

Section 95A-E Resource Management Act 1991



Report pursuant to section 42A of the Resource Management Act 1991 recommending whether an application for resource consent should be publicly notified, limited notified or non-notified

Decision pursuant to section 95A-E

Author: Jane Anderson

Position: Consultant Planner

Resource Consent Number: RC205014

APPLICANT:	Johnston Civil Ltd
LOCATION:	28 Manse Road, Leeston
LEGAL DESCRIPTION:	Lot 2 DP69318 being 2.67 hectares in area more or less, as contained in Record of Title 604361

Description of the Proposal

1. The applicant seeks to subdivide Lots 1, 2 and 3 of Lot 2 DP69318 created by RC165456 to create an additional allotment (Lot 8). The proposed lots will be as follows: Lot 1 – 2038m², Lot 2 – 3170m², Lot 3 – 3141m² and Lot 4 – 2000m². The average allotment size will be 2523m² (net).
2. The original subdivision application, RC165456, sought to create 9 lots, varying in size from 2045m² to 6544m². The application was publicly notified on 14th February 2017, with one submission in opposition received. The applicant requested that the application be placed on hold upon the close of submissions to consider their options.
3. The applicant reduced the number of allotments and provided an amended subdivision plan. The revised plan increased the lot sizes by an average of 847m² and reduced the number of lots to seven. Resource Consent 165456 was granted on 25 May 2017. The consented lot sizes vary between 2814m² to 4030m² (including access), with an overall average lot size of 3489m².

Description of the Existing Environment

4. The application site is legally described as Lot 2 DP69318 being 2.67 hectares in area more or less, as contained in Record of Title 604361. The site is a back section located at 28 Manse Road.
5. As has been noted, a resource consent to subdivide the site into 7 allotments was granted on 25 May 2017. To date, a Section 224 certificate has not been issued for this subdivision. Access to the 7 lots is via a cul-de-sac and Right of Way. The site is relatively flat with an existing dwelling and associated utility shed located on Lot 6 of RC165456.
6. The area subject to the current consent application are Lots 1 – 3 of RC165456, being approximately 1 hectare of land.

7. The site is located to the north of the Leeston township. The site and surrounding area is zoned Living 2. The Living 2 zone is characterised by large section sizes, with extensive landscaping, open spaces and mature trees.
8. The residential area on the western side of Manse Road is zoned Living 1, and Living XA further to the north-west of the site. The Ellesmere Community Hospital is located immediately adjacent to the application site.
9. Manse Road is a sealed road with kerb and channel on the west side with a footpath.

Operative District Plan

10. The application site is zoned Living 2 within the Townships volume of the Operative District Plan.

RULE	TOPIC	COMPLIANCE
Rule 12.1.1.1		
A subdivision of land shall be a restricted discretionary activity if it complies with the standards and terms set out in Rule 12.1.3		
Rule 12.1.7		
Any subdivision subject to Rule 12.1.1 which does not comply with Rule 12.1.3 shall be a non-complying activity.		
Rule 12.1.3.7		
Any allotment created, including any balance allotment, complies with the relevant allotment size requirements set out in Table C12.1	The average net site area of Lots 1 – 3 and proposed Lot 8 will be 2523m ² .	Non-complying
The average allotment size in the Leeston Township shall be 5000m ² .		

11. Overall, the proposal is a Non-Complying activity under the Operative District Plan.

National Environmental Standards

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

12. The NES manages activities which involve the disturbance of land which may be contaminated. This is determined by whether activities have or are likely to have occurred on the site, which are listed in the Hazardous Activities and Industries List (HAIL).
13. The site is identified as a HAIL site by Environment Canterbury's Listed land Use Register. The HAIL types identified as I – Any other land and A10 – Persistent pesticide bulk storage or use. A Preliminary Site Investigation and Detailed Site Investigation have been undertaken. Resource Consent RC165641 was granted on 25 May 2017, subject to conditions relating to site management and requiring a Site Validation Report (SVR) to be lodged with Council at the end of the remediation process. The remediation process has been completed and the SVR provided to Council. The Contamination Officer at Environment Canterbury has confirmed that the HAIL areas have been successfully remediated and currently listed as "below guidelines – residential". Therefore, it is considered that the proposal is a permitted activity under the NES.

Step 1 – Mandatory public notification

14. Does the application meet any of the following criteria?

		Y	N
1.1	The applicant has requested public notification	<input type="checkbox"/>	✓
1.2	Public notification is required under section 95C RMA (no response or refusal to provide information or agree to the commissioning of a report under section of the 92 RMA)	<input type="checkbox"/>	✓
1.3	The application has been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act	<input type="checkbox"/>	✓

If the answer is yes, **public notification is required**

If the answer is no, continue to **Step 2**.

Step 2 – Public notification precluded in certain circumstances

15. Does the application meet either of the following criteria?

		Y	N
2.1	All activities in the application are subject to one or more rules or national environmental standards that preclude public notification	<input type="checkbox"/>	✓
2.2	The application is for one or more of the following, but no other types of activities		
	• A controlled activity	<input type="checkbox"/>	✓
	• A restricted discretionary or discretionary activity that is a “residential activity” (as defined in section of the 95A RMA) or a subdivision of land	<input type="checkbox"/>	✓
	• A restricted discretionary, discretionary or non-complying activity that is a boundary activity	<input type="checkbox"/>	✓
	• An activity prescribed by regulations made under section 360H(1)(a)(i) of the RMA (if any) precluding public notification	<input type="checkbox"/>	✓

If the answer is no, continue to **Step 3**

If the answer is yes, continue to **Step 4**

Step 3 – Public notification required in certain circumstances

16. Does the application meet either of the following criteria?

		Y	N
3.1	Any activity in the application is subject to a rule or national environmental standard that requires public notification	<input type="checkbox"/>	✓

3.2	The activity has, or is likely to have, adverse effects on the environment that are more than minor in accordance with section 95D of the RMA (<i>complete section 95D assessment, section 5 to this report</i>)	✓ <input type="checkbox"/>
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17. As concluded in the assessment of effects below, it is considered that the application will have adverse effects on the environment that are more than minor in accordance with s.95D.

Section 95D Assessment – Environmental Effects

18. Section 95D sets out the relevant considerations for determining whether adverse effects on the environment are likely to be more than minor for the purposes of making a decision on notification.

95D Consent authority decides if adverse effects likely to be more than minor

A consent authority that is deciding, for the purpose of section 95A(8)(b), whether an activity will have or is likely to have adverse effects on the environment that are more than minor—

- (a) must disregard any effects on persons who own or occupy—

 - (i) the land in, on, or over which the activity will occur; or*
 - (ii) any land adjacent to that land; and**
- (b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and*
- (c) in the case of a restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard restricts discretion; and*
- (d) must disregard trade competition and the effects of trade competition; and*
- (e) must disregard any effect on a person who has given written approval to the relevant application.*

Discussion

19. It is noted that the activity is a non-complying activity and the consent authority’s discretion is not limited, and therefore all adverse effects must be considered. It is in my view that, in considering the wider environment, that is “non-adjacent”, any adverse effects resulting from this proposal will relate to residential density and character and amenity, traffic effects and servicing.

Permitted Baseline

20. Section 104(2) of the RMA directs that the decision maker may disregard an adverse effect on the environment of an activity if a rule in the District Plan permits an activity with that effect, a concept known as the permitted baseline. The application of the permitted baseline is discretionary and case law has established that the permitted baseline test relates to the effects of non-fanciful hypothetical activities which could be carried out as of right under the District Plan, as well as any existing lawfully established activity on the site or any activity for which resource consent has been granted.

21. There is no relevant permitted baseline in relation to the proposed activity.

Residential Density and Character and Amenity

22. The Living 2 zone has an expectation of lower building density and development reflective of the rural character provided by low density living environments. The larger lot sizes anticipated by the Plan provide for open space, extensive landscaping and a rural outlook. The Living 2 zone also acts as a buffer between the more intensive Living 1 and Living X zones to the south, and the rural Outer Plains zone, immediately adjacent to the north-east of the site.
23. The proposal will result in the creation of four undersized residential lots. The proposed lots will have the following areas: Lot 1 – 2038m², Lot 2 – 3170m², Lot 3 – 3141m² and Lot 4 – 2000m², including access. The average net allotment size will be 2523m². Therefore, the proposal will fail to meet the Living 2 requirement of 5000m², with all four lots being considerably undersized.
24. As has been noted, the original subdivision application sought to create 9 lots, varying in size from 2045m² to 6544m², with an average net allotment size of 2588m². The amended subdivision plan provided lot sizes that vary between 2814m² and 4030m², with an overall average lot size of 3286m² (including access). Taking into account the entire 8 lot subdivision of the application site (Lot 2 DP 69318), the average allotment size will be 3053m².
25. The surrounding Living 2 zone is predominantly characterised by large allotment sizes of around the permitted average allotment size of 5000m². These large allotments are characterised by large family dwellings surrounded by open space and extensive landscaping. It is acknowledged that there are a number of undersized lots with an area of between 3034m² to 3824m² in Showgrounds Place, however it is noted that the average allotment size for the 12 lot development is 4937m².
26. Two of the proposed lots will be less than half the required lot size of 5000m² for this zone, with the remaining two lots more than 1500m² below the required lot size. The proposed subdivision and any future residential dwelling have the potential to adversely affect the existing low density residential character, contributing to establishing a more urban residential character in the Living 2 zone.
27. It is considered that the location of the proposed lots down a long driveway / right of way will contribute to reducing the potential adverse effects on the surrounding environment. Further, the applicant has offered planting an evergreen hedge along the southern boundaries of Lot 1 and Lot 8 and along the western boundary of Lot 8 as a condition of consent.
28. The applicant has provided information detailing how the increase in density proposed in the application will ensure that the overall density of the Living 2 zone will be maintained. This approach relies on other property owners maintaining their current property sizes to maintain the overall low density residential character of the area and therefore mitigate the adverse effects of the proposal. Given that these mitigation measures are not part of the application site, I have disregarded this for the purposes of this assessment.
29. Further, it is noted that the application relies on Policy B4.1.2 in determining that the four allotments are “in keeping” with the anticipated environmental outcomes for the Living 2 zone. Policy B4.1.2 seeks to:
“Maintain Living 2 and 3 zones as areas with residential density which is considerably lower than that in Living 1 zones.”
The explanation of the policy states that:
“The policy refers to ‘considerably lower’ which acknowledges that low density living zones be spacious and reflect something of the rural characteristics in which they are located. Currently they are from 6 to 12 times lower. The Council suggests average section sizes would need to remain between 3 and 6 times lower in the Living 2 zone...”
30. The applicant notes in the Assessment of Environmental Effects that the proposal will result in an average allotment size 3.9 times larger than a Living 1 zone in Leeston and therefore “able to be discerned as being visually different from the Living 1 and Living XA” zones. Further, the report states that the proposal meets the suggested average section size in outlined in the explanation to Policy B4.1.2.
31. It is noted that the explanation of this Policy seeks to acknowledge that low density living zones are spacious and reflect something of the rural characteristics in which they are located. Policy B4.1.2 seeks to cover all Living 2 zones throughout the Selwyn District and does not take account of the variations in

average allotment sizes for each township. As has been noted, the existing character and amenity of the Living 2 zone in Leeston is predominantly characterised by large spacious allotments, providing significant levels of open space and landscaping for each site. It is considered that the proposal will create an isolated pocket of higher density housing within an area characterised by lower density living.

32. It is considered that the establishment of significantly smaller allotments in this location may have significant adverse effects on the character and amenity of the existing environment by creating a more intensive residential density than that anticipated by the District plan. Therefore, it is considered that the adverse effects of the proposed subdivision will be more than minor.

Section 95E Assessment – Affected Person

33. Section 95E sets out the relevant considerations for determining whether a person is an affected person in relation to the application.

95E Consent authority decides if person is affected person

- (1) *For the purpose of giving limited notification of an application for a resource consent for an activity to a person under section 95B(4) and (9) (as applicable), a person is an affected person if the consent authority decides that the activity's adverse effects on the person are minor or more than minor (but are not less than minor).*
- (2) *The consent authority, in assessing an activity's adverse effects on a person for the purpose of this section,—*
 - (a) *may disregard an adverse effect of the activity on the person if a rule or a national environmental standard permits an activity with that effect; and*
 - (b) *must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and*
 - (c) *must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.*
- (3) *A person is not an affected person in relation to an application for a resource consent for an activity if—*
 - (a) *the person has given, and not withdrawn, approval for the proposed activity in a written notice received by the consent authority before the authority has decided whether there are any affected persons; or*
 - (b) *the consent authority is satisfied that it is unreasonable in the circumstances for the applicant to seek the person's written approval.*
- (4) *Subsection (3) prevails over subsection (1).*

NAME	ADDRESS/LEGAL DESCRIPTION	REASON	AFFECTED PARTY APPROVAL PROVIDED?
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	22 Manse Road	Residential character and amenity	<input type="checkbox"/>
	34 Manse Road	Residential character and amenity	<input type="checkbox"/>
	36 Manse Road	Residential character and amenity	<input type="checkbox"/>
	15 Showground Place	Residential character and amenity	<input type="checkbox"/>
	19 Showground Place	Residential character and amenity	<input type="checkbox"/>
	6 Friars Lane	Residential character and amenity	<input type="checkbox"/>
	10 Friars Lane	Residential character and amenity	<input type="checkbox"/>

Discussion

34. It is considered that the proposal will create an isolated pocket of higher density housing within an area characterised by lower density living and that the adverse effects of the proposed subdivision will be more than minor. It is considered that all of the immediately adjacent residents are affected parties.


Recommendation

35. It is recommended that the application be processed on a publicly notified basis.

Reported and recommended by  Jane Anderson Consultant Planner	Date: 18 February 2020
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Decision

That the above recommendation be adopted under delegated authority.

 Rosie Flynn, Team Leader Resource Consents	Date: 20 February 2020
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