Distances*

67. As with the issue of recession planes considered above, I accept (just as within my consideration of the recession plans) that the application meets the minimum setback control set out in the District Plan, save for the minor infringement on the external common boundary with proposed Lot 6. I also accept and agree with the evidence of Ms Beachan and Mr Atkinson that the setback proposed off the common boundaries will enable sufficient distance to be achieved between the units in terms of sunlight, daylight, visual privacy and preventing overlooking effects from occurring on the adjacent residential properties. In terms of the rear yard infringement, I consider this to be minor and it will also be towards the vehicle accessway serving the residential property at 507A Chiders Road, with a block wall on the common boundary.

68. As a result, I find that the application meets this limb of the criteria.

*Infrastructure, Works and Services*

69. While I acknowledge the issues raised by a number of the submitters, including Mr Clancy, over the impacts of three waters and potential flooding issues, I am guided by the professional evidence in this regard. I note there was no disagreement between Mr Beale and Mr Ehlers that the site could adequately be serviced (three waters) and that the flooding annual stormwater issues could be adequately addressed by the suitable imposition of conditions of consent. I explored this with both witnesses through my questions at the hearing.

70. Turning to the issue of on-site car parking and sufficient clearance space for vehicle maneuverability, I accept the evidence of Mr Ehlers in this regard and find that the level of clearance space proposed is acceptable in this location. Turning to the issues of on-site car-parking, setting aside the issue that there are no car parking standards required for this type of development as a Land Use activity, Mr Mapeta suggests that 10 car parking spaces would be an appropriate level of on-site car parking for this form of development. I accept this and agree

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<sup>27</sup> Paragraph 70 of Ms Beachen's Evidence in Chief dated 6 Sept 2024

with his view that there is sufficient on-street car parking in the local environment to address any overspill car parking issues that may arise. I acknowledge for completeness this accords with my own experience during my two site visits.

71. As a result, I find that the application meets this limb of the assessment criteria. Acknowledging I will return to the issue of vehicle sight lines below.

*Consideration of Rule DD1.6.1(17) in the round*

72. In considering the assessment criteria under Rule DD1.6.1(17) in the round it is clear to me that the application meets the assessment criteria. The proposal will provide an appropriate design response in this location in terms of its layout, building orientation, height, typological responses and ensure an appropriate level of off-site amenity is achieved for the neighbouring properties in terms of sunlight and daylight access, visual privacy and overlooking. Finally, I do not believe the buildings will generate any visual dominance effects upon the adjacent properties.
73. As a result, I find that the application meets the assessment criteria under Rule DD1.6.1(17) and will not generate an unacceptable level of adverse effects on either the adjacent properties or the wider environment.

The infringements of the general provisions in Chapter C2

74. As considered above, there was significant disagreement amongst the planners as to whether the General Standards C2.1.7.1(H)(2) in respect of clear and unobstructed sight lines were a relevant consideration to this application. As Ms Blomfield suggested, based on Ms Beachen's evidence there was no new vehicle crossing created, and the proposal was using the existing crossing and therefore the provision was not engaged. On the surface this argument appears to be based around some form of existing use rights. However, I do have some concerns with this approach given the intensity of use of the crossing would increase with this proposal and I wonder if existing use rights would be retained in this case.
75. I believe it's safer to look at the impact of the use of this vehicle crossing and the potential impacts this could have in terms of driver sightlines for safely exiting the site. In this regard I do give some weight to Mr Beale's concerns given his experience in the District. In essence, Mr Beale's concerns relate to vehicles parking close to the vehicle crossing, preventing drivers exiting the site from having sufficient sightline distance to see the oncoming traffic and therefore preventing them from safely exiting the site.
76. Turning to the evidence, it is Mr Mapeta's view that given the low level of traffic generation from the site, 10 vehicle trips at peak time per hour, and if no mitigation methods can be imposed such as the use of no stopping lines within 3 metres of the vehicle crossing, (a preferred option but beyond my control), he believes the impact will be minimal. He bases his views on the relevant crash data and his experience of dealing with similar developments throughout the country. I accept his evidence in this regard and believe the impacts will not be unacceptable. However if the council is concerned about this as the road controlling authority it could think

about imposing no stopping lines within 3 metres of the vehicle crossing.

77. As a result, in setting aside the issue of whether consent is required under these provisions, based on the evidence of Mr Mapeta I have found the impact would be acceptable and would not prevent the granting of consent under the District Plan's general provisions (C2).

#### Contaminated Soils

78. As I have considered above, it appears to me that by the time of this hearing Dr Bull and Mr Strong had come to an agreement that issues of contaminated soils, its disposal and how this should be addressed in terms of the appropriate remediation protocol had been addressed and could be included in the set of conditions should I have been of a view to grant consent. I agree with this approach as I find there's nothing in terms of the contaminated soil issues and the consent required under the NES-CS that would prevent me from granting consent to this application.

#### Any outstanding subdivision matters, including any issues under s.106

79. As Ms Exley<sup>28</sup> points out, under Rule C10.9.6(9) consent is required as a Discretionary Activity given the activity does not comply with the general standards for Controlled and Restricted Discretionary Activities under this rule. There are a number of subdivision provisions that are similar and are covered under these provisions in Rule DD1.6.1(17), including density, access and a number of other issues which have been discussed above, acknowledging that subdivision consent would also be required as a Discretionary Activity as it would not meet the District Plans minimum site area control.
80. Given where I have landed on the Land Use consent element (restricted discretionary activity) of this application I do not see any benefit in covering all the issues under the subdivision section of the District Plan, save to say I have not received any evidence that would have prevented me from granting the application under s.106 of the RMA. As a result, it's clear to me that had the Land Use consent been applied for first and then followed by the Subdivision consent there would be no reasons that I can see that would prevent subdivision consent from being granted

#### Assessment of the relevant District Plan policy frameworks and the NPS:UD

81. I was provided a detailed assessment of the relevant objectives and policies by both planners which I found very helpful in considering this matter. It's clear to me that the objectives in the residential zones seek to provide for a range of different housing choices to meet the varied needs of the community (DD1.3.1) and seek to manage and protect amenity values (DD1.3.2). The supporting policies expand on these issues in greater detail and seek to ensure that the appropriate level of on-site amenity and amenity of adjoining properties is maintained and

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<sup>28</sup> Paragraphs 41 and 42 of Ms Exley's s.42a report

enhanced through design controls (DD1.4.2) and through the location and positioning of buildings on site and density (DD1.4.5). To achieve this outcome the plan imposes a range of methods including activity status and a different residential zoning approach, as discussed above, lowering density as it moves away from the town centre (DD1.5).

82. As would be expected both planners took different approaches on this issue with Ms Exley suggesting the application was inconsistent with a number of these objectives and policies with Ms Beachan taking a different view, suggesting the application was consistent with these. Their respective views and rationale for their views are set out in their evidence. Given where I have landed through my consideration above, I do not propose to go through these objectives and policies line by line as I don't think this would add any real value to the discussion.
83. In saying this, it is clear to me that the application would be consistent with the objective to ensure that the proposal enhances or maintains the residential amenity values of the local environment in this location. In this regard, I favour Ms Beachen's evidence. The District Plan provides for a range of different housing typologies as expressed in objective DD.1.31. This is supported by policy DD 1.4.2 that requires new buildings and structures to minimize, avoid and remedy their adverse effects on adjoining properties, which in my view has been achieved in this scenario.
84. As a result, I find that the proposal is consistent with the objectives and policies set out in the residential section of the District Plan and I consider that the application would also be consistent with the subdivision section's objectives and policies. I note for completeness that the application would be consistent with the relevant objectives and policies relating to infrastructure provision, stormwater and servicing and contaminated land.
85. Turning to the issue of the NPS:UD and whether the level of density proposed would form part of a well-functioning urban environment, and thereby enabling a range of different densities and housing choice to come forward. While I accept Ms Beachen's arguments in this regard, I believe it would be inappropriate for me to use these provisions to 'override' the District Plan review process, which I understand from Mr. McGhie is currently underway and these sort of outcomes should be subject to the normal plan-making and consultation processes. In any event and in many ways this is just an academic exercise given where I have landed in terms of my consideration of the District Plan

The application in the round, positive effects and Part 2.

86. It is clear to me that while the issue of social housing did not dominate the discussion over the application, this is what was applied for and its provision would be a positive benefit to the District and would help achieve the purpose of the RMA (s.5). I acknowledge the positive benefits that further housing stock can provide to the district in meeting the needs of varied members of the community as set out in Objective DD1. 3.1 as suggested by Ms Beachen.
87. Looking at the application in the round, as Ms Blomfield suggested I should do, I have come to the view, based on the reasons above, that the proposal would not generate a level of unacceptable adverse effects on the environment and would meet the test at s.104(1)(a). Turning to s.104(1)(b) I find that the application would be consistent with the objectives and

policies that seek to ensure that development enhances or maintains the residential amenity values of the local environment and content. For completeness, no s.104(1)(c) matters were brought to my attention save for Ms Exley's reference to the zone statements, which in many ways reinforced her own view on the application.

Having regard to Part 2 and acknowledging this is open to me, I am of the view that the matter has been adequately dealt with in the existing District Plan provisions. In saying that I acknowledge the provision of social housing would be a positive benefit to the District and should not be underplayed.

## **DECISION**

88. In exercising my delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 104B, 104C, and 106, of the RMA, I have determined that the resource consent application by NZHG Gisborne Limited ('the Applicant') for land use and subdivision consent for an 8 Unit residential development, site works, access (Joint owned access lot: JOAL) and on-site carparking arrangements at 99A Stanley Road, Gisborne, be granted consent.
89. The reasons for my decision have been set out in the sections above.
90. Turning to the issue of conditions in my last directions of the 3 Dec 2024 I asked the parties to develop an agreed set of conditions which I have included in this decision as Appendix One. I find that these conditions, subject to the minor amendments I have made are fair and reasonable and reflect the scale of the development proposed and appropriate to impose under s.108 and s.108AA.
91. Under sections 104, 104B, 104C, 108, 108AA, 106, 221 and Part 2 of the RMA, this consent is subject to the conditions set out in Attachment One.



**Commissioner:** Dr Lee Beattie

**Date:** 18 Dec 2024