

RM220116

Section 95 of the Resource Management Act 1991 - Assessment Report

Part A - Details of Application	
Applicant	Westmoreland Homes Limited
Property to which the consent relates	68 Weka Street, Mangawhai, LOT 8 DP 518700, RT 991406

1.0 Description of proposal, site and locality

1. Land use consent is sought for the construction of a new dwelling at 68 Weka Street, Mangawhai. The proposal breaches rules 13.10.1a 'Earthworks', 13.10.7 'Setbacks', 13.10.8 'Separation Distance for Noise Sensitive Activities', 13.10.11 'Private Open Space' and 13.10.12 'Permeable Surfaces' of the Kaipara District Plan. These rule breaches class the overall activity status for the proposal as restricted discretionary.
2. The site is legally described as Lot 8 DP 511004 (RT 783748) has an area of 660m². The site is currently vacant in pasture and is slightly sloping. It is located within the Mangawhai Village Township and the surrounding area is typified by residential dwellings with allotments of varying shapes and sizes. As the wider area has been developed over a time and the character of the exiting residential buildings reflects the changes and architectural style and building materials.
3. Claire Phillips of CPPC Planning has provided a description of the proposal and subject site on page(s) 4-6 of the AEE titled 'Resource Consent Application At A Property At 68 Weka Street, Mangawhai' dated May 2022.
4. Having undertaken a site visit on 1 July 2022 I concur with that description of the proposal and the site and have no further comment.

2.0 Written approvals

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

3.0 Kaipara District Plan (Operative 2013) Rule Assessment

6. The following apply to the subject property:

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- Zoning: Residential Zone
- Overlays: Mangawhai Harbour
- Rules:
- 13.10.1a 'Earthworks' as the proposal involves earthworks with a total volume of 107m³ over an area of 403.42m². Therefore, the proposed earthworks are deemed to be a restricted discretionary activity.*
- 13.10.7 'Setbacks' as the proposed dwelling is located 1.5m to the western boundary and therefore requires resource consent as a restricted discretionary activity.*
- 13.10.8 'Separation Distance for Noise Sensitive Activities' as the proposed dwelling is located within 300m to Bennett's and therefore requires consent as a restricted discretionary activity.*
- 13.10.11 'Private Open Space' as the proposed outdoor space is obstructed by retaining walls and does not contain a usable shape of no less than 3m dimension, capable of accommodating one circle less than 5m in diameter. Resource consent is required as a restricted discretionary activity.*
- 13.10.12 'Permeable Surfaces' as the proposal involves impermeable surfaces over an area of 277.96m² being 42.11% breaching the 40% limit. This requires resource consent as a restricted discretionary activity.*
- Activity Status: Restricted Discretionary Activity

7. As a Restricted Discretionary Activity, Council's discretion is restricted to the matters listed under the relevant planning rules listed above.

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)?

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- ☐ Yes - **Publicly notify** application. No further assessment required. Move to Part D
- ☒ No - Continue through Step 1
- c. Has the application been made jointly with an application to exchange recreation reserve land?
- ☐ Yes - **Publicly notify** application. No further assessment required. Move to Part D.
- ☒ No - Move to Step 2

Step 2. Public Notification Precluded in Certain Circumstances

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

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

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

Step 3. Public Notification Required in Certain Circumstances

- a. Is any activity in the application subject to a rule or NES that requires public notification?
- ☐ Yes - **Publicly notify** application. No further assessment required. Move to Part D.
- ☒ No - Continue through Step 3
- b. Does the activity have, or is likely to have, adverse effects on the environment that are more than minor in accordance with s95D?
- ☐ Yes - State Reasons. **Publicly notify** application. Move to Part D.

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☒ No - State Reasons. Move to Step 4 (special circumstances)

State Reasons:

A. Land excluded from Public Notification assessment:

8. 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.
9. In this instance the effects of the owners and occupiers of the application site and the adjacent properties, identified in Figure 2 below with a red dot have been disregarded.

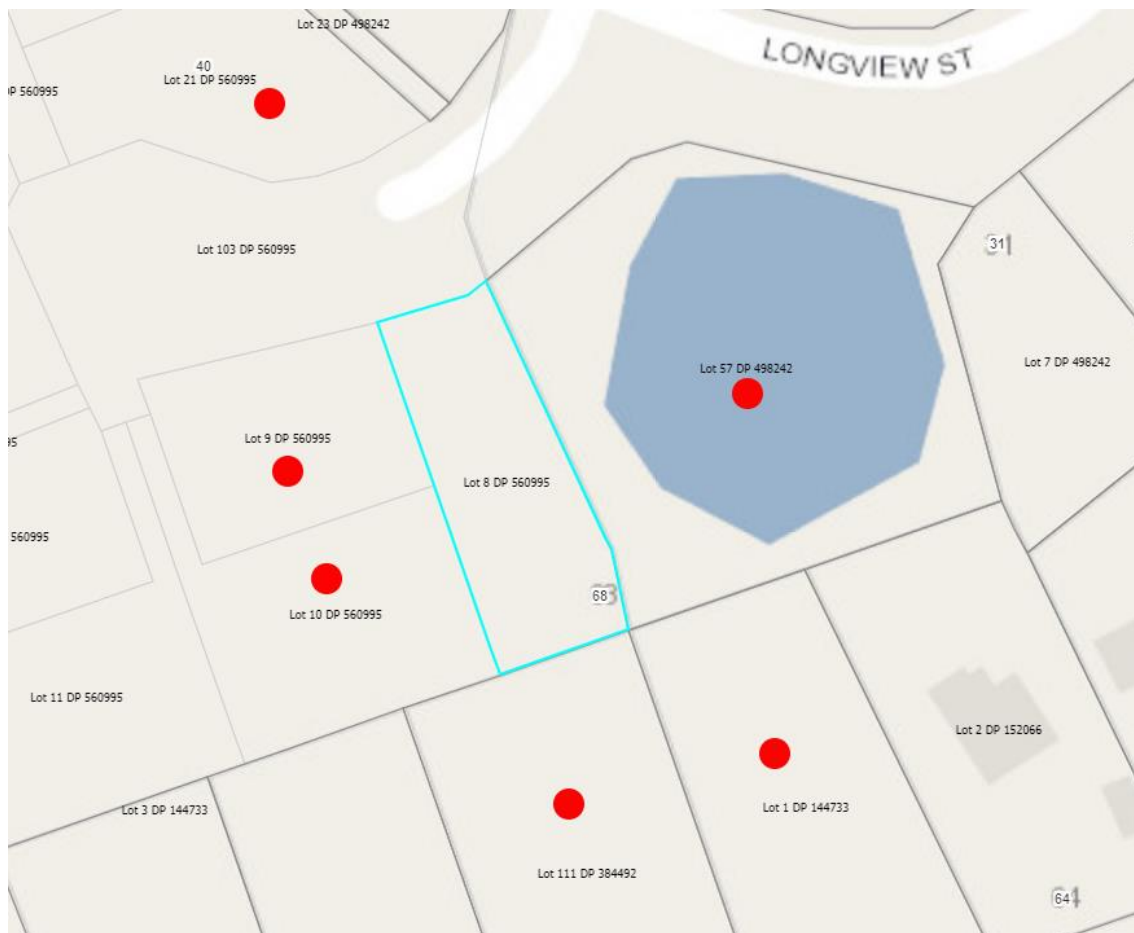


Figure 2: Application site and adjacent land.

B. Written Approvals:

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

C. Permitted Baseline:

11. Pursuant to Section 95(D)(b) of the Act, the Council may disregard an adverse effect of an activity on the environment if the plan or an NES permits an activity on the site with that effect (commonly referred to as the 'permitted baseline' test). The purpose of the permitted baseline test is to isolate and make effects of activities on the environment that are permitted by the plan or NES, irrelevant. The baseline has been defined by case law as comprising non-fanciful (credible) activities that would be permitted as right by the plan in question.
12. For the application site, the following activities with comparable effects are permitted. Development within the Residential Zone compliant with the performance standards of Chapter 13 of the District Plan is a permitted activity. Only the effects that extend beyond the permitted baseline are assessed. The effects that will be assessed include the additional 7m³ of earthworks breaching the 100m³ limit for rule 13.10.1a 'Excavation and Fill'. The boundary infringement within 1.5m from the western boundary will be assessed, the proposed site being within the 300m (172m) setback from noise sensitive activities and the property not having sufficient private open space will also be assessed. In this case, the proposal involves impermeable surfaces over an area of 277.96m² being 42.11%. Any potential effects from the additional 2.11% of the permissible 40% of the net site area will also be assessed.

D. Assessment of Adverse Effects on the Environment

13. The 'receiving environment' upon which effects are to be assessed comprises the existing and reasonably foreseeable future environment. In identifying the receiving environment, it is necessary to consider the environment as it is at the time of application, and the likelihood of change to the environment in the future, based upon the activities that could be carried out as right or with respect to resource consents that have been granted (where it is likely that they will be given effect to).
14. The receiving environment could be described as a 660m² residentially zoned site which has a slightly sloping topography.

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15. The surrounding environment comprises a residential environment characterised by residential allotments, including a mix of developed and undeveloped lots.
16. 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.
17. 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.
18. In this instance, the proposed development is assessed as a restricted discretionary activity, and as such the Council has restricted its control/discretion to the matters listed in Part A of this report. An assessment against these matters is provided below.

Assessment of Adverse Effects

Earthworks

19. The property has an area of 660m² and with a volume of 107m³ and it is proposed to undertake earthworks as part of the construction of a new dwelling. A Construction Management Plan was supplied in support of the application titled 'Earthworks Construction Management Plan For 68 Weka Street, Mangawhai' prepared by CPPC Planning dated 16 May 2022.
20. The following measures will be implemented to avoid any discharge of sediment laden water into receiving environments.:
 - Filter fabric fences shall be installed on the down-slope side of soil stockpiles and disturbed/exposed areas to filter sediment from surface runoff before it enters the receiving environment (stormwater drains, rivers, streams and adjacent properties).
 - Cut off drains shall be constructed along batters, above soil stockpiles and disturbed/exposed areas to diver clean surface water away from where it could become contaminated by sediment.
 - Sediment collected by filter fabric and filter material is to be regularly collected and carted off-site and disposed of at an approved land fill site if any of the material is unsuitable, otherwise spread on the site.
21. The CMP also outlines dust control measures:

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- Areas earth worked will be watered and covered as required to minimise the creation of dust;
- The use of stockpiles and handing of excavation materials are to be minimized/limited;
- The area of cut and fill is to be minimised/limited, with areas only being excavated where required.
- Problem sandy, dusty areas will be capped to minimise/limit the level of dust creation;
- Hydrocarbons (such as hydraulic oils) shall not be used as a method of controlling dust.

22. There is not expected to be any silt runoff created given the minimal number of earthworks required to prepare the site for the new dwelling, coupled with the relatively flat nature of the site, precluding any potential discharges during construction. Excavations are small and there will be little runoff from excavated surfaces that could result in erosion. Erosion mitigation measures include:

- There are to be no directed channels from earthworks to roadside drains or flood plain areas.
- Limited areas are to be earth works at any one time, with areas that have been completed, to be capped or otherwise covered to prevent erosion. This including top soiling and re-grassing where appropriate.
- Where areas are exposed to high winds (in excess of 30 kph plus), areas are to be wetted with imported water and/or otherwise covered with mulch or topsoil to prevent wind erosion.

23. With the use of the CMP and proposed mitigating measures identified, any potential adverse effects that might arise from the earthworks have been addressed and will be less than minor.

Landscape and Visual Effects

24. In terms of the landscape, there will be change from the current vacant residential site, to include the built development. The dwelling will not be located in a position that would dominate the landscape or adversely affect the visual amenity of the area.

Private Open Space

25. The applicant's agent has said in the supplied AEE that the proposed outdoor space is obstructed by retaining walls and therefore is in breach of rule 13.10.11. On the supplied plans the private open space is also located on the south side of the dwelling a further breach to 13.10.11.

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26. The private open space does have direct access from the main living area of the dwelling and is unobstructed by vehicle access or parking areas. . There are no adverse effects on the surrounding environment from this rule breach.

Setbacks

27. The proposed dwelling has a setback breach to one of the side yards as it does not meet the 3m requirement. Instead, the setback is 1.5m from the boundaries of Lot 9 DP 560995 and Lot 10 DP 560995.



Figure 3: Western Boundary Side Setback Infringement (1.5m instead of 3m).

28. This setback breach will not result in adverse effects on the wider environment as the design of the dwelling and location of this lot are such that it will be indiscernible from a compliant proposal. Therefore, the side yard setback breach is considered to not result in adverse effects to the wider environment.

Noise Sensitivity

29. There are no suitable alternative sites for a dwelling further away from any commercial activity. The applicants have accepted the presence of existing commercial activities and the dwelling will provide for double glazing ensuring compliance with internal noise level requirements.

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30. There is no direct line of sight between the commercial activities and the proposed dwelling as vegetation and existing dwellings act as buffers between these and Bennetts of Mangawhai Chocolate Shop.
31. Therefore, due to the topography, existing vegetation and built form any potential reverse sensitivity effect (i.e., noise and traffic etc) would be mitigated and the effects are less than minor.

Permeable Surfaces

32. A report has been prepared by a suitable qualified Engineer on stormwater. Rainwater is to be collected and also re-used for water and firefighting supply. Stormwater from paved surfaces (all impervious surfaces) is to be controlled as outlined in the attached stormwater report. The recommendation of the stormwater report will be implemented to ensure the effects will be acceptable and less than minor.

Conclusion

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

Step 4. Public Notification in Special Circumstances

- a. Do special circumstances exist that warrant the public notification of the application?
- ☐ Yes - State Reasons. **Publicly notify** application. Move to **Part D**.
- ☒ No – State Reasons. Determine whether limited notification is required under s95B.

State Reasons:

34. 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:

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- Under Step 1, public notification is not mandatory given the applicant has not requested it, there are no outstanding or refused requests for further information, and the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977.
- Under Step 2, public notification is not precluded as none of the specific preclusions apply.
- Under Step 3, public notification is not required as the potential adverse effects of the proposed activity are less 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 without public notification.

Part C – Limited Notification Decision – Section 95B, 95E of the Act

Step 1. Certain Affected Groups and Affected Persons Must be Notified.

- Are there any affected protected Customary Rights Groups?
 - ☐ Yes – Notice to be served on Protected Customary Right Group. Continue through Step 1.
 - ☒ No – Continue through Step 1
- For applications for an accommodated activity, is there an affected Customary Marine Title Group?
 - ☐ Yes – Notice to be served on Customary Marine Title Group. Continue through Step 1.
 - ☒ No – Continue through Step 1
- Is the proposal on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement, and the person to who the statutory acknowledgement is made is considered affect?
 - ☐ Yes – Notice to be served on affected person(s). Move to Step 2
 - ☒ No – Move to Step 2.

Step 2. Limited Notification Precluded in Certain Circumstances

- Are all the activities in the application subject to one or more rules or NES that preclude limited notification?
 - ☐ Yes – Move to Step 4 (special circumstances)

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- ☒ No – Continue through Step 2
- b. Is the application for a controlled activity (but no other activities) that require a resource consent under the district plan (other than a subdivision of land)?
- ☐ Yes – Move to Step 4 (special circumstances)
- ☒ No – Continue through Step 2
- c. Is the activity prescribed by regulations to preclude limited notification?
- ☐ Yes - Move to Step 4 (special circumstances)
- ☒ No - Move to Step 3

Step 3. Certain Other Affected Persons Must be Notified

For Boundary Activities (s95B(7)(a), complete the below:

Or N/A ☒

- a. If the activity is a boundary activity, is the owner of an allotment with an infringed boundary 'affected' under s95E?
- ☐ Yes – Notice to be served on affected persons(s). Move to Step 4
- ☐ No – Move to Step 4 (special circumstances)

For any other activities (s95B(8))

- a. For any other activity, are there any affected persons under s95E
- ☐ Yes – State Reasons. Notice to be served on affected persons(s). Move to Part D.
- ☒ No – State Reasons Application can proceed on a **non-notified** basis. Move to **Part D**.

State Reasons:

A. Written Approvals:

35. Pursuant to Section 95E(3)(a) of the Act, the Council must decide that a person is not an affected person has given their written approval to the activity. No written approvals have been received in support of this application.

B. Permitted Baseline:

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36. Pursuant to Section 95E(2) of the Act, the Council may disregard an adverse effect of an activity on a person if the plan or an NES permits an activity on the site with that effect. This has been discussed previously in this report in the public notification decision.

C. Statutory Acknowledgements

37. Pursuant to Section 95E(2)(c) of the Act, the Council must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11 of the Act.

D. Assessment of Adverse Effects on Specific Persons:

38. Under the Act, a person is an “affected person” if the Council decides that the activity’s adverse effects on the person are minor or more than minor (but are not less than minor).
39. Section 95E(2)(b) of the RMA states the Council must, in the case of a controlled or restricted discretionary activity, disregard an adverse effect of the activity on a person that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion.
40. In this instance, the proposed development is assessed as a restricted discretionary activity, and as such the Council has restricted its control/discretion to the matters listed in Part A of this report.
41. Taking into account the location, nature, scale and duration of the proposed works, the owners and occupiers of the properties identified in Figure 2 above are considered to require specific consideration with respect to potential adverse effects. Set out below is an assessment of the adverse effects on these property owners and occupiers.

Assessment of Adverse Effects on Persons

Earthworks

42. The Construction Management Plan identified measures which will be implemented to avoid any discharge of sediment laden water into receiving environments, dust pollution and silt runoff created through the earthworks required.
43. These measures will lead to owners and occupiers of the properties identified in Figure 2 not being affected by the proposed earthworks as any potential effects are being controlled creating less than minor effects on opposite and adjacent properties.

Landscaping and Visual Effects

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44. The dwelling will not be located in a position that would dominate the landscape or adversely affect the visual amenity of the owners and occupiers of the properties identified in Figure 2.
45. The amenity values including the natural and physical attributes which form the surrounding character will be maintained. This is because the residential zoning is characterised by residential living, moderate site sizes and smaller separation distances between properties/dwellings. The proposal is overall compatible with the existing residential character and amenity values of the immediate surrounding area.
46. The proposal will have minimal effects on persons with the development in line with the existing and expected scale, design and character of development in this area.

Private Open Space

47. The private open space does have direct access from the main living area of the dwelling and is unobstructed by vehicle access or parking areas. The on-site privacy and amenity of the occupants will be maintained as is sufficiently setback from the side yard and rear yard requirements from neighbouring and adjoining properties.
48. The lot adjoins a firefighting pond to the east and an existing dwelling to the west. Due to the neighbouring site with the pond not being capable of housing a dwelling and the dwelling next door only being single storied the neighbouring properties will not be affected by the proposed arrangement.
49. The proposed private open space for the proposal is adequate and any potential adverse effects on persons would be localised such that they would be less than minor on persons.

Permeable Surfaces

50. A report has been prepared by a suitable qualified Engineer on stormwater. Rainwater is to be collected and re-used for water and fire-fighting supply. Stormwater from paved surfaces is to be controlled as outlined in the attached stormwater report.
51. The effects from the increase to permeable surfaces will not extend beyond the site onto neighbouring properties.

Conclusion

52. In conclusion, having assessed the actual and potential effects of the activity, it is considered that there are no affected persons.

Step 4. Further Notification in Special Circumstances

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- a. Do special circumstances exist that warrant notification to any other persons not already determined to be eligible for limited notification.
- ☐ Yes – State Reasons. Notice to be served on affected persons(s) Move to Part D
- ☒ No – State Reasons. Application can proceed on a **non-notified** basis. Move to Part D

State Reasons:

53. In this instance it is considered that there are no special circumstances that warrant notification to any other persons. There is nothing exceptional or unusual about the application, and that the proposal has nothing out of the ordinary run of things to suggest public notification should occur.

Limited notification conclusion

Having undertaken the s95B limited notification tests, the following conclusions are reached.

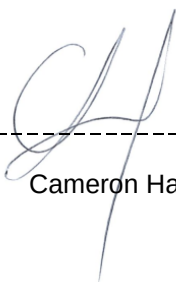
- Under Step 1, limited notification is not mandatory.
- Under Step 2, there is no rule or NES that specifically precludes limited notification of the activities, and the application is for an activity other than those specified in s95B(6)(b).
- Under Step 3, limited notification is not required as it is considered that the activity will not result in any adversely affected persons.
- Under Step 4, there are no Special circumstances that warrant the application being limited notified as discussed above.

It is therefore recommended that this application be processed without limited notification.

Part D - Decision

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

Reporting Planner



Cameron Harridge

4/07/2022

Date

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Signed  _____ 5/07/2022
Wendy Robinson Date
Resource Consents Manager

Kaipara District Council

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

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