

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

Resource Management Act 1991

Application reference	SC 23048
Applicant	Clearspan Property Assets Ltd
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to subdivide a utility lot.
Location	388 Macgibbon Road, RD 1, Gore (183 Millane Road, Gore)
Legal Description	Lot 1 DP 11831
Activity Status	Controlled
Decision Date	25 August 2023

SUMMARY OF DECISIONS

1. Pursuant to sections 95A-95F of the Resource Management Act 1991 (**RMA**) the application will be processed on a **non-notified** basis given the findings of Section 5 of the Section 95A and 95B report. This decision is made by Werner Murray, on 25 August 2023 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 and Section 104A, B, C and D of the RMA, consent is **GRANTED SUBJECT TO CONDITIONS** outlined in this report of the Section 104 decision imposed pursuant to Section 220 of the RMA. This consent can only be implemented if the conditions in this report are complied with by the consent holder. The decision to grant consent was considered by Werner Murray, under delegated authority pursuant to Section 34A of the RMA.

1. THE PROPOSAL

Consent is sought to create a utility lot encompassing an existing telecommunication tower.

Lot 1 will have a site area of 13.9088ha. Lot 2, the utility lot, will have a site area of 72m².

Lot 1 will be accessed via existing vehicle crossings at various locations across the farm site. Access to Lot 2 will be via a right of way over Lot 1, as shown as D and G on the Scheme Plan (attached at Appendix A).

The proposed subdivision does not include any physical construction or vegetation removal.

2. SITE DESCRIPTION

The subject site has an area of 13.9167 ha with a road frontage of approximately 300m, south of Millane Road. The site is accessed via the existing accessway along the northern boundary.

The site has a sloping topography from the northern to the southern boundary. The majority of the site is utilised for pastoral use and contains shelterbelt trees and a storage shed. An existing power pole is positioned on the Millane Road boundary, near the site's northern edge.

There is an existing 2 Degrees telecommunication tower on the site at the northern boundary. This telecommunication tower has underground access to a power line from the power pole beside the road.

The site is zoned rural under the Gore District Plan. The Gore District GIS illustrates the site is subject to negligible liquefaction risk and is not at risk of inundation. The site is situated on Land Use Class 3 soils.

3. ACTIVITY STATUS

3.1 Gore District Plan

The site is zoned rural in the Gore District Plan and the proposed activity requires resource consent under the District Plan for the following reason:

- A **controlled** activity resource consent pursuant to Rule 8.10(2) for subdivision to allow the erection on land of any unmanned utility not requiring the services of water and sewage. The telecommunication tower is considered to be an unmanned utility and is not connected to sewage or water.

3.2 National Environmental Standard for Assessing Contaminants in Soil to Protect Human Health 2011 ("NES-CS")

Based on the applicants review of Council records, the piece of land to which this application relates is not a HAIL site, and therefore the NES-CS does not apply.

3.3 Activity Status Summary

Overall, the application is being considered and processed as a **controlled** activity under the District Plan.

4. NOTIFICATION ASSESSMENT

Sections 95A – 95F (inclusive) of the Resource Management Act 1991 ('RMA') set out the steps the Council is required to take in determining whether or not to publicly notify an application or notify on a limited basis.

4.1 Public notification – Section 95A

In accordance with section 95A, the following steps have been followed to determine whether to publicly notify the resource consent application:

Step 1 – Mandatory public notification

Mandatory public notification, is not required because:

- The applicant has not requested public notification.
- Public notification is not required as a result of a refusal by the applicant to provide further information or refusal of the commissioning of a report under section 92(2)(b) of the RMA.
- The application does not involve exchange to recreational reserve land under section 15AA of the Reserves Act 1977.

Step 2 – Public notification is precluded

Public notification is precluded as follows:

- The application is:
 - a controlled activity.

Step 4 – Special Circumstances for Limited Notification

- There are no special circumstances that warrant limited notification of the application.

4.2 Limited notification – Section 95B

In accordance with section 95B, the following steps have been followed to determine whether to give limited notification of the application:

Step 1 – Certain affected groups or persons must be notified

- There are no protected customary rights groups or customary marine title groups affected by the proposed.
- The proposal is not on or adjacent to, and will not affect, land that is the subject of a statutory acknowledgment.

Step 2 – Limited notification precluded

- The activity is not subject to a rule or National Environmental Standard that precludes limited notification.
- The application is a controlled activity, however it is a subdivision of land under a district plan.

Step 3 – Certain other affected persons must be notified

- Under Step 3, if the proposal is a boundary activity, only the owner/occupier of the infringed boundary can be considered. The activity is not a boundary activity.
- For any other activity, a consent authority must notify an application on any person, if notification is not precluded by Step 2, and the consent authority decides, in accordance with s95E, that the proposed activity will have or is likely to have adverse effects on that person that are minor or more than minor.

An assessment in this respect is therefore undertaken as follows:

Considerations in assessing adverse effects on persons under s95E

- a) The consent authority **may** disregard an adverse effect of the activity on a person if a rule or national environmental standard permits an activity with that effect (a “permitted baseline”). The relevance of the permitted baseline to this application is outlined in the above s95D assessment of environment effects.
- b) The consent authority **must** 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) The consent authority **must** have regard to every relevant statutory acknowledgement specified in Schedule 11.
- d) The consent authority **must** disregard effects on those parties who have provided written approval.

Assessment: Effects on Persons

Taking into account the exclusions in sections 95E, the following outlines an assessment as to whether the activity will have or is likely to have adverse effects on persons that are minor or more than minor.

It is considered that no person is affected by the proposal as the potential environmental effects will be less than minor for the following reasons:

- The proposed subdivision creates one lot around an existing telecommunications tower. No physical works are proposed and there would be no change to the current visual, roadside or rural amenity. The proposed subdivision will not result in any changes to the existing lawfully established situation experienced by owners and occupiers of adjoining properties.
- The proposal is purely legal and hence indiscernible in the host natural and built environment in terms of resultant physical and amenity effects.

- The proposal does not involve any physical changes to the site or create additional development rights. The existing development will be unchanged from its current appearance and any potential effects are considered to be less than minor.

Conclusions: Effects on Persons

In terms of section 95E of the RMA, and on the basis of the above assessment, no person is considered to be adversely affected.

Step 4 – Special Circumstances for Limited Notification

- There are no special circumstances that warrant limited notification of the application.

5. DECISION PURSUANT TO S95A AND S95B OF THE RMA

For the reasons set out above, under s95A and s95B of the RMA, the application is to be processed on a non-notified basis.

6. SECTION 104 ASSESSMENT

6.1 Matters for consideration

This application must be considered in terms of Section 104 of the RMA.

Subject to Part 2 of the RMA, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) *any relevant provisions of:*
 - (i) *A national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

6.2 Effects on the Environment

Conditions of consent can be imposed under s108 of the RMA as required to avoid, remedy or mitigate adverse effects.

Written Approval/s

Whilst APA has not been provided from the landowner, the proposal will not be able to be given effect to without landowner approval to undertake the work. Furthermore, once consent is granted it will run with the land and as such, it will be up to the landowner to decide if the consent will be implemented.

The following effects may be disregarded:

- An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect – referred to as the “permitted baseline”. The relevance of a permitted baseline to this application is as follows:

Permitted Baseline

The consent authority **may** disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect. In this case, all subdivision consents require consent, therefore there is no applicable permitted baseline.

a) The suitability of the allotments for activities permitted within the zone in which they are located.

The subdivision is proposed to alter the ownership of the land a telecommunication tower is located on. This will assist in the ongoing operation of the utility. The land use activities occurring on each site will remain unchanged. No further development rights will be created.

The suitability of the allotment for the utility activity is acceptable.

(b) Granting of easements;

The scheme plan provides easements for access to the utility lot and protecting the existing power connection.

(c) The design, location, construction and alignment of any access or road;

The utility lot is accessed via a farm gate access. No changes are proposed to the land use of either lot, and no additional development rights will be created as a result of the subdivision. The access to the telecommunication tower will be seldom utilised. The existing farming activity on the balance lot will continue, unchanged by the proposed subdivision.

The design, location and construction are deemed appropriate.

(d) The location, design and construction of infrastructure;

The infrastructure on site is existing. No further infrastructure is required as part of the subdivision.

(e) Ensuring that the minimum environmental standards specified in this Plan can be met on any allotment that contains an existing building.

NA

(f) The protection of any heritage or archaeological values on the site.

(g) Any adverse effects on natural features and landscapes, ecological or cultural values.

There are no known heritage, archaeology, ecology or cultural values known to be associated with the allotments and the allotments are not classified as a natural feature or landscape.

Overall, it is considered that any adverse effects from the proposed subdivision will be less than minor and acceptable.

6.3 Relevant Provisions

District Plan

The relevant objective and policies are contained within Chapter 8 - Subdivision of Land of the District Plan. The relevant objective and policies seek that the size and shape of allotments are appropriate for the location and future land use, and that access and servicing can meet Council's standards. The proposal is considered to meet the relevant objectives and policies of the Gore District Plan.

National Policy Statement for Highly Productive Land (NPS-HPL)

The NPS-HPL came into force on 17 October 2022. The objective of the NPS-HPL is that highly productive land is protected for use in land-based primary production, both now and for future generations. As the proposal is for a controlled activity subdivision and matters of control do not provide scope for the consideration of highly productive land. No further assessment of the NPS-HPL is required.

7. SECTION 106 REQUIREMENT FOR SUBDIVISION

A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to, or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made. In this case both lots will be provided with legal and physical access. There are no natural hazards effecting the site.

8. PART 2 OF THE RMA

The purpose of the RMA is to promote the sustainable management of natural and physical resources.

Part 2 (sections 5, 6, 7 and 8) of the RMA sets out the purpose and principles of the legislation, which as stated in section 5, is "Avoiding, remedying, or mitigating any adverse effects of activities on the environment", section 7(c) "The maintenance and enhancement of amenity values" and section 7(f) "The maintenance and enhancement of the quality of the environment".

In addition, Part 2 of the RMA requires the Council to recognise and provide for matters of national importance (section 6); have particular regard to other matters (section 7); and to take into account the principles of the Treaty of Waitangi (section 8).

For the reasons outlined in this report, it is considered that the proposal meets the relevant sections of Part 2 of the RMA.

Overall, the proposal is considered to meet the purpose and principles of the RMA.

9. DECISION ON RESOURCE CONSENT

Pursuant to Section 104A of the RMA, consent is **granted** to create a utility around an existing telecommunication tower subject to the following conditions imposed pursuant to Section 220 of the RMA:

Consent Conditions

1. The subdivision must be in general accordance with the application made to Council on 25 July March 2023 and the following plan:
 - *'Proposed Utility Subdivision Subdivision Scheme Plan' Drawing No 14830, Rev B, prepared by Easdale Surveyors Ltd, dated 18/07/2023*

This plan is attached as Appendix A.

2. Prior to Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, any necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved as necessary.
3. The consent holder must meet the costs for the preparation, review and registration of the easement instrument of the relevant Records of Title.

Advice Notes

- Any future development will be subject to the requirements of the Gore District Council Subdivision and Land Development Bylaw 2019 and the Gore District Plan and will be assessed at the building consent stage.

Administrative Matters

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further costs have been incurred.

This resource consent is not a building consent granted under the Building Act 2004. A building consent must be obtained before construction can begin.

This resource consent must be exercised within five years from the date of this decision subject to the provisions of section 125 of the RMA.

If you have any enquiries please contact the duty planner on phone (03) 209 0330 or email planning@goredc.govt.nz.

Prepared by



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Decision made by



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Appendix A: Approved Plans

APPENDIX A – APPROVED PLANS

