

# Gore District Council Decisions



## NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

*Resource Management Act 1991*

<b>Application reference</b>	SC23040
<b>Applicant</b>	Nithdale Land Company Limited
<b>Proposal</b>	Application under Section 88 of the Resource Management Act 1991 (RMA) for a subdivision creating one additional rural lot.
<b>Location</b>	221 Nithdale Road, RD 2, Gore
<b>Legal Description</b>	Section 18 Block XII Waikaka SD
<b>Activity Status</b>	<b>Restricted Discretionary</b>
<b>Decision Date</b>	<b>12 July 2023</b>
<b>Re-issue Date</b>	<b>12 July 2023</b>

### 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 12 July 2023 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 and Section 104C 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 Werner Murray, under delegated authority pursuant to Section 34A of the RMA.

3. Pursuant to section 133A of the RMA this consent is being re-issued due to an error in referencing the balance Lot. This is considered a minor mistake or defect and therefore the consent can be re-issued pursuant to section 133A of the RMA.

## 1. THE PROPOSAL

Consent is sought to create an additional rural allotment. The proposed subdivision comprises:

Lot 1	57.26 ha. Vacant rural land
Part Lot 18 BLK XII Waikaka SD (Balance Lot)	38.13 ha. Vacant rural land

The subdivision will result in the formation of one additional allotment held in a separate record of title. Diamond Peak Road bisects the current legal title, such that it physically separates the subject site.

The application states the current land use is intended to remain unchanged and the agriculture activities occurring on site will be retained by the Applicants.

No new accesses are proposed. The lots will continue to be serviced by existing farm gate accesses from Diamond Peak Road and Nithdale Road. No additional servicing provision is proposed.

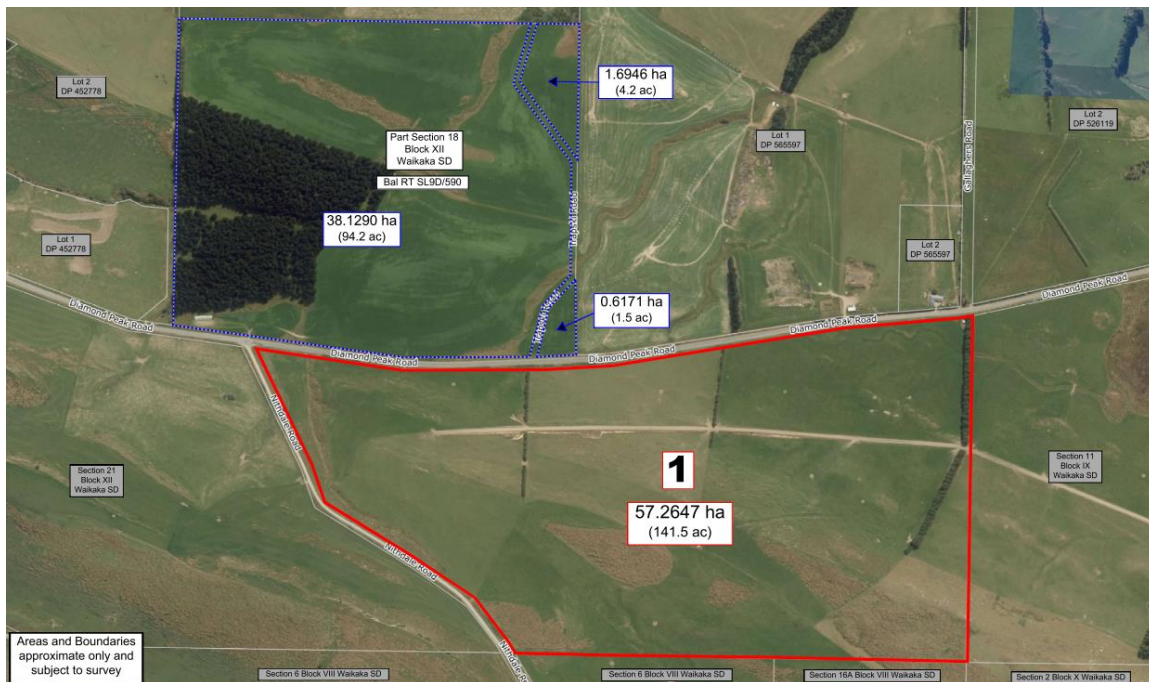


Figure 1: Scheme Plan

## 2. SITE DESCRIPTION

The subject site is located 17km south east of Gore, on the corner of Diamond Peak road and Nithdale Road and is 97.91 hectares. The site is located within the Rural Zone, located on the north and south side of Diamond Peak Road as indicated by Figure 2. The subject site is part of the larger rural landholding servicing Nithdale Station, comprising of 1478 hectares in total, owned by the Applicants.

There are no dwellings or accessory buildings on the site.

The topography of the site consists of gradual rolling land on the north side of Diamond Peak Road, which increases in gradient across to the south of Diamond Peak Road and then plateaus into flat rural land.

The subject site is located on the corner of Diamond Peak Road, a chip sealed rural servicing road and Nithdale Road, a gravel road that services local farms and small volumes of traffic.

The Council's mapping system does not identify the site is subject to inundation. The Council's mapping system also does not identify the site being subject to any liquefaction.

The site is not identified as being on the Selected Land Use Register as an actual or potentially contaminated site.

The site is subject to the Land Use Capability 3 Overlay and therefore is considered to be High Class Soil under the National Policy Statement for Highly Productive Land.



Figure 2: Subject site, outlined in red and surrounding areas.

### 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 **restricted discretionary** activity pursuant to Rule 8.10(4)(b) to undertake a subdivision creating one additional lot, both the new allotment and balance allotment will exceed 2 hectares in area.

Council's discretion is restricted to the following:

- (i) suitability of the allotments for activities permitted within the zone in which they are located.*
- (ii) suitability of the land for subdivision, including presence of any natural or other hazards, including contaminated land;*
- (iii) ability to provide services (water, sewage, storm water, power and telecommunications);*
- (iv) impacts on the council and other infrastructure services;*
- (v) future use of the land and the need to consider any associated resource consents;*
- (vi) within residential and rural areas lot size, dimensions and potential for future subdivision of the land;*
- (vii) within residential and rural areas the desirability of providing building platforms; and provision of easements*
- (ix) impacts on any heritage or archaeological values*
- (x) impacts on natural features and landscapes, ecological or cultural values*
- (xi) impacts water quality, including groundwater*
- (xii) provision of all transport modes, including the movement of pedestrians and cyclists*

### **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. Nonetheless, the subject site is production land, and the proposed subdivision will not prevent the land from being production land. A change of land use is further not proposed.

As such under Regulation 5(8) of the NES-CS, that NES does not apply to this subdivision.

## **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:

- There are not rules in a plan or National Environmental Standard that preclude notification.
- The application is not:
  - a controlled activity; or
  - a boundary activity as defined by section 87AAB that is restricted discretionary, discretionary or non-complying.

### **Step 3 – Public notification is required in certain circumstances**

- There are no rules in a plan or National Environmental Standard that require notification.
- A consent authority must publicly notify an application if notification is not precluded by Step 2 and the consent authority decides, in accordance with s95D, that the proposed activity will have or is likely to have adverse effects on the environment that are more than minor. An assessment in this respect is undertaken as follows:

The following effects must be disregarded:

- Effects on the owners or occupiers of land on which the activity will occur and on adjacent land.
- Trade competition and the effects of trade competition.
- Any persons that have provided their written approval and as such adverse effects on these parties have been disregarded.

#### *Written Approval/s*

No written approvals have been provided.

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, as all subdivision requires resource consent under the Gore District Plan, there is no permitted baseline.

#### *Suitability of the allotments and future land use*

The subdivision layout results in one new rural allotment exceeding the minimum 2 hectare requirement for the rural zone, specified in the Gore District Plan. The balance lot is further in exceedance of 2 hectares. The subdivision is therefore consistent with what the District Plan enables in the rural zone. The lots will continue to be utilised as farmland used for agriculture activities, as permitted by the District Plan in the rural zone.



There are no other resource consents that are needed to be considered with this subdivision.

Overall, it is considered that the size, shape, and configuration of the proposed allotments are appropriate for rural activities. Any adverse effects on the wider environment will be less than minor.

#### *Suitability of the land for subdivision – Natural Hazards and other Hazards*

The subject site is not identified in the Selected Land Use Sites Register ('SLUS') as an actual or potentially contaminated site.

The Council's mapping system, which sources information from Environment Southland, identifies the site is not subject to any inundation or liquefaction risk.

Any adverse effects, with respect to natural hazards and other hazards on the wider environment will be less than minor.

#### *Ability to provide services*

There is existing supply of water to the site for stock. Given the land use of both lots is to continue, no changes to the existing servicing arrangements are considered to be necessary.

Potential adverse effects on the wider environment in relation to servicing are considered to be less than minor.

#### *Impacts on heritage, archaeological values, natural features, landscapes and water quality*

There are no known heritage or archaeological features, or values identified on the site. It is considered that the impacts of the proposed subdivision will be less than minor with respect to these features and values. The subject site is located outside of any mapped significant natural features and landscapes, or areas shown as having identified ecological or cultural values.

The proposed subdivision will not have noticeable effects on the water quality in the surrounding area as the existing land use will continue.

Overall, the adverse effects on the environment are considered to be less than minor.

#### *Effects on traffic*

The physical delineation of the subject site, by the road, has meant that the lots have been utilised independently of each other and have separate access points. The land will continue its existing use, therefore the existing farm accesses from Diamond Peak Road and Nithdale Road are considered fit for purpose.

If any future residential development was to occur on Lot 1, a consent notice has been volunteered by the Applicant to notify future owners that an upgraded access, in accordance with the Subdivision and Land Development Bylaw, would be required at the time a dwelling is constructed.

Overall, any adverse effects in relation to traffic effects, on the environment are considered to be less than minor.

#### *Provision of easements*

No easements are proposed for this subdivision scheme. Any easements found to be required to secure any rights of way or services and utilities can be included at the time of section 223 certification.

#### *Conclusion: Effects On The Environment*

On the basis of the above assessment, in terms of s95D, it is assessed that the proposed activity will not have adverse effects on the environment that are more than minor.

#### **Step 4 – Public Notification in Special circumstances**

- There are no special circumstances that warrant public notification.

#### **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 not for a controlled activity (other than for 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.

*Neighbouring Properties*

The adjacent persons assessed below are all the owners/occupiers of the properties that share a common boundary with the subject site. These are indicated by the green dots. The parcels of land outlined in red are owned and operated by the Applicants, which have not been assessed.

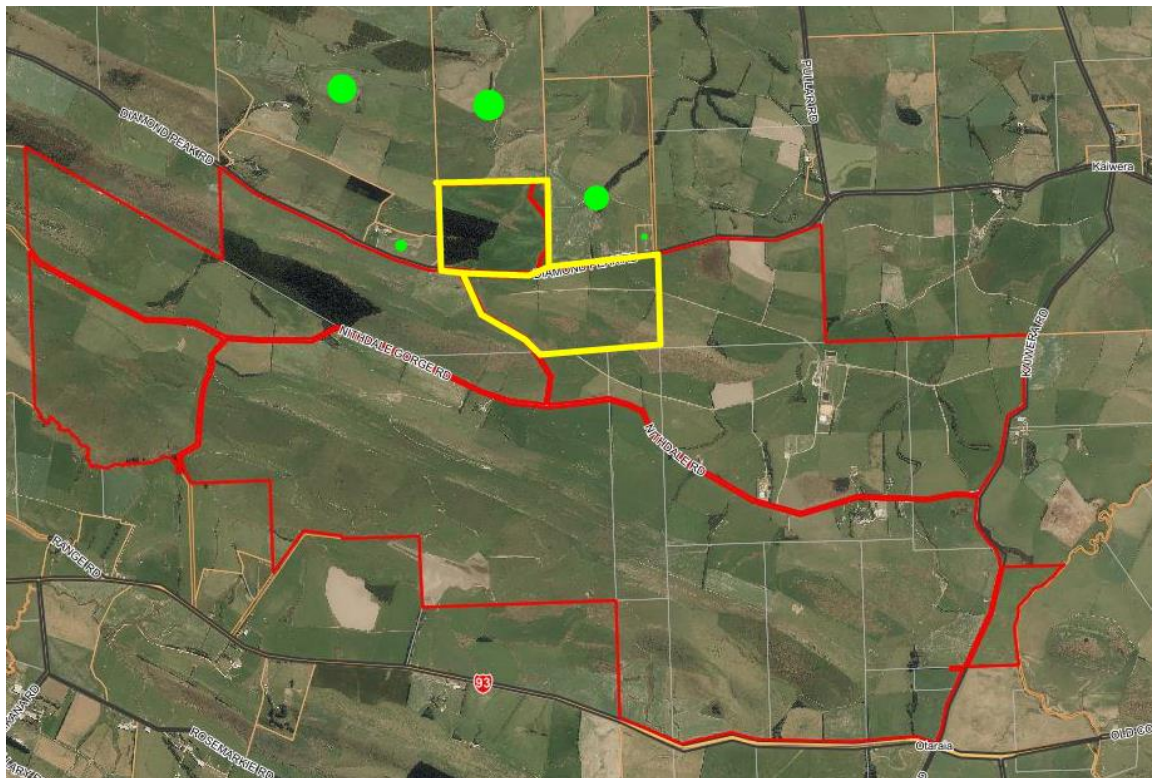


Figure 3: Subject site outlined in yellow, surrounding neighbours indicated by green dots and land owned by applicant outlined in red.

The subdivision meets the standards for minimum lot size in the Rural Zone. The District Plan has therefore anticipated the adverse effects associated with future development at this density. The proposed lot is of a size, shape and configuration to enable the rural activities currently occurring to continue.

The proposed subdivision aligns with the physical features of the site, and the legal separation of the lots will not be readily apparent, given the physical separation of the road. The proposed lots will be continued to be used for rural pastoral land, a permitted activity in the rural zone under the District Plan.

Overall, it is considered that the proposed subdivision will not create lots or future uses that are out of character for the area or detract from the existing amenity values. Any adverse effects on the rural character and amenity experienced by persons residing on or working on the adjacent properties will 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

Actual and potential effects on the environment have been outlined in the section 95 report. Conditions of consent can be imposed under s108 of the RMA as required to avoid, remedy or mitigate adverse effects.

## 6.3 Relevant Provisions

### District Plan

The relevant operative objectives and policies are contained within Chapter 8 of the District Plan.

#### *Chapter 8 - Subdivision of Land*

##### *Objectives*

- (1) To facilitate the orderly subdivision and development of land.*
- (2) To ensure that the size and shape of new allotments created, and the design standards for access and infrastructure, is suitable and appropriate for the location and future use of the land.*
- (3) To ensure that developers pay all reasonable costs associated with the subdivision and subsequent development of land.*
- (5) To ensure land development and servicing is undertaken to Council's standards.*
- (7) To ensure that land subdivision results in allotments that are suitable for activities anticipated by the zone in which they are located.*
- (8) Avoid adverse effects on water quality, including groundwater, from the development of subdivided land.*

##### *Policies*

- (1) Control the subdivision of all land.*
- (2) Avoid the adverse effects of subdivision on the functioning of existing services, infrastructure and roading.*
- (3) Require the works associated with subdivision to be carried out in conformity with Council's standards.*
- (5) Avoid any off-site effects of development of subdivided land.*
- (9) Require land development to be undertaken in compliance with the Gore District Council Subdivision and Land Development Bylaw 2011.*
- (10) Have regard to the potential for the land subject to any subdivision consent, and other land in the locality to be further subdivided in the future.*
- (13) Have regard to the potential impacts arising from the subdivision and future use of land on water quality, including groundwater.*

The proposed subdivision is consistent with the objectives and policies of Chapter 8. The size and the layout of the allotments are considered to be suitable and appropriate for the rural zone anticipated activities. The subdivision does not result in any adverse effects on water quality as no further service provision are proposed.

## **National Policy Statement – Highly Productive Land 2022**

It is acknowledged that part of the property is subject to the Land Use Capability 3 Overlay and therefore is considered to be High Class Soil under the National Policy Statement for Highly Productive Land. As the proposal is a restricted discretionary activity and matters of discretion do not extend to highly productive land, no assessment regarding the high class soils has been undertaken.

## **Southland Regional Policy Statement 2017**

The proposal is consistent with the relevant objectives and policies in the Southland Regional Policy Statement (RPS), specifically contained in Chapter 5 (Rural land/soils). There is sustainable use of Southland's rural land resource through this proposed subdivision scheme as the land use is proposed to remain the same to service the wider farm. The subdivision will maintain the rural amenity values and character of the existing rural area. In addition to this there are no known adverse effects on the amenity and cultural values on the landscape.

## **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 the lots have existing physical and legal access to them via farm gates from both Diamond Peak Road and Nithdale Road, allowing continuation of the lots to be serviced for rural purposes. The subject site is not subject to any known natural hazards and the material damage to the land resulting from natural hazards will be no more than minor.

## **8. PART 2 OF THE RMA**

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

### *Section 5 – Purpose*

The proposed subdivision takes into account Section 5 of the RMA as the proposed lots will continue to enable sustainable management of the physical resources of the land for agriculture purposes to enable people and communities to provide for their social, economic and cultural wellbeing, benefiting the community. As assessed above, the adverse effects of the proposal can be avoided, remedied, or mitigated.

### *Section 6 – Matters of national importance*

Attention has been given to matters of national importance. This site does not contain any outstanding natural features or landscapes, nor an area of significant indigenous vegetation. It is considered the land use is appropriate within this residential landscape, as there are a number of existing residential lots in the surrounding area of similar size.

### *Section 7 – Other matters*

Particular regard has been given to the maintenance and enhancement of amenity values (section 7(c)) and maintenance and enhancement of the quality of the environment (section 7(f)). The amenity of the land and surrounding area will be maintained, and the subdivision will not have adverse effects on the quality of the environment.

### *Section 8 – Treaty of Waitangi*

This site is not within any known heritage sites or statutory acknowledgement areas and therefore, this recommendation is not inconsistent with the principles of the Treaty of Waitangi.

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

## **9. DECISION ON RESOURCE CONSENT**

Pursuant to Section 104C of the RMA, consent is **granted** to undertake a subdivision to create one additional rural lot, subject to the following conditions imposed pursuant to Section 220 of the RMA:

### **Consent Conditions**

1. The proposed subdivision must be undertaken generally in accordance with the following plans:
  - ‘Proposed Subdivision of Part Section 18 Block XII Waikaka SD [SL9D/590]’, drawn by Clark Fortune McDonald & Assoc., dated 10.05.2023.
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. Prior to issuing certification pursuant to section 224(c) of the Resource Management Act 1991, a consent notice, in accordance with Section 221 of the Resource Management Act, shall be issued in relation to Lot 1 to record that:
  - a. At such a time a residential unit is constructed, the consent holder, shall, to the satisfaction of the Chief Executive of the Gore District Council, construct a vehicle access or upgrade an existing vehicle crossing, in accordance with the relevant access standard in the Gore District Council Subdivision and Land Development Bylaw 2019.

### **Advice Notes**

1. Any future development on Lot 1 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.
2. Any work carried out on the legal roadway require the prior approval of the Council and consent holder must consult with the Roding Department to ensure the appropriate

processes are being followed and the work is being carried out to the correct standard. The work itself must be undertaken by a Council approved contractor.

3. At the time of this subdivision, a fixed-line telecommunication connection was not provided to Lot 1 and should a telecommunication service be required in the future, an alternative service (wireless broadband) needs to be installed at a cost to the owner.

### 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.

The Council will contact you in due course to arrange the required monitoring. The Monitoring Officers time will be charged to the consent holder. It is suggested that you contact the Council if you intend to delay implementation of this consent or if all conditions have been met.

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](mailto:planning@goredc.govt.nz).

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### Appendix A: Approved Plan



# APPENDIX A – APPROVED PLANS

