

|                           |                  |                       |                |
|---------------------------|------------------|-----------------------|----------------|
| <b>Date:</b>              | 5 September 2023 | <b>App Number:</b>    | SP/0073/23     |
| <b>Reporting Planner:</b> | Hayley Thomas    | <b>Site Visit on:</b> | 24 August 2023 |

|                           |  |
|---------------------------|--|
| <b>Applicant:</b>         | 3MS of Cambridge GP Limited                                |
| <b>Agent:</b>             | Mitchell Daysh Limited – Abbie Fowler                      |
| <b>Property Address:</b>  | 32 & 32A Kelly Road, Cambridge                             |
| <b>Legal Description:</b> | Lot 2 DP 364040 (RT 260489)<br>Lot 1 DP 364040 (RT 260488) |
| <b>Site Area:</b>         | 2,107m <sup>2</sup> & 2,200m <sup>2</sup>                  |
| <b>Activity Status:</b>   | Non-Complying  |
| <b>Zoning:</b>            | Residential  |
| <b>Policy Area(s):</b>    | Nil  |
| <b>Designation(s):</b>    | Nil  |
| <b>Proposal:</b>          | Subdivision of two lots into four in the Residential Zone  |

## 1 INTRODUCTION

Mitchell Daysh Limited, on behalf of their client 3MS of Cambridge GP Limited, have applied for subdivision consent to subdivide the two properties at 32 and 32A Kelly Road, Cambridge, into four lots. The sites are within the Residential Zone of the Waipā District Plan and require consent for a Non-Complying Activity.

### 1.1 Description of site

The subject site is located on the western side of Kelly Road, west of the Cambridge Green Belt, and north of Cambridge Road, west of the Cambridge Town Centre. Two titles make up the subject site at 32 and 32A Kelly Road, each containing 2,107m<sup>2</sup> and 2,200m<sup>2</sup> respectively. The sites are both currently vacant of development, with an almost flat topography. An existing stormwater pond is located within the northern portion of the sites running east-west along the northern property boundaries.

The property is sited within the Residential Zone and the C2 Structure Plan Area of the Waipā District Plan ('District Plan'). The site is not subject to any policy overlays. Council's Special Features Maps identify the southeastern portion of the site is subject to poor soakage. Refer to Figures 1 to 7.

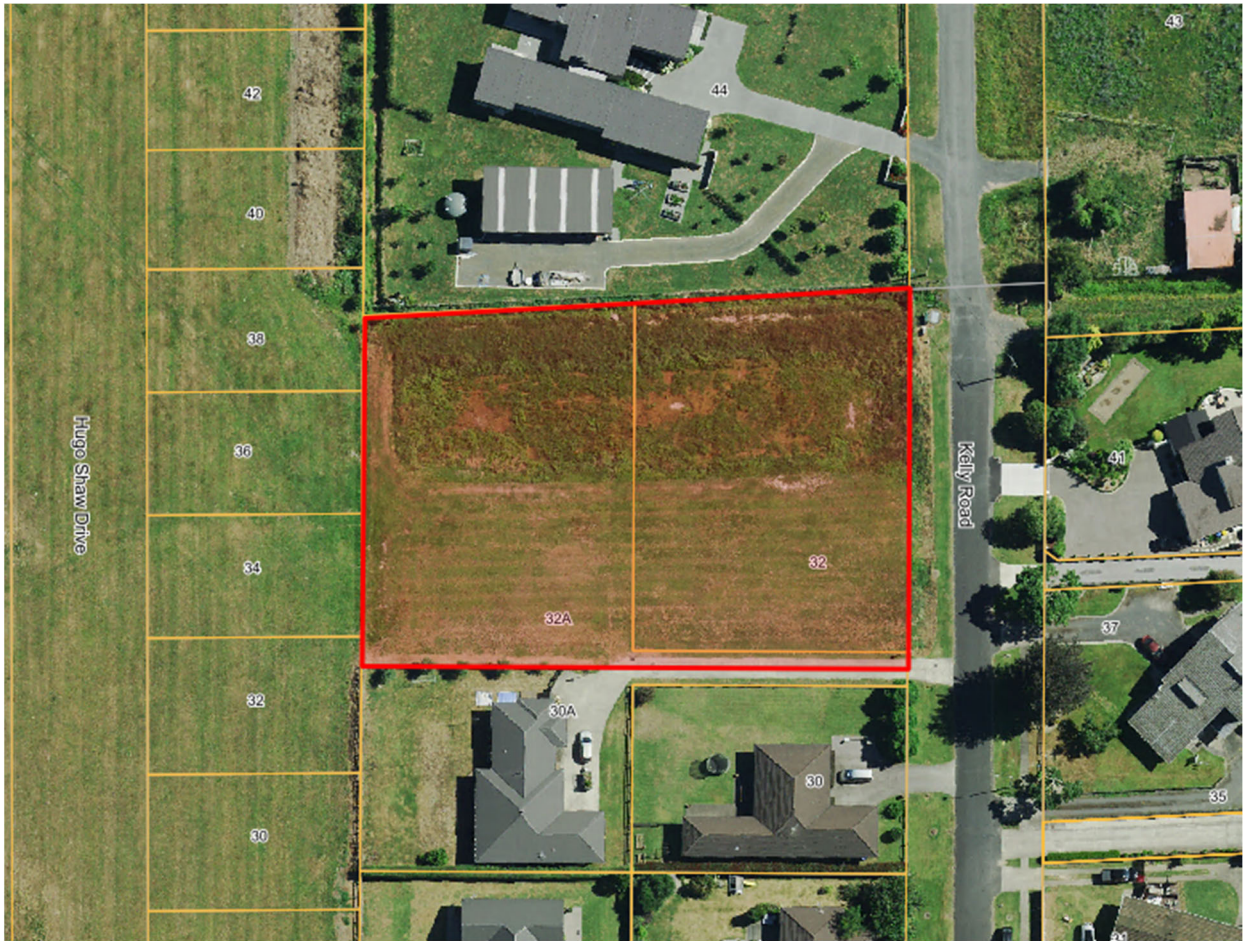


Figure 1: Aerial photograph of site (site shown in red)

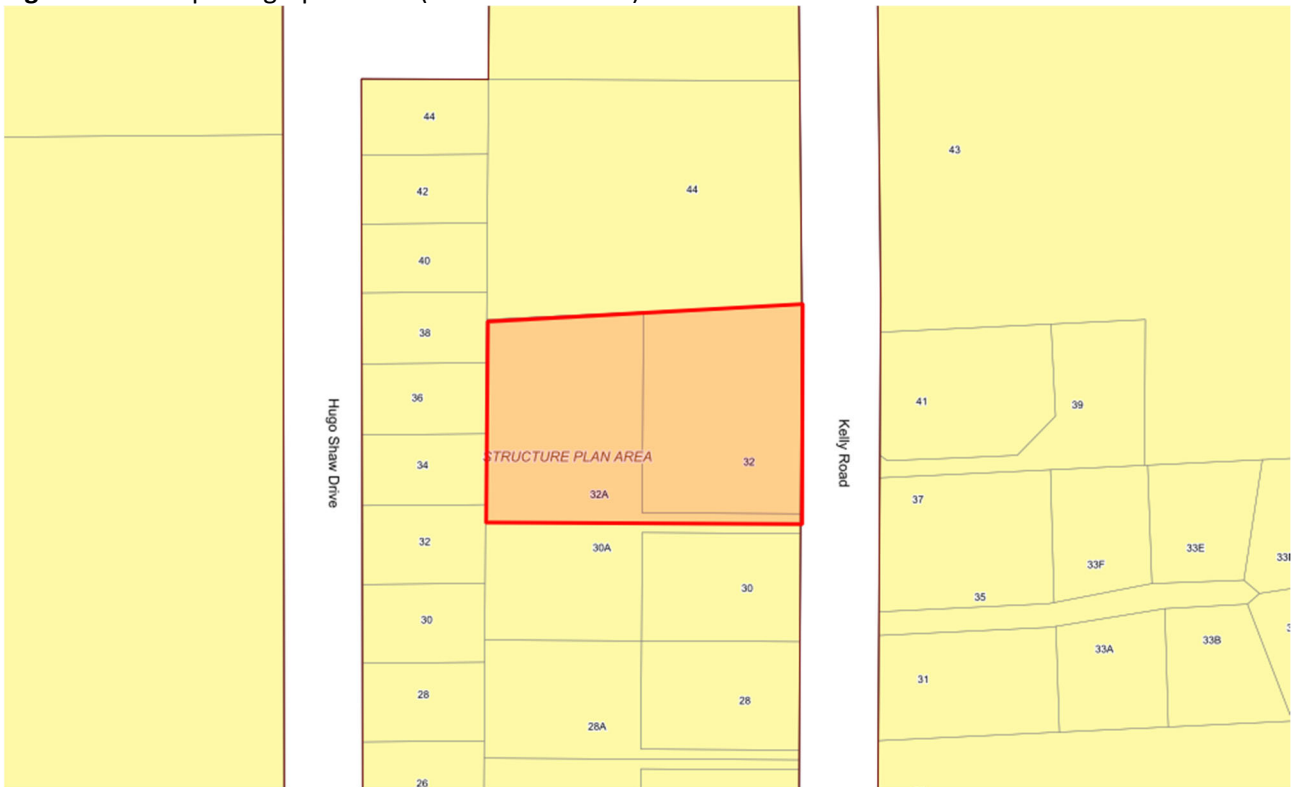
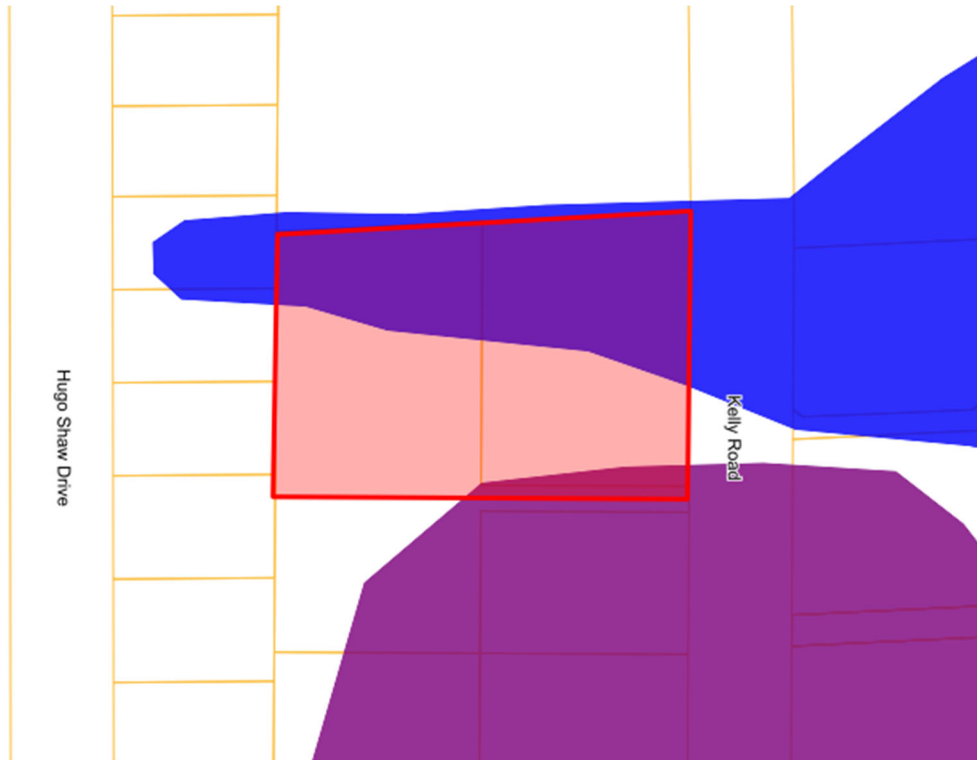


Figure 2: District Plan Zone & Policy Overlays Map



**Figure 3:** Council's Special Features Map (Poor soakage shown in purple, flood hazard shown in blue and subject site highlighted in red)



**Figure 4:** Site visit photo showing existing pump station and culvert at northern boundary taken from Kelly Road looking towards site



**Figure 5:** Site visit photo taken from Kelly Road looking south west across 32 Kelly Road



**Figure 6:** Site visit photo taken from southern property boundary looking northwest at 32A Kelly Road



**Figure 7:** Site visit photo taken from Kelly Road looking northwards along existing road frontage

## 1.2 Legal interests in the property

Table 1 below summarises the relevant interests on the existing titles.

| Title Reference | Legal Description  | Size                | Date Issued     | Relevant Interests   |
|-----------------|--------------------|---------------------|-----------------|--|
| 260488          | Lot 1<br>DP 364040 | 2,107m <sup>2</sup> | 29 June<br>2006 | <ul style="list-style-type: none"> <li>▪ 6927453.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 29.6.2006 at 9:00 am</li> <li>▪ Subject to a stormwater easement over the part marked B on DP 364040 created by Easement Instrument 6927453.5 - 29.6.2006 at 9:00 am</li> <li>▪ Appurtenant hereto is a stormwater easement created by Easement Instrument 6927453.5 - 29.6.2006 at 9:00 am</li> <li>▪ The easements created by Easement Instrument 6927453.5 are subject to Section 243 (a) Resource Management Act 1991</li> <li>▪ Land Covenant in Easement Instrument 6927453.6 - 29.6.2006 at 9:00 am</li> </ul>   |
| 260489          | Lot 2<br>DP 364040 | 2,200m <sup>2</sup> | 29 June<br>2006 | <ul style="list-style-type: none"> <li>▪ 6927453.2 Consent Notice pursuant to Section 221 Resource Management Act 1991 - 29.6.2006 at 9:00 am</li> <li>▪ Subject to a right (in gross) to drain sewage over the part marked R and a right to drain stormwater over the parts marked C &amp; D, all marked on DP 364040 and in favour of Waipa District Council created by Easement Instrument 6927453.4 - 29.6.2006 at 9:00 am</li> <li>▪ The easements created by Easement Instrument 6927453.4 are subject to Section 243 (a) Resource Management Act 1991</li> <li>▪ Subject to a right of way, a water supply and an electricity, natural gas and telecommunications easements over the parts marked D &amp; R and a stormwater easement over the part marked A, all marked on DP 364040 and created by Easement Instrument 6927453.5 - 29.6.2006 at 9:00 am</li> <li>▪ Appurtenant hereto is a right of way, a water supply and an electricity, natural gas, stormwater and telecommunications easements created by Easement Instrument 6927453.5 - 29.6.2006 at 9:00 am</li> </ul> |

| Title Reference | Legal Description | Size | Date Issued | Relevant Interests  |
|-----------------|-------------------|------|-------------|---|
|                 |                   |      |             | <ul style="list-style-type: none"> <li>▪ The easements created by Easement Instrument 6927453.5 are subject to Section 243 (a) Resource Management Act 1991</li> <li>▪ Land Covenant in Easement Instrument 6927453.6 - 29.6.2006 at 9:00 am</li> </ul> |

**Table 1:** Existing titles and interests

The above listed interests do not restrict the proposal from proceeding.

### 1.3 History

The property is subject to multiple resource consents listed in Table 2.

| Consent No. | Description  | Date Approved | Key Details  |
|-------------|--|---------------|--|
| SP/4407     | Subdivision consent to subdivide Lot 1 DPS 11955 of 1.3962ha into 10 residential lots ranging from 1,051m <sup>2</sup> to 1,361m <sup>2</sup> and a Local Purposes Reserve (Recreation) in the Deferred Residential Zone | July 2006     | <ul style="list-style-type: none"> <li>▪ Applicant: Twin Star Developments Ltd</li> <li>▪ Agent: Cogswell Surveyors</li> <li>▪ Publicly Notified on 29 January 2004, submissions closed on 27 February 2004, with five submissions in opposition received;</li> <li>▪ Council staff recommended decline;</li> <li>▪ Hearing on 30 August 2004 at which revised scheme was presented. Hearing was adjourned and independent review of technical reports commissioned.</li> <li>▪ Addendum Report presented to Regulatory Committee on 27 September 2004;</li> <li>▪ Consent granted subject to conditions regarding financial contributions, right of way formation, vehicle crossing formation, Kelly Road upgrades, water supply and wastewater reticulation, power and telecommunication connections, stormwater reticulation and detention in accordance with Mark T Mitchell Ltd design, and earthworks.</li> <li>▪ Condition 25 includes an advice note outlining "Areas A and B on the approved plan shall be easement areas not subject to land covenants as shown".</li> </ul> |
| RC/4908     | Consent to apply the Residential Zone building setbacks in the Deferred Residential  | July 2006     | <ul style="list-style-type: none"> <li>▪ Consent to enable residential zone building setbacks for sites post approval of SP/4407;</li> <li>▪ Conditions requiring buildings within set building platforms as shown on approved plan;</li> </ul>  |

| Consent No. | Description                      | Date Approved | Key Details |
|-------------|----------------------------------|---------------|-------------|
|             | Zone as a Non-Complying Activity |               |             |

**Table 2:** Existing resource consents

Of interest, due to the relationship with stormwater disposal of the current application, SP/4407 provided the following history of subdivision within the Kelly Road area:

*“The Kelly Road area (inclusive of the subject site) has a long, and at times colourful development history. Following is a brief bullet point summary of the development history of the area:*

- *In 1974, as part of the first Waikato County District Scheme, a Residential 'A' zoning was placed on Kelly Road. This zone permitted non-sewered lots down to a minimum of 800m<sup>2</sup> for front sites and 1,000m<sup>2</sup> for rear sites.*
- *From 1979 onwards, Council have received written complaints from Kelly Road residents with regard to flooding and resultant problems of sewage maintenance.*
- *In November 1982 the Waikato County Council received a subdivision application from D Weinberg to subdivide what is now 23 and 27 Kelly Road into two lots of 3,928m<sup>2</sup> and 835m<sup>2</sup> Council declined the subdivision on the grounds that the lot size of 835m<sup>2</sup> was too small to dispose of sewage effluent and to accommodate a stormwater disposal system.*
- *In January 1983 another subdivision application was received from D Weinberg to subdivide the property into two lots of 1,603m<sup>2</sup> and 3,163m<sup>2</sup>. The application was approved subject to a design for a stormwater disposal system for the 3,163m<sup>2</sup> lot. The stormwater system installed to meet the subdivision condition was a soakhole between the house and road frontage which discharged to the roadside berm drain on the boundary.*
- *As a result of the Weinberg's applications and the possibility that further development could cause deterioration of the servicing problems, a Scheme Change to change the zoning of the land from Residential 'A' to Residential 'C' was introduced by the Waikato County Council in July 1983. The intent of the Scheme Change was to prevent any further subdivision until such time that Council could consider a feasibility study on the provision of urban level services. The Residential 'C' zone statement is repeated below:*

*"Residential 'C' is confined to Kelly Road, Cambridge, and the purposes of the zone is to limit residential subdivision and the building of new dwellinghouses, except in special circumstances, due to problems with flooding, septic tank failure and servicing in the area. Kelly Road is adjacent to Cambridge Borough. but lacks all urban services except for a limited water supply. The Council intends that the zoning will be temporary, while a full investigation into the feasibility of providing urban level services is carried out. Until such time as adequate additional flood protection or servicing are provided, the zoning will need to remain as Residential 'C'. However, if agreement is reached between the property owners and the Council regarding the provision of flood protection and other urban level services, the zoning will be reviewed and more appropriate ordinances reinstated."*

- *A report was prepared in July 1984 by the Waikato County Council setting out five development options for the Kelly Road area. These options ranged from providing full urban services through*

to remaining with the existing level of services. It is understood informal discussions were held by the County Council with the Cambridge Borough Council and the residents of Kelly Road to consider these development options. The three parties involved were unable to reach agreement on the amount of servicing and how the provision of these services would be funded.

- In August 1986 the owners of 31 Kelly Road, AK and JE Weidenbolm, reported that severe flooding had occurred on their property resulting in failure of their septic tank effluent soakage system. The Waikato County Council constructed a culvert under Kelly Road to transport flood water from the Weidenbolm's property to an open drain along to the South Hautapu Drainage District Drain<sup>1</sup>.
- In September 1988, Mrs ME Candy lodged a subdivision application to subdivide the subject site (Lot 1 DPS 11955) into 7 residential lots. The lots were rectangular shaped sections with road frontages of approximately 25m and lot sizes of between 1,970m<sup>2</sup> and 2,090m<sup>2</sup>. The Waikato County Council, after considering several engineering reports declined the subdivision in March 1989 for the following reasons:
  - "(i) The water table in this area is too high to enable the disposal of effluent via a septic tank and accompanying effluent field.
  - (ii) The proposal to use evapo-transpiration sand beds to dispose of effluent in lots 5, 6 and 7 are an unsatisfactory means of effluent disposal particularly as the fog during the winter months would cause this method of effluent disposal to fail.
  - (iii) The area has experienced stormwater flooding in the past and this is likely to continue unless there is an improvement in the level of urban servicing for the area.
  - (iv) As the Council is not satisfied that the servicing problems associated with this site will not be overcome by the methods proposed in the application a precedent would be set by granting approval to this application and the integrity of the District Scheme would then be challenged. This would therefore necessitate a change to the District Scheme. "
- In 1996 Waipa District Council received a subdivision application by Mr R Gorringe to subdivide a property off Kelly Road (now Maranatha Way) into six residential lots. The subdivision was approved on appeal to the Environment Court after initially being declined by Council for stormwater disposal design reasons. The Environment Court approved the subdivision on the basis that all stormwater is detained within the boundaries of the property.
- Urban service works completed in Kelly Road since 1989 (i.e. the year when the area was included within the Waipa District Council) include:
  - September 1993 - water reticulation upgrade;
  - September 1993 - sewer main installed and connected to Cambridge reticulation;
  - February 2000 - road seal widening (no kerb), including drainage soakhole improvements;
  - 2000/2001 - footpath replaced and streetlights installed;
  - May 2002 - water reticulation replaced.

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<sup>1</sup> "The South Hautapu Drainage District Drain runs along the length of the northern boundary of the Applicant's (Twin Star Developments Ltd) property (Lot 1 DPS 11955) the subject of this subdivision application."



- The Cambridge North West (or Kelly Road) has been excluded as a Growth Cell in the Waipa Urban Growth Strategy Report, September 2002.
- A motel development on the eastern State Highway 1/Kelly Road comer was granted consent in May 2002. The consent was granted subject to extensive conditions for (among others) on-site stormwater disposal and management. Council's reasoning with respect to stormwater issues follows:

"The Committee notes that natural drainage for stormwater disposal in Kelly Road is not good. Accordingly conditions relating to the design, construction and maintenance of a stormwater disposal system on the property have been imposed. Having heard the evidence given at the Hearing the Committee is satisfied that adequate provision can be made for the disposal of stormwater on the property and there will be no additional adverse effects on downstream properties caused by the proposed development. "

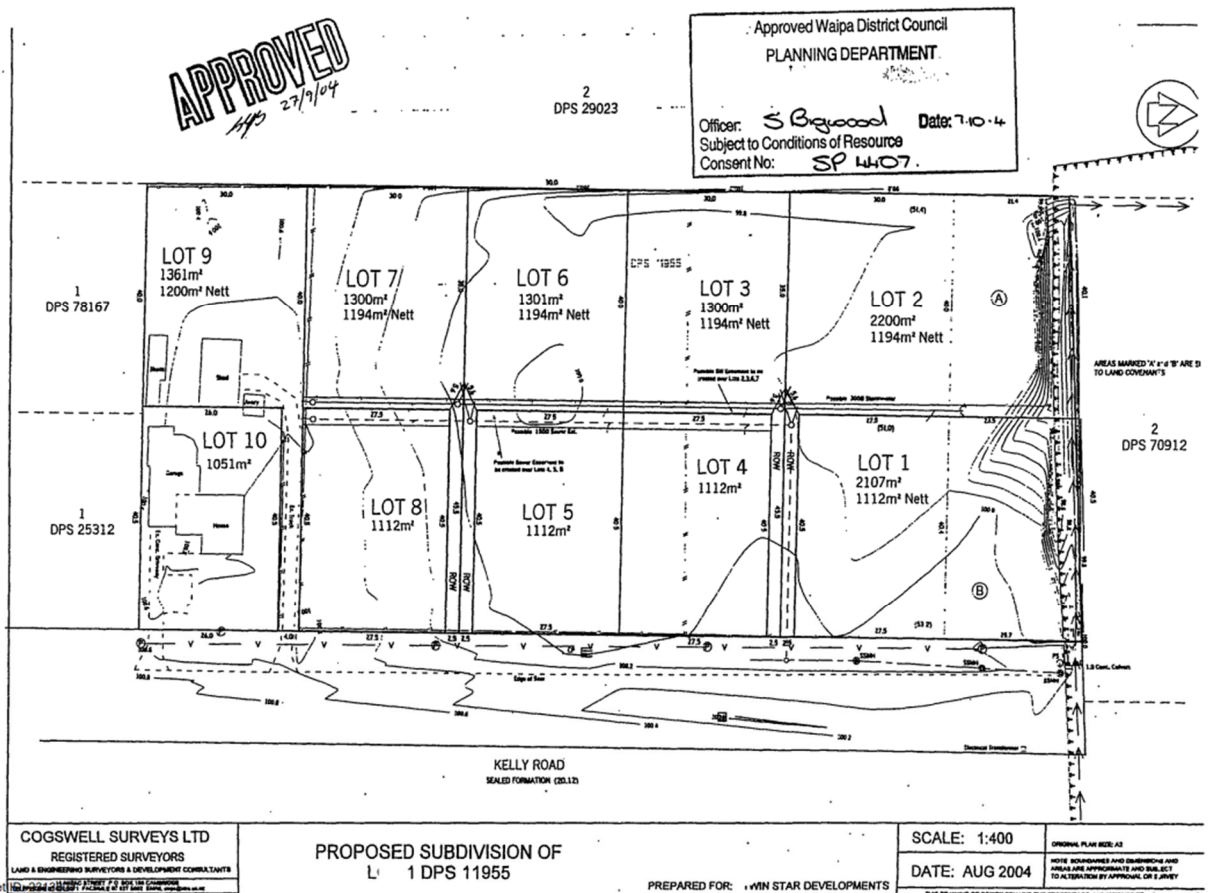


Figure 8: SP/4407 Approved Plan

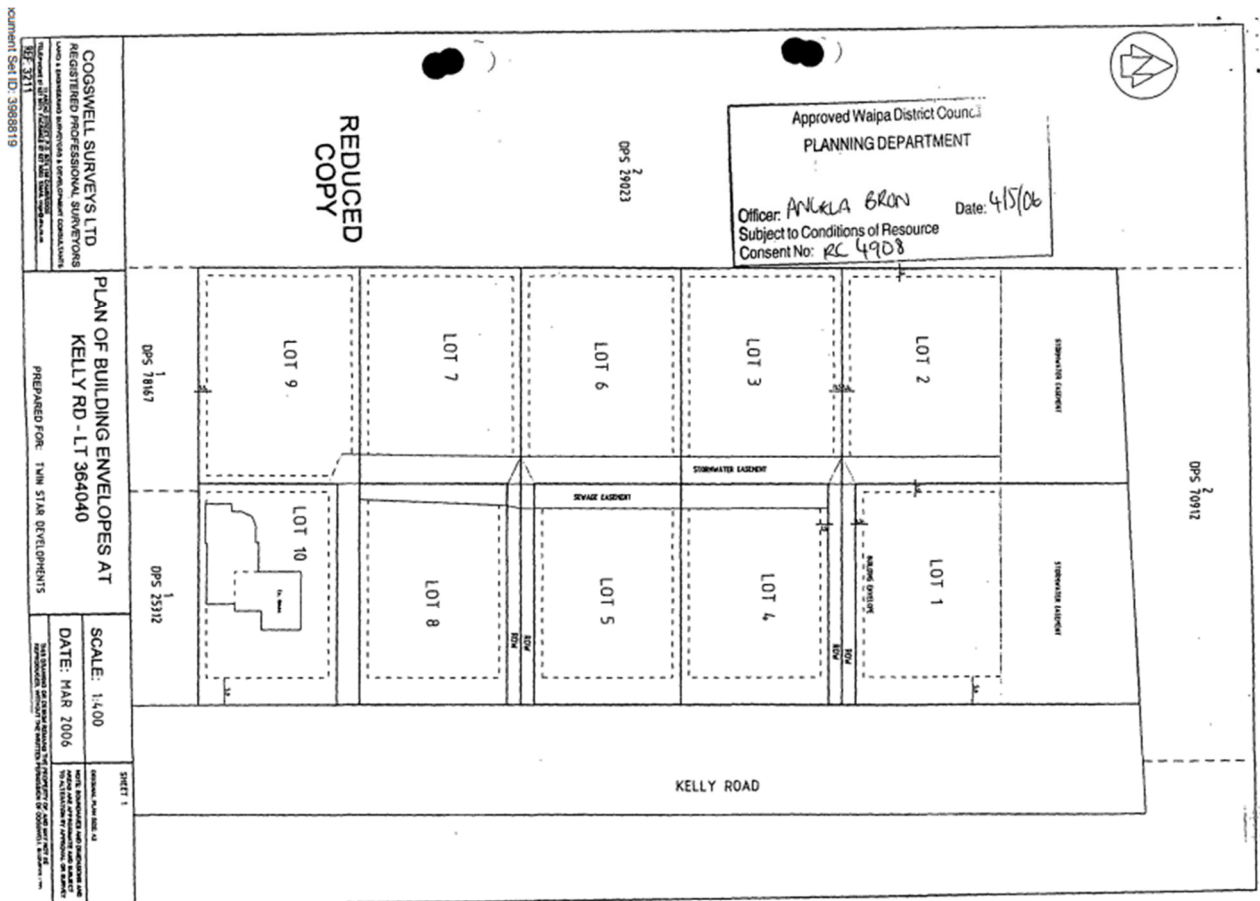


Figure 9: RC/4908 Approved Plan

### 1.4 Proposal

Pursuant to Section 88 of the Resource Management Act 1991 ('the Act'), Mitchell Daysh Limited, on behalf of their client 3MS of Cambridge GP Limited, have applied for subdivision consent to subdivide the two properties at 32 and 32A Kelly Road, Cambridge, into four residential lots.

The proposed lots, their respective areas, and the proposed method of subdivision are summarised in Table 3. Refer to Figure 10 for the proposed scheme plan for the subdivision.

| Lot Reference | Size   | Method/rule     |
|---------------|--|-----------------|
| 1             | 924m <sup>2</sup>                                    | Residential lot |
| 2             | 1,014m <sup>2</sup> net<br>1,127m <sup>2</sup> total |                 |
| 3             | 1,016m <sup>2</sup>                                  |                 |
| 4             | 1,079m <sup>2</sup> net<br>1,241m <sup>2</sup> total |                 |

Table 3: Proposed method of subdivision

In order to service the subdivision the following is proposed:

- **Access:** Proposed Lot 2 will utilise the existing right of way and entrance at the southern boundary of the site. New vehicle entrances will be required for Proposed Lots 1, 3 and 4.
- **Water Supply:** One of the existing water supply connections within Kelly Road will be utilised to supply Proposed Lot 1 and three new connections will be required to service Proposed Lots 2, 3 and 4 from the reticulated network in Kelly Road.
- **Wastewater:** Two existing connections are present within Kelly Road for the site and will be utilised by Proposed Lot 1 and 2. Two new connections will be required for Proposed Lots 3 and 4 from the reticulated network in Kelly Road.
- **Stormwater:** The existing stormwater pond located on the subject site will be filled in and a new stormwater pipeline will be installed and connected to the C1 and C2/C3 stormwater system west of the subject site. The stormwater drain located along the northern site boundary will be retained and formalised as the secondary flow path. All four lots will have direct connection to the stormwater network. Additionally, rainwater collection tanks are proposed for each lot to utilise the collected runoff as non-potable water.
- **Power and telecommunications:** New connections for each lot will be provided from the networks within Kelly Road.

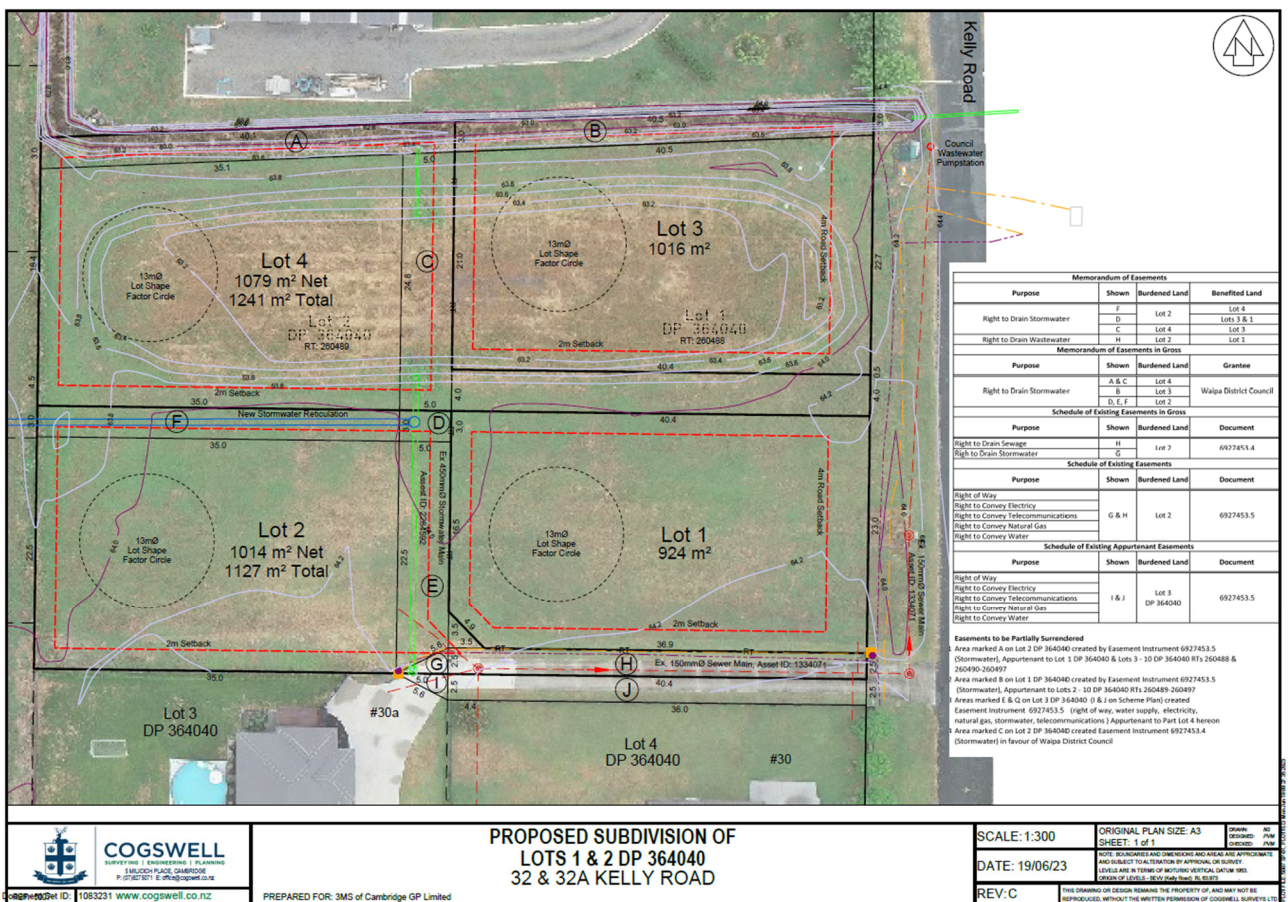


Figure 10: Proposed Site Plan

## 2 REASON FOR THE APPLICATION

A land use consent as described under Section 87(a) of the Act is required for the reasons set out below.

### 2.1 Waipā District Plan Rule Assessment

An assessment of the proposal's compliance with the relevant rules of the District Plan has been completed. In summary, Table 4 below outlines the relevant rules relating to the proposed subdivision.

| Rule #       | Rule Name   | Status of Activity | Comment   |
|--------------|---|--------------------|---|
| 15.4.1.1     | Activity Status Table   | Non-Complying      | The proposed subdivision fails to comply with the provisions of this rule therefore, the proposal defaults to a Non-Complying Activity as advised in the first row of Table 15.4.1.1.   |
| 15.4.2.1(ac) | Net lot area rules - Residential subdivision in the C1 and C2/C3 structure plan areas | Non-Complying      | This provision sets out the minimum, average and maximum net lot areas for subdivision within the C2 Structure Plan in which the subject site is located. In this location the minimum lot size is 500m <sup>2</sup> , the average should be <800m <sup>2</sup> , and the maximum lot size 1,000m <sup>2</sup> .<br>In this instance, the proposed lots sizes are 924m <sup>2</sup> , 1014m <sup>2</sup> , 1,016m <sup>2</sup> and 1,079m <sup>2</sup> net respectively. Proposed Lots 2 to 4 are all larger than the maximum lot size. Failure to meet this provision requires assessment as a Non-Complying Activity. |
| 15.4.2.2     | Existing consent notices, bonds, and other legal instruments                          | Noted              | This provision restricts further subdivision of properties where existing legal instruments are in place, in favour of Council, restricting subdivision. I note the subject sites have private covenants restricting subdivision, therefore this provision does not apply as the restrictions are not in favour of Council.   |
| 15.4.2.3     | Lot frontage, lot shape factor and vehicle crossings                                  | Complies           | This provision sets out the minimum lot frontage size, the lot shape factor, and the vehicle crossing width for each Zone. In the Residential Zone, a lot frontage of 20m, a lot shape factor of 13m diameter circle and a vehicle crossing of 3m to 5.5m is required. The proposed subdivision is able to provide all of these requirements for all lots.  |
| 15.4.2.4     | Minimum width of vehicle access to rear lots  | Complies           | This provision sets out the minimum width of access to rear lots in the Residential Zone is 4m for up to three lots. In this instance, both Proposed Lot 2 and Proposed Lot 4 will be rear lots. Proposed Lot 2 has   |

| Rule #   | Rule Name  | Status of Activity | Comment   |
|--|--|--------------------|---|
|  |  |                    | a 5m wide access (including right of way over 30A Kelly Road), and Proposed Lot 4 will have a 4.0m wide access. The proposed subdivision is therefore compliant with this provision.  |
| 15.4.2.5   | Lot design:<br>Shape factor                                  | Complies           | This provision requires that each lot is able to incorporate the lot shape factor in a compliant location. In this instance, the proposed subdivision plan demonstrates a compliant location for the shape factor.  |
| 15.4.2.6   | Lot design: Rear lots  | Complies           | This provision notes that subdivision within the urban limits shall not create more than two rear lots. Two rear lots are being created as part of the subdivision, being Proposed Lots 2 and 4, resulting in the subdivision complying with this provision.  |
| 15.4.2.13  | Site suitability:<br>General                                 | Complies           | This provision requires that all subdivision have a defined building platform in a location that is capable of being serviced to the requirements of the zone. In this instance the scheme plan includes the lot shape factor circle and the boundary setback requirements clearly demonstrating each lot has adequate area for building.   |
| 15.4.2.14 &<br>15.4.2.15   | Site suitability:<br>within or adjoining a Flood Hazard Area | Noted              | These provisions seek to restrict development in locations identified as flood risk areas. It is noted the site is currently occupied by a stormwater pond, which contains water at peak rain events (therefore shows on Council's maps as flood areas). As noted in the report, the area will be connected to the wider stormwater reticulation which has been constructed as part of surrounding development. As a result, the flood risk will be removed, and subdivision of the site will not result in development in a Flood Hazard Area. |
| 15.4.2.16,<br>15.4.2.18,<br>15.4.2.20,<br>15.4.2.26,<br>16.4.2.4 | Infrastructure servicing in all zones                        | Complies           | These provisions seek to ensure all new lots in a subdivision have access to the necessary servicing (i.e. roading, power and telecommunications, water supply and wastewater disposal, and stormwater disposal). The application included a Development Engineering Assessment and Engineering Drawings from McCaffrey and Cable Consultants Ltd which has demonstrated that the subject site has or can be suitably supplied with all the necessary infrastructure.   |
| 16.4.2.5   | Vehicle entrance   | Will Comply        | This provision sets out the minimum separation distance between vehicle entrances where the   |

| Rule # | Rule Name   | Status of Activity | Comment   |
|--------|---|--------------------|---|
|        | separation from intersections and other vehicle entrances |                    | posted speed limit is 50km/hr shall be less than 4m or more than 11m.<br>Given the extent of road frontage for Proposed Lots 1 and 3, and the likely location of future vehicle entrances (i.e. by the southern property boundaries), it is anticipated this provision will be complied with at the time of building. |

**Table 4:** District Plan rule assessment

As outlined in the table above, the application is deemed to be a **Non-Complying Activity** being the highest status indicated by the above rules.

### 3 STAFF COMMENTS

#### 3.1 Development Engineering

Council's Engineer - Growth, Ms Eva Cucvarova, has reviewed the application and notes the following points:

- **Roading/Transportation:** Proposed Lot 2 has an existing vehicle crossing that is provided through Right of Way H and J, as shown on the Proposed Scheme Plan. This vehicle crossing is in good condition and no upgrade is required. Proposed Lots 1, 3 and 4 are to have new vehicle crossings constructed and therefore, should consent be granted, relevant conditions are recommended.

The quantity of traffic is anticipated to be 10 vehicle movements per day per lot (i.e. 20 vmpd) which can be accommodated by the existing roading infrastructure.

- **Water Supply:** There are currently two existing water meters provided for the existing lots at 32 and 32A Kelly Road. The proposal is for the existing meters to be retained by Proposed Lots 1 and 2. Proposed Lots 3 and 4 will require new water connections to the Council's reticulated network (i.e. the 63mm diameter water main located within the Kelly Road road corridor just outside of Proposed Lots 1 and 3).

Should consent be granted, conditions of consent are recommended to ensure the appropriate water supply connections are made for Proposed Lots 3 and 4.

- **Wastewater:** There are two existing wastewater lateral connections for the existing lots at 32 and 32A Kelly Road. These are to remain in place and will service Proposed Lots 1 and 2. Proposed Lots 3 and 4 will require new wastewater connections to the existing Council reticulation located just outside of Proposed Lots 1 and 3 road boundaries. An existing wastewater pump station is also located just north of the Proposed Lot 3 boundary.

Should consent be granted, conditions of consent are recommended to ensure the appropriate wastewater connections are made for Proposed Lots 3 and 4.

- **Stormwater:** The existing stormwater detention pond was created under the subdivision SP/4407. The pond catered for the 10 lots and was designed and sized for 50 year storm event. At the time of the subdivision, this asset remained in private ownership as the pond did not offer wider benefit to Kelly Road properties.

As part of the consolidation of the stormwater infrastructure as part of the C2 Growth Cell development, a letter was sent to all the lots created by SP/4407 specifying that the stormwater flows that were previously going to the detention pond are now going to be piped through Hugo Shaw Drive and into the wider C2 Stormwater System.

As the flows are no longer conveyed through to the stormwater detention pond at 32 and 32A Kelly Road, this pond can now be decommissioned without adversely affecting properties in the vicinity.

The existing secondary flow path is conveyed to the north to the existing open drain located within Proposed Easements A and B. Through this subdivision this is now being formalised and easements in gross proposed. This currently private drain will eventually connect into the swale that Council will be constructing at the southern portion of 44A Kelly Road.

Given the groundwater situation within the site (i.e. 1.9m below the existing ground level and is expected to rise additional 350mm in winter months), and to comply with the requirements of the C1 – C3 Stormwater Discharge Consent, rainwater collection tanks will be required for Proposed Lots 1-4. Proposed Lots 1-4 will also require stormwater connections as per the preliminary Engineering Design Plans submitted with the application.

Should consent be granted, conditions are recommended to capture the abovementioned requirements for stormwater disposal.

- **Earthworks:** As the existing detention pond will need to be decommissioned, it is expected that approx. 1,500m<sup>3</sup> to 2,000m<sup>3</sup> of imported fill will be required to get Proposed Lots 3 and 4 to level surface. To mitigate any potential adverse effects this may have, should consent be granted, it is recommended conditions of consent should require a Construction Management Plan, a Sediment and Erosion Control Plan, and a Geotech Completion Report.
- **Foundations:** According to the Site Suitability Report prepared by Probase Engineering Ltd, dated 9/8/2023, good ground was not achieved, and the site is likely to liquefy therefore, should consent be granted, a foundation design consent notice is recommended.

Council's recent Flood Hazard Mapping indicate flooding within the stormwater detention pond as designed. Since this pond is to be decommissioned it is unlikely that 500mm freeboard above the flood level will be required but as the Earthworks Completion Report condition is being recommended, the foundation design consent notice shall be amended so this is addressed post earthworks, prior to Section 224(c), and if required, relevant consent notices will be registered on lots.

## **4 ASSESSMENT FOR THE PURPOSE OF PUBLIC NOTIFICATION**

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### **4.1 Adequacy of information**

It is my opinion that the information contained within the application is substantially suitable and reliable for the purpose of making a recommendation of and decision on notification. The information within the application is sufficient to understand the characteristics of the proposed activity as it relates to provisions of the District Plan, for identifying the scope and extent of any adverse effects on the environment, and to identify persons who may be affected by the activity's adverse effects.

### **4.2 Mandatory Public Notification - Section 95A(2) & (3) – Step 1**

Council must publicly notify the resource consent where:

- a) it has been requested by the Applicant; or
- b) a further information request has not been complied with or the Applicant refuses to provide the information pursuant to Section 95C; or
- c) the application has been made jointly with an application to exchange recreation reserve land under Section 15AA of the Reserves Act 1977.

In this instance, none of the above situations apply, therefore public notification is not required under Section 95A(2) and 95A(3).

### **4.3 Public notification precluded – Section 95A(5) – Step 2**

Section 95A(5) precludes public notification if the application is for a resource consent for one or more of the following:

- a) Controlled activity; or
- b) A restricted discretionary, discretionary, or non-complying activity, but only if the activity is a boundary activity.

The application is for subdivision of the subject site which is within the Residential Zone and a Non-Complying Activity under the Waipā District Plan. As this subdivision is not for a controlled activity, or a boundary activity, public notification is therefore not precluded pursuant to Section 95A(5). Additionally there are no rules a National Environmental Standard or the District Plan relevant to this proposal that preclude public notification.

### **4.4 Public notification required in certain circumstances – Section 95A(8) – Step 3**

Council must publicly notify the resource consent where:

- a) The application is for a resource consent for one or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification; or



- b) The consent authority decides, pursuant to Section 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor.

In this instance, public notification is not required by a rule or a national environmental standard. Refer to Section 4.5 and 4.6 of this report for Council’s assessment of the effects.

#### 4.5 Effects that may or must be disregarded – Section 95D(a), (b), (d) and (e)

Pursuant to Section 95D, if a rule or national environmental standard permits an activity with that effect the adverse effect of that activity may be disregarded.

##### 4.5.1 Permitted Baseline

Pursuant to Section 95D, a Council may disregard an adverse effect of the activity on the environment if the plan or a national environmental standard permits an activity with that effect (i.e. the Council may consider the ‘permitted baseline’). The permitted baseline is a concept designed to disregard effects on the environment that are permitted by a plan or have been consented to with regard to who is affected and the scale of the effects.

All forms of subdivision within the District Plan require resource consent. Therefore there are no subdivision activities permitted by the District Plan which can be considered with respect to the permitted baseline.

##### 4.5.2 Land excluded from the assessment

For the purpose of assessing an application to establish whether public notification is required, effects on owners and occupiers of the subject site and adjacent sites, and persons whom have given written approval **must** be disregarded. The adjacent properties to be excluded from the public notification assessment are listed in Table 5 and shown in Figure 11 below.

| ID# | Street Address     | Legal Description | Owner  |
|-----|--------------------|-------------------|--|
| 1   | 44 Kelly Road      | LOT 1 DP 541139   | Simon R Makgill & Glen G Reid                    |
| 2   | 43 Kelly Road      | LOT 1 DP 508467   | RD & CE Dyer, Accounted4 Trustees (2022) Limited |
| 3   | 41 Kelly Road      | LOT 1 DP 496914   | Bytalus Trustee Limited, SR Elliott              |
| 4   | 39 Kelly Road      | LOT 2 DP 496914   | JG & DM Holmes                                   |
| 5   | 37 Kelly Road      | LOT 1 DP 384711   | JC Todd & Allen Needham Trustees (2011) Limited  |
| 6   | 30 Kelly Road      | LOT 4 DP 364040   | H Osborn-Dunn & GA Dunn                          |
| 7   | 30A Kelly Road     | LOT 3 DP 364040   | AR & CW Clark                                    |
| 8   | 32 Hugo Shaw Drive | LOT 16 DP 583890  | Davies Homes 2012 Limited                        |
| 9   | 34 Hugo Shaw Drive | LOT 17 DP 583890  | RM Langsford & Lewislegal Trustees 2019 Limited  |
| 10  | 36 Hugo Shaw Drive | LOT 18 DP 583890  | Langsford & Ogle Limited                         |

| ID# | Street Address     | Legal Description | Owner                                |
|-----|--------------------|-------------------|--------------------------------------|
| 11  | 38 Hugo Shaw Drive | LOT 19 DP 583890  | 3MS Of Cambridge Limited Partnership |

**Table 4:** Properties excluded for purposes of public notification assessment



**Figure 11:** Adjacent properties map (Subject site highlighted in red)

No written approvals were provided with the application.

#### 4.6 Assessment of Adverse Environmental Effects – Section 95D

Part 2 of the Act explains the purpose is to “promote the sustainable management of natural and physical resources”. In addition, it is noted the meaning of ‘effect’ is defined under the Act as:

*In this Act, unless the context otherwise requires, the term **effect** includes—*

- (a) any positive or adverse effect; and*
- (b) any temporary or permanent effect; and*
- (c) any past, present, or future effect; and*
- (d) any cumulative effect which arises over time or in combination with other effects — regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*
- (e) any potential effect of high probability; and*
- (f) any potential effect of low probability which has a high potential impact.*

With the definition of ‘effect’ in mind, it is considered appropriate to further examine the effects of the proposed activity relating to character and amenity, roading, infrastructure and construction effects. It is acknowledged some of these effects are temporary and directly related to the construction of the development.

A comprehensive assessment of effects is included in Section 5 of the application. In accordance with Section 42A(1A) and (1B) of the Act I wish to generally adopt the Applicant's assessment and provide the additional commentary below.

#### **4.6.1 Effects on character and amenity**

The Act defines amenity values as *“those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”*. The Residential Zone accommodates the Districts urban areas and considers bulk, existing environment, density, noise and the relationship between private and public spaces. Collectively these elements form the character of the area.

In terms of character and amenity, the immediate surrounds are typified by residential dwellings with a variety of architectural styles. The proposed subdivision and development will change the function and use of the site from the current stormwater pond, however, is consistent with residential activities anticipated in the Residential Zone. The application has considered the surrounding residential character with regard to lot size and chosen not to increase the density in a manner that would be inconsistent with the immediate surrounds.

Overall, based on the assessment above, the adverse effects on the wider environment with regard to the character and amenity will be less than minor.

#### **4.6.2 Effects on the roading network**

Traffic and the effects on the roading network are an instrumental part of the District Plan direction to ensure an integrated approach to land use and transport. At a local scale the integration of new activities needs to ensure that the roading network can continue to function in a safe and efficient manner. Kelly Road is a local road servicing residential activity. In terms of potential effects on the roading network, trip generation, and vehicle entrances and access ways, are considered to require further consideration.

In terms of trip generation, the proposal results in two additional lots which will have increase the traffic onto Kelly Road as a direct result of the subdivision, following development. The quantity of traffic is anticipated to be 10 vehicle movements per day per lot (i.e. 20 vmpd) which will have negligible effects on Kelly Road and the wider transportation network.

Council's Senior Engineer - Growth, Ms Eva Cucvarova, has reviewed the application and notes Kelly Road is currently undergoing urbanisation and substantial upgrades are being undertaken at the Kelly Road and Cambridge Road intersection. Given the anticipated quantity of traffic generated by the subdivision, and the road environment, it is considered that the effects on the roading network will be less than minor.

Overall, it is concluded that any adverse effects on the roading network as a result of this proposal will be less than minor.

### **4.6.3 Effects on Infrastructure**

How and where infrastructure occurs is critical to the suitability of a development and the resulting use of the area. The infrastructure required for the development in the Residential Zone includes water supply, stormwater disposal, wastewater disposal, power and telecommunication connections.

The application has provided a Development Engineering Assessment and Engineering Drawings (Appendices E and F of the application) which outlines the proposal for wastewater, water supply and stormwater disposal. This report confirms there is a workable design for each reticulation to ensure the development is serviced appropriately.

Council's Senior Engineer - Growth, Ms Eva Cucvarova, has reviewed the Development Engineering Assessment and Engineering Drawings and is supportive of the proposed infrastructure reticulation. Ms Cucvarova notes this is subject to detailed design plans which can be submitted and managed via consent conditions, should consent be granted.

Overall, based on the technical reports provided with the application and Council's Development Engineering Team advice, it is my opinion that any adverse effects on infrastructure will be less than minor and limited to the immediate environment.

### **4.6.4 Effects from Construction and Earthworks**

Construction and earthworks are an instrumental component of all subdivision and development and are required to modify the existing sites to enable construction and appropriate servicing to occur. Typically the scale and impact of construction and earthworks reflect the size of the development, with the potential adverse effects often arising from construction noise, dust, vibration, erosion and sediment control, and construction management.

With regard to the proposed development, earthworks will be required to the existing site to recontour the site to provide building platforms for each of the new dwellings, excavations for drainage reticulation, and reinstatement of the area currently occupied by the stormwater pond. The application has included Development Engineering Assessment and Engineering Drawings, prepared by McCaffrey and Cable Consultants, dated 3 August 2023 (Appendices E & F of application) which outlines the required works for the site to enable development to occur.

In terms of construction and earthworks effects, I note the works are minimal, and with regard to the associated construction noise, dust, and vibration, these will be temporary in nature and limited to the immediately surrounding area. Therefore further assessment is considered regarding the adjacent properties in the limited notified assessment below.

Council's Senior Engineer - Growth, Ms Eva Cucvarova, has reviewed the application, and should consent be granted recommended conditions of consent to ensure the potential adverse effects from construction and earthworks are managed.

Overall, based on the technical reports provided with the application and Council's Development Engineering Team advice, it is my opinion that any adverse effects as a result of the necessary earthworks and construction will be below the minor threshold.

#### **4.6.5 Summary of Effects**

Overall it is concluded that any adverse effects of the proposal will be less than minor. On this basis the potential effects are below the more than minor threshold and the proposal does not require public notification.

#### **4.7 Special Circumstances – Section 95A(9) – Step 4**

Council must determine as to whether special circumstances exist in relation to the application that warrant public notification of the application and publicly notify an application if it considers that special circumstances exist. In effect, special circumstances 'trumps' other notification provisions. Special circumstances have been defined as circumstances that are unusual or exceptional but may be less than extraordinary or unique. Special circumstances provide a mechanism for public notification of an application which may otherwise appear to be routine or uncontentious or minor in its effects.

The purpose of considering special circumstances requires looking at matters that are beyond the plan itself. The fact that a proposal might be contrary to the objectives and policies of a plan is not sufficient to constitute special circumstances. Special circumstances must be more than:

- where a Council has had an indication that people want to make submissions;
- the fact that a large development is proposed; and
- the fact that some persons have concerns about a proposal.

In this instance, the proposal is not considered to have unusual or exceptional circumstances warranting public notification.

#### **4.8 Summary of Public Notification Assessment**

Pursuant to Section 95A, the application has been assessed to determine if public notification is required. In this instance, and for the reasons outlined in Sections 4.1 to 4.7 above, it is not considered that the proposal warrants public notification. For this reason the application is required to be assessed pursuant to Section 95B for limited notification.

## **5 ASSESSMENT FOR THE PURPOSES OF LIMITED NOTIFICATION**

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Pursuant to Section 95B(1), where a consent authority decides that public notification is not required under Section 95A of the Act, an assessment is required to determine whether limited notification of an application is required.

## **5.1 Affected Customary Rights or Marine Title Groups – Section 95B(2)- Step 1**

The property subject to this application is not within a protected customary rights group area or a customary marine title area as defined by the Marine and Coastal Area (Takutai Moana) Act 2011.

## **5.2 Statutory Acknowledgment Area – Section 95B(3) – Step 1**

Pursuant to Section 95B(3)(a), the Council is required to determine whether the proposed activity is on, or adjacent to, or may affect, land that is the subject of a statutory acknowledgment made in accordance with an Act specified in Schedule 11. The property subject to this consent is not within a Statutory Acknowledgement Area.

## **5.3 Limited Notification Precluded in Certain Circumstances – Section 95B(6) – Step 2**

There are no rules in a National Environmental Standard or in the District Plan relevant to this proposal that preclude limited notification (Section 95B(6)(a)).

The application is not a controlled activity requiring consent under the District Plan (Section 95B(6)(b)) nor are there circumstances relevant to this proposal that preclude limited notification under Section 95B(6) (Step 2).

## **5.4 Certain other affected persons must be notified – Section 95B(7) – Step 3**

Step 3 required Council to determine whether, in accordance with Section 95E whether, in the case of any other boundary activity, an owner of an allotment with an infringed boundary is affected. As the proposal is not a boundary activity (Section 95(7)(a)), there are no owners of with an infringed boundary that are affected.

The proposal is also not an activity prescribed under Section 360H(1)(b), so there are no parties to notify in this report.

## **5.5 Assessment of adversely affected persons - Section 95B(8) – Step 3**

Assessment is now required under Section 95B(8) to determine whether a person is an affected person in accordance with Section 95E. Under Section 95E, a person is an affected person if the consent authority decides that the activity's adverse effects on a person are minor or more than minor (but not less than minor). The following provides an assessment of the adverse effects on the potentially affected persons.

### **5.5.1 Persons owning/occupying 44 Kelly Road (Property 1)**

This property is located directly north of the subject site and contains an existing dwelling and accessory building. The northern edge of the existing stormwater drain is located along this property

boundary and heads north into this property at the western boundary. In terms of the proposed subdivision of the subject site, the outlook will change from a stormwater pond to two lots and in the future two dwellings. Potential adverse effects to further consider include residential character and amenity, and stormwater effects.

In terms of residential character and amenity, the Kelly Road neighbourhood is typified by larger residential lots, particularly on the western side of Kelly Road, averaging approximately 1,000m<sup>2</sup> in size. The eastern side of Kelly Road is very similar with some areas of smaller lots of approximately 750m<sup>2</sup> in size. Dwellings in the area are typically setback from the road boundary by a minimum of 4.0m and there is a range of single and double storey buildings. Development north of the subject site and this property has provided for smaller lot sizes of approx. 500m<sup>2</sup>. The proposed subdivision seeks to retain the larger lot sizes typified along Kelly Road; therefore the open and spacious character will be retained. Additionally, the 3.0m easements along the northern boundaries of Proposed Lots 3 and 4 will result in an increased building setback from this property. Combined, the larger lot sizing, and the easement along the northern boundary, will minimise potential adverse effects with regard to residential character and amenity for owners/occupiers at this property.

Considering potential stormwater effects, the subject site and this property have a stormwater drain located along their boundary, which is used for secondary overland flow, currently draining stormwater from the eastern side of Kelly Road towards the west. This drain will be formalised as a secondary flow path as part of this subdivision. The primary stormwater network is the new public system developed to the west of the subject site as part of the wider 3MS subdivision and development which discharges to the Waikato River southwest of Kelly Road. This new network, and connections to it, diverts runoff away from the existing private Kelly Road soakage basin on the subject site allowing it to be de-commissioned and reinstated. Based on the information provided with the application, and advice from Council's Development Engineer, it is my opinion that potential stormwater effects on these persons because of the subdivision and development will be less than minor.

In summary, it is my opinion that the proposed subdivision and development of 32 and 32A Kelly Road, will have less than minor adverse effects on the owners or occupiers of the property north of the site being 44 Kelly Road.

### **5.5.2 Persons owning/occupying 43 Kelly Road (Property 2)**

This property is located northeast of the subject site, on the eastern side of Kelly Road. The property contains 1.7ha of land, a farm building/yards and is currently used for grazing purposes. A stormwater drain is located within the southern area of the site running from the Cambridge Green Belt to Kelly Road, connecting to the stormwater drain within the subject site. In terms of the proposed subdivision of the subject site, potential adverse effects to further consider include stormwater and reverse sensitivity.

As noted above, the subject site contains an existing stormwater drain which is used for secondary overland flow, that connects to the stormwater drain on this property. Through the proposed subdivision, this secondary overland flow drain will be formalised. In terms of the potential adverse effects to owners or occupiers of this property as a result of the formalisation, there will be no noticeable change to the stormwater drainage.

In terms of reverse sensitivity, the Environment Court, in *Auckland RC v Auckland CC (1997) 3 ELRNZ 54; [1997] NZRMA 205*, defined 'reverse sensitivity' as "*the effects of the existence of sensitive activities on other activities in the vicinity, particularly by leading to restraints and the carrying on of those other activities*" with complaints being the first sign of opposition that can chip away at a lawfully established activity. In terms of the grazing activities, likely complaints may arise from future residents with regard to noise, and effects associated with animals such as odour. Given the existing use of this property, and the separation from the subject site (i.e. being across Kelly Road), it is my opinion that any potential adverse effects from the existing grazing activity will be less than minor.

Overall, I consider that any likely adverse effects of the subdivision on owners or occupiers of this property will be less than minor.

### **5.5.3 Persons owning/occupying 37, 39 and 41 Kelly Road (Properties 3, 4 and 5)**

Three properties are located on the eastern side of Kelly Road, opposite the subject site. Each of these properties contain an existing dwelling. The existing entrance to 41 Kelly Road is located opposite the proposed entranceway for Proposed Lot 4, while the existing entrance to 37 Kelly Road is located opposite the entranceway for Proposed Lot 1. In terms of the proposed subdivision of the subject site, the outlook will change from a stormwater pond and a vacant site to four lots, and in the future four dwellings. Potential adverse effects to further consider include residential character and amenity, and traffic effects.

As outlined previously in this report, in terms of residential character and amenity, the Kelly Road neighbourhood is typified by larger residential lots, averaging approximately 1,000m<sup>2</sup> in size. The three dwellings on these properties are setback from the road boundary by a minimum of 12.4m with established trees and vegetation within the front yards. The proposed subdivision seeks to retain the larger lot sizes typified along Kelly Road resulting in only two new lots fronting Kelly Road, minimising potential adverse effects with regard to residential character and amenity on owners or occupiers of these properties.

In terms of the proposed traffic effects, as noted above the new entrances will be located opposite the existing entrances to both 37 and 41 Kelly Road. While the new entrances will be a noticeable change for both properties, the locations are considered to provide a safe outcome for both properties, enabling clear sight lines of vehicles entering or exiting the properties. With regard to anticipated traffic volumes, the proposal results in two additional lots which are anticipated to generate approx. be 20 vehicle movements per day (i.e. 10 vmpd per lot). This volume, again while



noticeable to the owners or occupiers of properties across the road, are anticipated to have corresponding effects that are less than minor.

In summary, while the subdivision and future development of four dwellings on the subject sites will be a noticeable change for the owners or occupiers of the properties on the eastern side of Kelly Road, the potential adverse effects are considered to be less than minor.

#### **5.5.4 Persons owning/occupying 30 Kelly Road (Property 6)**

This property is located south of the subject site, fronting Kelly Road, contains an area of 1,112m<sup>2</sup> and an existing dwelling. The access leg for 30A Kelly Road is located between the subject site and this property. An existing wastewater pipeline is located within the western portion of this property that provides an existing connection to 32A Kelly Road. In terms of the proposed subdivision of the subject site, the outlook will change for this property from an existing vacant site to four lots and future dwellings, of which two will be visible from this property. Potential adverse effects to further consider include residential character and amenity effects.

As outlined previously in this report, in terms of residential character and amenity, the Kelly Road neighbourhood is typified by larger residential lots, averaging approximately 1,000m<sup>2</sup> in size. The dwelling on this property is located 8m south of the property boundary, which means the resulting closest distance between a future dwelling on Proposed Lot 1 and the existing dwelling will be a minimum of 12.5m (i.e. 8m setback, plus 2.5m Proposed Lot 2 access leg, plus 2.0m internal boundary setback distance). This separation will continue the spaciousness created under the original subdivision of this area and uphold the residential character of the area.

Overall, with regard to the proposed subdivision and owners or occupiers of this property, I consider that any likely adverse effects of the development will be less than minor.

#### **5.5.5 Persons owning/occupying 30A Kelly Road (Property 7)**

This property is located south of the subject site, contains an existing dwelling, and shares an access with 32A Kelly Road. The property's eastern edge contains stormwater infrastructure which drains northwards into the subject site. In terms of the proposed subdivision of the subject site, the outlook will change for this property from an existing vacant site to four lots and future dwellings, of which two will be visible from this property. Potential adverse effects to further consider include residential character and amenity effects, stormwater, and traffic effects.

As outlined previously in this report, in terms of residential character and amenity, the Kelly Road neighbourhood is typified by larger residential lots, averaging approximately 1,000m<sup>2</sup> in size. The dwelling on this property is located 4.5m south of the property boundary. The resulting closest distance between a future dwelling on Proposed Lot 2 and the existing dwelling will be a minimum of 6.5m (i.e. 4.5m setback, plus 2.0m internal boundary setback distance). This separation will continue the spaciousness created under the original subdivision of this area and uphold the residential character of the area.

As noted above, the subject site contains an existing stormwater pond to which the stormwater pipeline within this property flows to. As part of the subdivision, the pond will be infilled, and a new pipeline installed directing stormwater to the new reticulated network west of the sites within the 3MS development. In terms of the potential adverse effects on to owners or occupiers of this property as a result of the new infrastructure, there will be no change to the drainage capacity of the infrastructure therefore potential effects (i.e. such as flooding), will be less than minor.

In terms of the proposed traffic effects, an existing right of way exists that provides access to this property and the currently vacant 32A Kelly Road. As a result of the subdivision, Proposed Lot 2 will utilise this access. While this will be noticeable for this property (in that the current vacant site does not use the access however has rights to use it should a dwelling be constructed), there will be no increase in the anticipated number of users of the right of way from that currently provided for. On this basis, the resulting traffic effects are considered to be less than minor.

In summary, the proposed subdivision will result in two new lots adjacent to the northern boundary of 30A Kelly Road. While the subdivision, and future development, will be a noticeable change from the existing vacant sites, the subdivision will retain the character of the area, and have adverse effects on owners or occupiers of this property that are assessed to be less than minor.

#### **5.5.6 Persons owning/occupying 32, 34, 36 & 38 Hugo Shaw Drive (Properties 8 to 11)**

Located west of the subject site are four properties on Hugo Shaw Drive. These four properties are each at various stages new dwelling construction following their establishment under the wider 3MS subdivision and development of the area. In terms of the proposed subdivision of the subject site, the outlook will change for these properties from an existing vacant site to four lots and future dwellings, of which two will be visible from the western subject site boundary. An existing easement is located over 36 Hugo Shaw Drive for the 'Right to Drain Water' which will be connected to Proposed Easement D, E and F of the subdivision. For this reason potential adverse effects to further consider include residential character and amenity effects, and stormwater effects.

As outlined previously in this report, in terms of residential character and amenity, the Kelly Road neighbourhood is typified by larger residential lots, averaging approximately 1,000m<sup>2</sup> in size. The proposed subdivision seeks to uphold this character and density, which is somewhat different from that created on Hugo Shaw Drive which is typified by lots of approx. 600m<sup>2</sup>. While the character is different between the two streets, I am of the opinion neither will result in adverse effects on each other due to the way the two neighbourhoods back on to each other.

In terms of stormwater effects, the proposed subdivision results in a new stormwater pipeline being directed from the subject site through the adjacent property at 36 Hugo Shaw Drive. This connection has been anticipated and provided for as part of the wider development of the 3MS site west of the subject site, therefore is deemed to have less than minor effects on the adjacent properties located on Hugo Shaw Drive.

Overall, with regard to the proposed subdivision and the owners or occupiers of properties located on Hugo Shaw Drive, I consider that any likely adverse effects of the development will be less than minor.

### 5.5.7 Summary of Assessment

Based on the above assessment, the proposal will not have adverse effects on the identified properties that are minor or more than minor.

## 5.6 Special Circumstances – Section 95B (10) – Step 4

Pursuant to Section 95B (10), the Council must limit notify an application, to any other persons not already determined to be eligible for limited notification, if it considers that special circumstances exist in relation to the application. Special circumstances have been defined as circumstances that are exceptional, abnormal, or unusual but may be less than extraordinary or unique. Special circumstances provide a mechanism for limited notification of an application which may otherwise appear to be routine or uncontentious or minor in its effects.

In this instance, the applicant has requested limited notification due to the private covenant in place as a result of the historic subdivision SP/4407 (refer section X above). Within the application the Agent requests limited notification advising that *“the existing lots were created as part of a 10-lot subdivision which a restrictive private covenant in place that prohibits any further subdivision of lots in the subdivision. As 3MS are seeking to progress the Proposed Subdivision in a manner that is not consistent with the original subdivision (and will seek to cancel the covenant), 3MS seeks that this application be limited notified to the owners of the properties that form part of the original subdivision.”*

In considering notification under Section 95B (10), and the test as to whether the circumstances are *“exceptional, abnormal, or unusual but may be less than extraordinary or unique”*, I am of the opinion that:

- This is an unusual situation where a private stormwater pond was created historically for the purposes of stormwater drainage for a 10-lot subdivision (being SP/4407);
- The application is unique in that the applicant has requested limited notification to those properties created under SP/4407;
- More recently, wider stormwater infrastructure works in the Kelly Road and C2 Structure Plan Area have been undertaken which result in the pond no longer being required for the purpose it was established;
- The removal of the pond, and replacement with a stormwater pipeline to the infrastructure in Hugo Shaw Drive, will ensure stormwater is appropriately managed in the area; and
- The subdivision effects will be less than minor, hence notification under Section 95B (8) is not appropriate.

Overall, it is my opinion that the application circumstances are unusual, and as the effects are less than minor, limited notification as requested by the applicant can occur under special circumstances.

### 5.7 Summary of Limited Notification Assessment

Pursuant to Section 95B, the application has been assessed to determine if limited notification is required. In this instance, and for the reasons outlined in Sections 5.1 to 5.6 above, it is considered that the proposal warrants limited notification to the owners and occupiers of the following properties as highlighted below in Figure 12:

- 30A Kelly Road (LOT 3 DP 364040);
- 30 Kelly Road (LOT 4 DP 364040);
- 28A Kelly Road (LOT 6 DP 364040);
- 28 Kelly Road (LOT 5 DP 364040);
- 26A Kelly Road (LOT 7 DP 364040);
- 26 Kelly Road (LOT 8 DP 364040);
- 24A Kelly Road (LOT 9 DP 364040); and
- 24 Kelly Road (LOT 10 DP 364040).

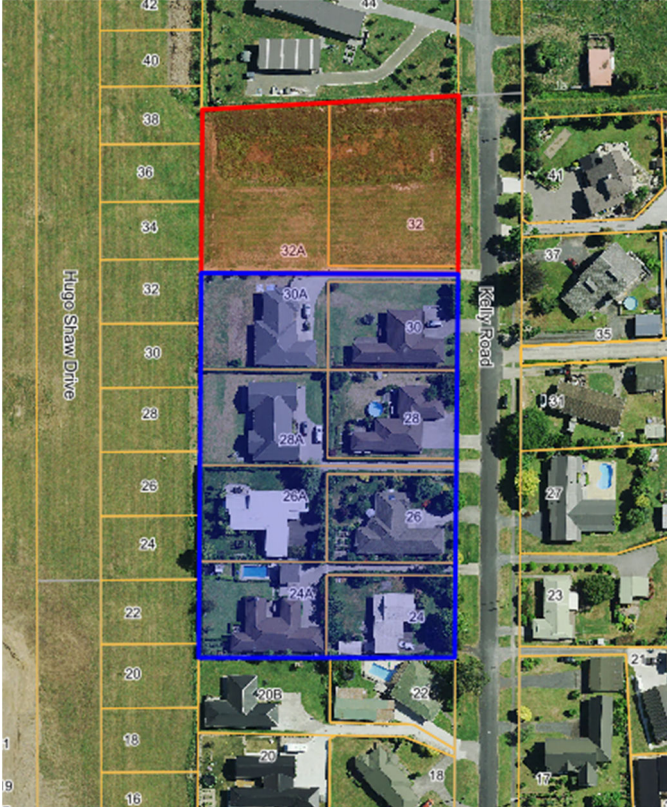


Figure 12: Properties to be limited notified (highlighted in blue, subject site highlighted in red)

## 6 SECTION 95 NOTIFICATION RECOMMENDATION AND DECISION UNDER DELEGATED AUTHORITY

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Pursuant to Section 95 A & B application SP/0073/23, applied for by Mitchell Daysh Limited, on behalf of their client 3MS of Cambridge GP Limited, for subdivision consent to subdivide the two properties at 32 and 32A Kelly Road, Cambridge, into four lots as a Non-Complying Activity shall proceed on a **Limited Notified** basis for the reasons discussed above in Section 1 to 5.

**Reporting Officer:**



**Hayley Thomas**

**Project Planner**

**Dated: 5 September 2023**

**Approved By:**



**Quentin Budd**

**Consents Team Leader**

**Dated: 12 September 2023**