

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

Resource Management Act 1991

Application reference	LU23073
Applicant	Elaine Booker
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to operate a wellness centre in a residential zone.
Location	11 Albany Street
Legal Description	Lot 8 DP 179
Activity Status	Discretionary
Decision Date	19 October 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 Katrina Ellis, on 19 October 2023 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 and Section 104B of the RMA, consent is **GRANTED SUBJECT TO CONDITIONS** outlined in this report of the Section 104 decision imposed pursuant to Section 108 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 Katrina Ellis, under delegated authority pursuant to Section 34A of the RMA.

1. THE PROPOSAL

Consent is sought to operate a wellness centre at the subject site 11 Albany Street, within an existing residential unit. The existing unit may continue to be used for residential purposes, alongside the proposed wellness centre. No change to the residential form of the physical building is proposed. Minor internal alterations are proposed.

The wellness centre is considered to be a commercial activity. The wellness centre will be holistic health-based that offers a variety of wellness services to members of the public through appointments as follows:

- massage therapy,
- health and wellness coaching,
- mirimiri korero,
- romi-romi bodywork,
- sound healing and,
- a boutique range of mind and body classes (yoga, pilates and traditional dance)

The classes run will have a maximum of seven (7) attendees at a time. All other appointments will be individual based through appointment only basis.

The centre will consist of an office area, as well as the option of four wellness spaces depending on residential requirements. The bathroom and kitchen will be retained. Outside, there will be a zen garden for quiet contemplation for clients after the services provided.

The applicant is the owner of the property and proposed business, they are a certified massage therapist and holistic health practitioner. At this stage they will be the sole therapist working at the centre with the possibility of adding a second therapist in the future. The number of clients anticipated per day will be no more than ten (10).

The business will operate as follows:

- Monday to Friday 7:00am – 9:00pm
- Saturday 7:00am – 1:00pm

These hours are proposed to provide the applicant flexibility, however the wellness centre will not be operating for the entire duration stated.

Clients who arrive by bike will be provided secure storage on site. On-site parking has not been proposed by the applicant. There are no minimum car parking requirements, noting that as per the National Policy Statement on Urban Development, the Gore District Council cannot impose minimum parking requirements in its urban environments .

Signage is proposed to be displayed on the front gate, being one sign measuring 80cm by 60cm. It is noted that signage in the Residential B Zone is permitted where it does not exceed the maximum area of 1m² and meets the other requirements set out in Rule 4.10.1(c) of the Operative District Plan.

The applicant has also proposed to provide a mobile service for clients who are not physically able to come to the centre to be treated. For clarity this aspect has been included within the application, as

part of the wider wellness centre application and will be limited to one practitioner per day providing this service.

2. SITE DESCRIPTION

The subject site is located at 11 Albany Street, legally described as Lot 8 DP 179. The site has an area of 809m² and consists of an existing residential dwelling and garden.

The site is located in the Residential B Zone under the Operative District Plan. The surrounding environment is a well-established residential area, in close proximity to the town centre. Albany Street is predominately residential in character and use, consisting of residential dwellings. Located within the immediate environment is the Gore Baptist Church on the corner of Albany Street and Ardwick Street and the Albany Rest Home, down the western end of Albany Street.

Albany Street is a wide residential street, close to the town centre that provides thoroughfare connection to Ardwick Street and Broughton Street, connecting other parts of the community. Waka Kotahi NZ Transport Agency, 'One Network Road Classification' classes the street as a Secondary Collector. The street therefore experiences higher volumes of traffic than other adjacent residential streets that are of a quiet small urban residential street nature.

The Council mapping system which sources information from Environment Southland does not identify the site as subject to any risk of flooding and identifies the site's liquefaction risk as negligible. The site is not identified in the Selected Land Use Sites Register ('SLUS') as an actual or potentially contaminated site.

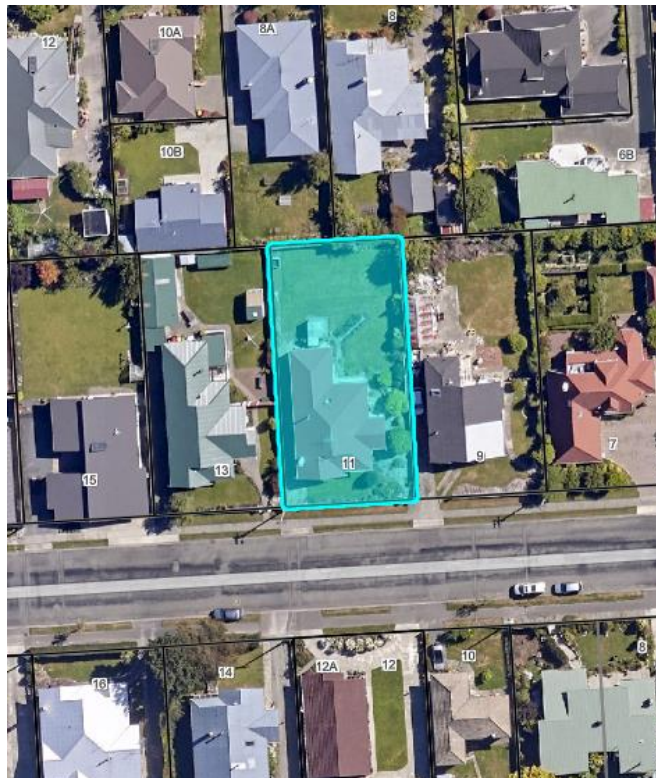


Figure 1: Aerial image of subject site highlighted in blue (Source: GIS Map)

3. ACTIVITY STATUS

3.1 Gore District Plan

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

- A **discretionary** activity resource consent pursuant to Rule 4.2.4(2) as the proposed wellness centre is a commercial activity which is not listed as a permitted activity under Rule 4.2.1 of the Operative District Plan for the Residential B Zone.

The applicant notes that a wellness center offering holistic health and wellness services, such as massage therapy and other health service could be considered a health care activity which is permitted in the Residential B zone. However, given the wide range of activities that a wellness center offers, and that it is occupation of a residential site, the commercial aspect, and the off-site nature of some of the work, this application is a discretionary activity.

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

The proposed activity is changing the use from primarily residential to home occupation use of the piece of land that is zoned Residential B and contains a dwelling. Given the current use it is considered that the site is not a piece of land to which subclauses 7 or 8 of the NES-CS applies. Therefore, it is considered that the NES-CS does not apply.

3.3 Activity Status Summary

Overall, the application is being considered and processed as a **discretionary** 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 not 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

The following written approvals have been provided:

Person (owner/occupier)	Address (location in respect of subject site)
Vickie Wright (occupier, not owner)	8a William Street, Gore
Graham Sean Dempsey	9 Albany Street, Gore
Patrea Gay Tweedie	12 Albany Street, Gore
Kevin Francis and John Francis McCartney	13 Albany Street, Gore

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.

Home Occupation

In this case it is a permitted activity under Rule 4.2.1(3) of the Operative District Plan to have a business being undertaken from a site used primarily as a residential unit by one or more persons living on that site provided that it does not:

- involves no sales from the site other than by order, or provision of services on the site;
- employs no more than one person residing elsewhere than on the site;
- the activity does not include panel beating, spray painting, motor vehicle dismantling, fibre glassing, sheet metal work, bottle or scrap storage, rubbish collection or recycling, motor body building, fish processing or meat processing;
- no noise associated with the home occupation activity shall be discernible from other sites on any Sunday, any public holiday, outside of the hours of 8:00 am – 5:00 pm Monday to Friday or 8:00 am – 1:00 pm Saturday.

Health Care Activity

It is a permitted activity under Rule 4.2.1(3) of the Operative District Plan to use land or buildings for the provision of services relating to the physical and mental health of people providing that it excludes the overnight accommodation of patients.

These permitted baselines are considered of relevance and applied to the assessment below.

Character and Amenity

The proposed wellness centre occurring within the existing residential unit envelope, retaining its physical form and appearance, will not detract from the immediate surrounding environment of Albany Street consisting mainly of residential units.

The proposed business style of the wellness centre offering one-on-one wellness services to clients falls under the definition of health care activity, a permitted activity in the Residential B Zone. It provides both a physical and mental service to people. The proposal has capped the number of clients to be no more than 10 clients a day, offering a small scale activity in the residential neighbourhood. No high noise generating activities are proposed, and the noise limits in the District Plan will need to be complied with.

Home occupation allows activities to be undertaken between 8:00am to 5:00pm. The applicant proposing to have one-on-one appointments and classes after 5:00pm till 9:00pm. The proposal activities are being undertaken in the hours where normal household noise is anticipated in a residential environment. It is expected that in a residential unit there is noise in the morning and night associated with before and after worktimes, the coming and going from residential units.

The wellness centre services provided will generate vehicle movements to and from the subject site, an anticipated occurrence in the existing throughfare nature of Albany Street. Waka Kotahi has defined Albany Street as a secondary collector with the AADT movements being 1,107. Compared to the adjacent urban street, Canning Street that provides connection to Broughton Street and Ardwick Street, Waka Kotahi establishes the AADT movement of vehicles is 445. The additional vehicle movements along Albany Street will be minimal and not generate an adverse effect on the immediate

surrounding neighbourhood. Any adverse effects on the character and amenity of the residential area will be less than minor.

The practice of sound healing will have gentle chimes from the equipment used. This equipment will only be used during contemplation, which will be limited to 8am-5pm Mon-Fri, and 8am-1pm on Saturday. Noise coming from this service will not be no more than minor on the environment.

The business offers group classes in the evening to a maximum of seven clients. The evening classes are proposed to be inside, to mitigate noise effects of the classes. The applicant has advised that the classes that are proposed to be undertaken in the last of the opening hours, will be individual client based. These will be quieter than the group-based activities, reducing the noise effect on the immediate surrounding neighbours, where noise later at night is reduced.

The group classes proposed to occur will involve music and noise associated with dancing and talking. The classes will be conducted inside the building and no later than 8:00pm. The applicant has advised that they will ensure that there is practices in place such as closing windows and doors during noisier activities, reminding clients to be quiet when leaving the building. This will provide mitigation effects to any noise associated with the services on the immediate surrounding environment. Any adverse effects from the noise from these activities will be less than minor. Note that no application has been made to breach the district plan noise limits.

Part of this business will involve providing services (health care) to people who cannot travel. The practitioner will drive to these clients own residence to provide services in their own vehicle parked at wellness centre. Supplies will be loaded from the centre and taken to each client. Going to clients homes will ensure that additional help by caregivers is available for the client during the appointment. The small scale and temporary nature of the applicant traveling in a vehicle to a person's house from the wellness centre to provide health care related services provided will not create adverse effects on the character and amenity of the residential area.

Overall, adverse character and amenity effects on the wider environment are considered to be less than minor.

Clients at the wellness centre will have off street parking provided in the existing driveway. In addition, the centre wants to promote clients walking and biking to the site through offering clients discounts to services at the wellness centre. Albany Street is a residential street that provides throughfare connection to both Ardwick Street and Broughton Street. Due to the function of this street providing connectivity to surrounding residential streets, higher volumes of traffic is not an uncommon occurrence on the street. The adverse effects of vehicle movements to and from the wellness centre will be no more than minor.

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.

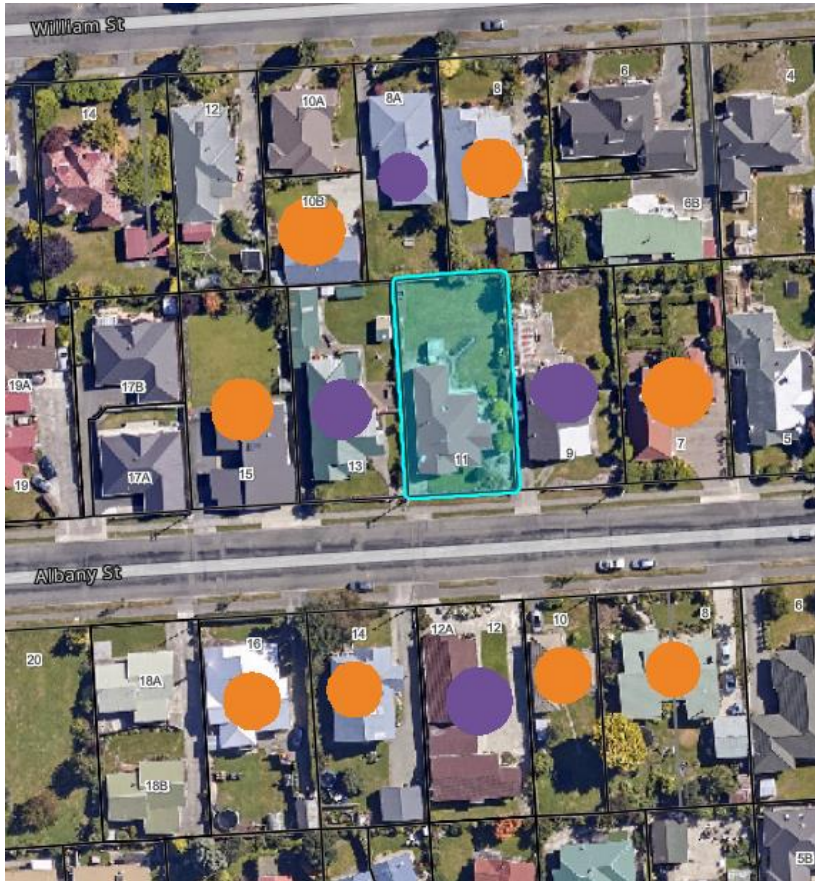


Figure 3: Surrounding neighbours to the subject site. (Source: GIS Maps).

The purple dots in figure 3 are the written affected party approvals that have been received as part of the application and therefore adverse effects against these properties have been disregarded. The orange dots represent neighbours who are assessed below. As only the occupier of 8A William Street as provided approval, not the owner, effects on the owner of that property are also assessed below.

8, 10, 14 and 16 Albany Street

These properties are located across Albany Street to the south of the subject site. These properties are separated by the wide road and vegetation in front of each of the residential units. The separation distance, and fact that most of the proposed activities will generally occurring inside the residential unit, help mitigate effects of the activity. No physical changes to the site are proposed, and it will still resemble a house. The number of customers on site at any one time will generally be limited one (for 1:1 sessions) and group session will be contained to 7 people. It is considered that any adverse effects on the owners and occupiers of these properties will be less than minor.

7 and 15 Albany Street

These properties are located on the same side of Albany Street and separated each by a residential unit to the subject site. The scale of the proposal is limited, and the separation between the subject site and these properties provides mitigation to any noise, character or amenity effects from the activity. The traffic associated with the clients coming and going from the wellness centre will not be noticeable from the already busy nature of Albany Street where vehicle movements are a common occurrence.

Overall, effects will be less than minor on the owners and occupiers of these properties.

8, 8A and 10B William Street

These properties share a common boundary along the north boundary of the subject site. The separation of the existing garden of the subject site between these properties and the activities proposed to be undertaken inside will mitigate the noise associated with the activities of the wellness centre. Externally the physical form of the residential unit is remaining and will not represent a wellness centre. Maximum number of persons and hours of operation further provide mitigation. While the garden will be used during the day, it is not proposed to be used in the evening. Any adverse effects associated with the proposed activity on these 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 4 of the District Plan.

3.3 Objectives

- (1) Maintain and enhance the amenity values of the various localities within the District whilst respecting the different values and characteristics that exist within each area.*
- (2) Ensure that the effects of land use activities do not adversely affect the quality of the environment and are compatible with the characteristics and amenity values of each locality.*

3.4 Policies

- (1) Establish zones that reflect the characteristics and amenity values of the area.*
- (2) Control the adverse effects of land use activities on the environment*

The proposed wellness centre being established in an existing residential dwelling within a residential area will not alter the characteristics and amenity of the residential zone. The physical appearance of the residential unit will remain, not deterring visually from the established environment of residential units. The activities proposed to be undertaken within the residential unit will not adversely affect the quality of the residential environment as the services are appropriate in nature and limited in scale. In this respect it is compatible with the residential characteristics of the locality. The application is considered to be consistent with the objectives and policies of the District Plan.

7. PART 2 OF THE RMA

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

The proposed activity occurring at the subject site to operate a wellness centre promotes sustainable management of natural and physical resources. The wellness centre will enable the wider community a business that provides for their social and cultural wellbeing that promotes health and wellbeing for the local community.

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

8. DECISION ON RESOURCE CONSENT

Pursuant to Section 104B of the RMA, consent is **granted** to establish and operate a wellness centre in a residential unit subject to the following conditions imposed pursuant to Section 108 of the RMA:

Consent Conditions

1. The proposal shall be undertaken in general accordance with the application made to the Council on the 14.09.2023, the additional information provided on the 27.09.2023 and held electronically by Council under file reference LU23073.
2. Operating hours for the activity are restricted to the following:
 - Monday – 7:00am – 9:00pm
 - Tuesday – 7:00am – 9:00pm
 - Wednesday – 7:00am – 9:00pm
 - Thursday – 7:00am – 9:00pm
 - Friday – 7:00am – 9:00pm
 - Saturday – 7:00am – 1:00pm
3. There shall be no more than ten (10) clients per day to the site.
4. Classes run at the Wellness Centre shall have no more than seven (7) attendees at any one time.
5. All activities occurring between 5:00pm and 9:00pm shall be inside. Windows and doors shall be shut during this time.
6. Only one therapist can provide mobile services to clients who cannot access the wellness centre.
7. A complaints register is to be held on site to record any complaints held against the noise associated with the wellness centre. Within five working days of receiving any complaint the consent holder shall advise the Gore District Council of the complaint and appropriate details from the complaints register.
8. Pursuant to section 128(1) of the Resource Management Act 1991, Council may review the conditions of this consent at or within 12 months of any anniversary of the date of consent, for the following purpose:
 - a. To deal with any adverse effect on the environment which may arise from the exercise of the consent should the noise coming from the activity become an issue;

Advice Notes

1. This resource consent does not constitute as a Building Consent under the Building Act 2004. You should consult with the Building Control Manager of the Gore District Council to obtain information on any Building Consents required to undertake development.
2. Any signage is to be provided in accordance with the requirements set out in rule 4.10.1(c) as a permitted activity.
3. Noise associated with the wellness centre is to be in accordance with the requirements set out in Rule 4.5.1 of the District Plan.

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.

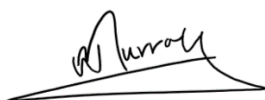
The Council will contact you in due course to arrange the required monitoring. The Monitoring Officers time will be charged to the consent holder. It is suggested that you contact the Council if you intend to delay implementation of this consent or if all conditions have been met.

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.

Prepared by



Werner Murray
Consultant Planner

Decision made by



Katrina Ellis
Delegated Authority

Appendix A: Approved Plans

APPENDIX A – APPROVED PLANS

