

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

Resource Management Act 1991

Application reference	SC 23067
Applicant	Keith and Tania Ross
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to undertake a two-lot rural subdivision; and Land use consent for a yard setback breach.
Location	322 Duthie Road, Upper Charlton
Legal Description	Part Lot 1 DP 12413
Activity Status	Restricted Discretionary
Decision Date	27 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 Werner Murray, on 27 October 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 by Werner Murray, on 26 October 2023 under delegated authority pursuant to Section 34A of the RMA.

1. THE PROPOSAL

The applicant proposes to subdivide Part Lot 1 DP 12413 and Section 1 SO 11571 creating proposed Lots 1 and 2 (Figure 2). The proposed subdivision comprises:

- Lot 1 being 2.48 hectares. Proposed Lot 1 contains an existing dwelling and associated accessory buildings (Refer to Figure 2). Access is via an existing formed vehicle crossing off Duthie Road.
- Lot 2 being 38.07 hectares. Proposed Lot 2 will be used for rural purposes, generally pastoral farmland and areas of tree plantation. There are existing sheds and farm service buildings, which are intended to retain the existing production farming land use. Lot 2 will utilise the existing vehicle access onto Duthie Road, with Right of Way easement A as indicated on the scheme plan. Proposed Lot 2 is anticipated to retain rural land use in future.

The land use assessment considers non-compliance regarding Yards as it relates to the proposed allotment boundaries. Land Use Consent is sought for an existing woolshed situated on proposed Lot 2, which will be located approximately 32m from the future boundary shared by proposed Lots 1 and 2 (Refer to Figure 2). The woolshed may contain animals, predominantly for seasonal shearing.

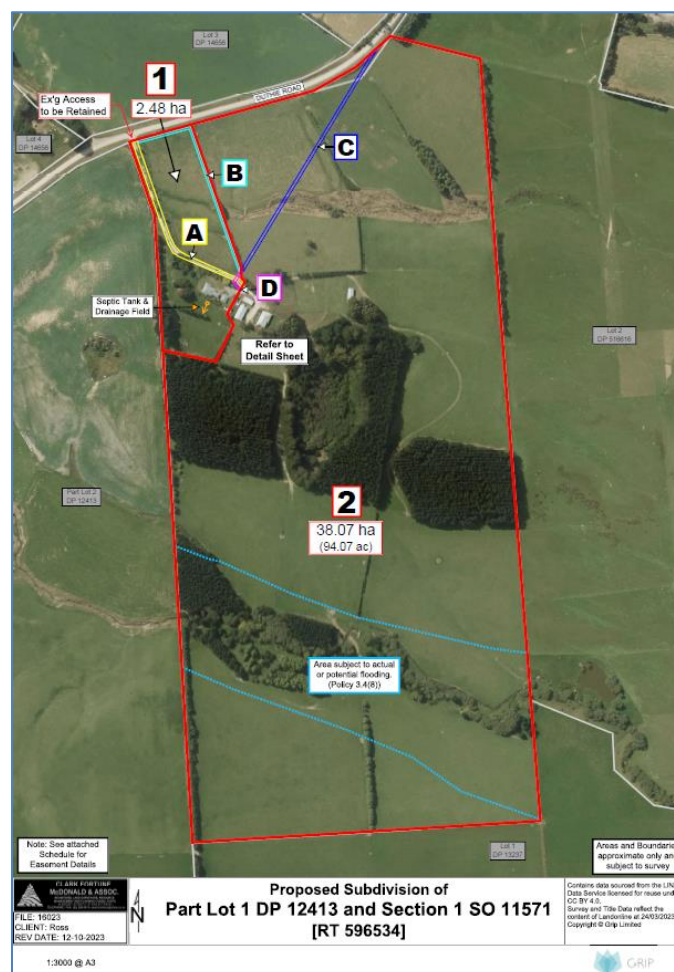


Figure 1. Proposed Scheme Plan

Access

Proposed Lots 1 and 2 will retain the existing vehicle access onto Duthie Road. Duthie Road an unsealed low volume local access road which is a boundary road between Gore and Southland District's. The road is maintained by the Southland District Council. Duthie Road rises steeply from the southwest to the property west boundary then slightly falls to the northeast. There are gentle horizontal curves on both approaches. A 100kph speed restriction applies to the road. Operating speeds of traffic are reduced by the combination of the gravel surface, horizontal and vertical curves. It is estimated to be approximately 60kph to the south and 70kph to the north.

Proposed Lot 2 will utilize the existing vehicle access onto Duthie Road over Easement 'A' over Lot 1 providing use of the existing gravel track to the existing farm sheds.

Gore District Councils Senior Roading Asset Manager Murray Hasler noted the proposed location of the existing single access provides acceptable sight distance based on the operating speed on the southern approach. A recommendation has been made that the vegetation in the road berm between the power pole number #02908 and the access be removed to achieve the required sight visibility to the east of the access.

The applicant has accepted the recommendations by Gore District Councils Senior Roading Asset Manager Murray Hasler. Consent conditions are included regarding the recommended vegetation removal, that have been accepted by the applicant.

Servicing

The existing dwelling on proposed Lot 1 is currently serviced for potable water supply via rainwater roof/collection tanks; on-site septic tank, sewage and stormwater disposal systems that are contained within the lot boundary, and existing wired telecommunication services and a power supply from networks extending from Duthie Road corridor. Both lots have existing power supply to the existing buildings.

Proposed Lot 2 does not contain or is intended to contain a habitable building and/or a residential unit. The lot is anticipated to retain the existing rural and farming land use; however, a dwelling can be constructed in future as a permitted activity. The applicant has demonstrated that services can be provided for a future dwelling on Lot 2. The area is appropriate for on-site disposal of wastewater and stormwater runoff that is expected to be fully contained within the proposed boundaries. Potable water can be collected via on-site rainwater collection tanks for future dwellings and firefighting supply. There are existing telecommunications (landline and wireless) services available within the Duthie Road corridor, with 4G wireless coverage for both Spark and OneNZ networks.

The detailed design of these services will be assessed at the time a building consent is submitted to the Council for future development on the individual lots.

The applicant has provided confirmation from PowerNet that the existing lines can supply both lots (reference email correspondence from Fraser Neil – Operations (Distribution) Project Manager, dated 4 September 2023). *PowerNet have been consulted regarding the potential for easements in gross to be required to protect that existing power supply – any easements found to be necessary will be created at the time of survey.*

Easements

The Subdivision Scheme Plan includes a Schedule of Proposed Easements, as follows:

Proposed Easements

- Area 'A' over proposed Lot 1 providing Rights of Way for proposed Lots 1 and 2 and the Benefitted Lot 2 Hereon;
- Area 'B' over proposed Lot 1 providing Rights to Convey Water for proposed Lot 1, and the Benefitted Lot 2 Hereon;
- Area 'C' over proposed Lot 2 providing Rights to Convey Electricity and Telecommunications for proposed Lots 1 and 2, and the Benefitted Lot 1 Hereon;
- Area 'D' over proposed Lot 1 providing Rights to Convey Electricity and Telecommunications for proposed Lots 1 and 2, and the Benefitted Lot 2 Hereon.

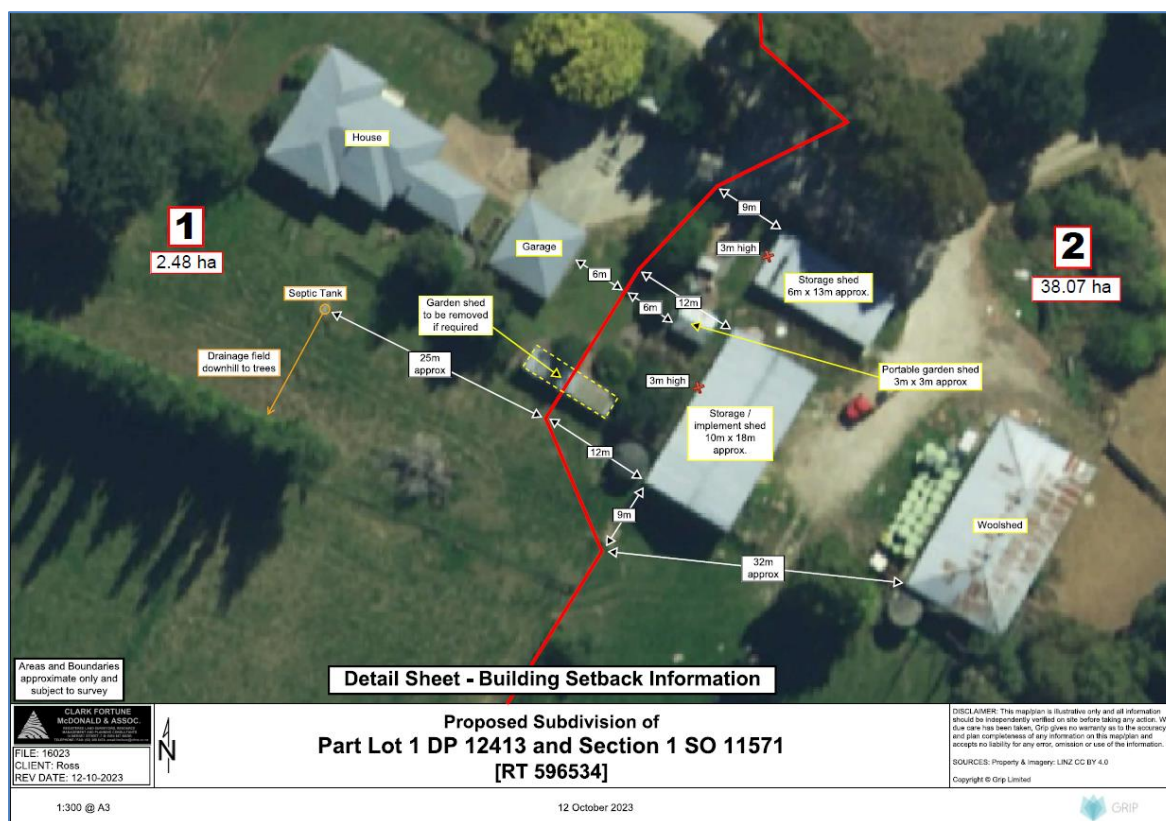


Figure 2. Submitted Detail Sheet showing existing Building Setback Information

2. SITE DESCRIPTION

The subject site is legally described as Part Lot 1 DP 12413 and Section 1 SO 11571, and is currently held in Record of Title 596534, with an area of 40.55ha. The site is located in the Rural Zone under the Operative Gore District Plan and is utilised for rural and rural lifestyle purposes. The subject site is located approximately 9.2km to the west of the Gore Township. The immediate surrounding area along Duthie Road is rural in character and use. It includes medium and large sized farming lots with some containing existing dwellings.

The subject site has frontage to Duthie Road, as shown in Figure 3. It contains an existing dwelling with a number of accessory buildings, all located within the north-east portion of the subject site. The dwelling is currently serviced for domestic purposes in terms of water supply, wastewater, stormwater, electricity, and telecommunications. The buildings on site are accessed via the existing entrance and formed vehicle crossing off Duthie Road. The remainder of the site is vacant pastoral farmland with areas of mature vegetation and tree plantation. The subject site has an undulating topography that declines towards the southern portion of the site. The Southland District is located west of the subject site and on the opposite side of the Duthie Road carriageway.

The Council's Senior Roding Operations Officer, Murray Hasler, notes that the section of Duthie Road adjacent to the site is classified as a unsealed low volume local access road, rises steeply from the southwest to the property west boundary then slightly falls to the northeast.

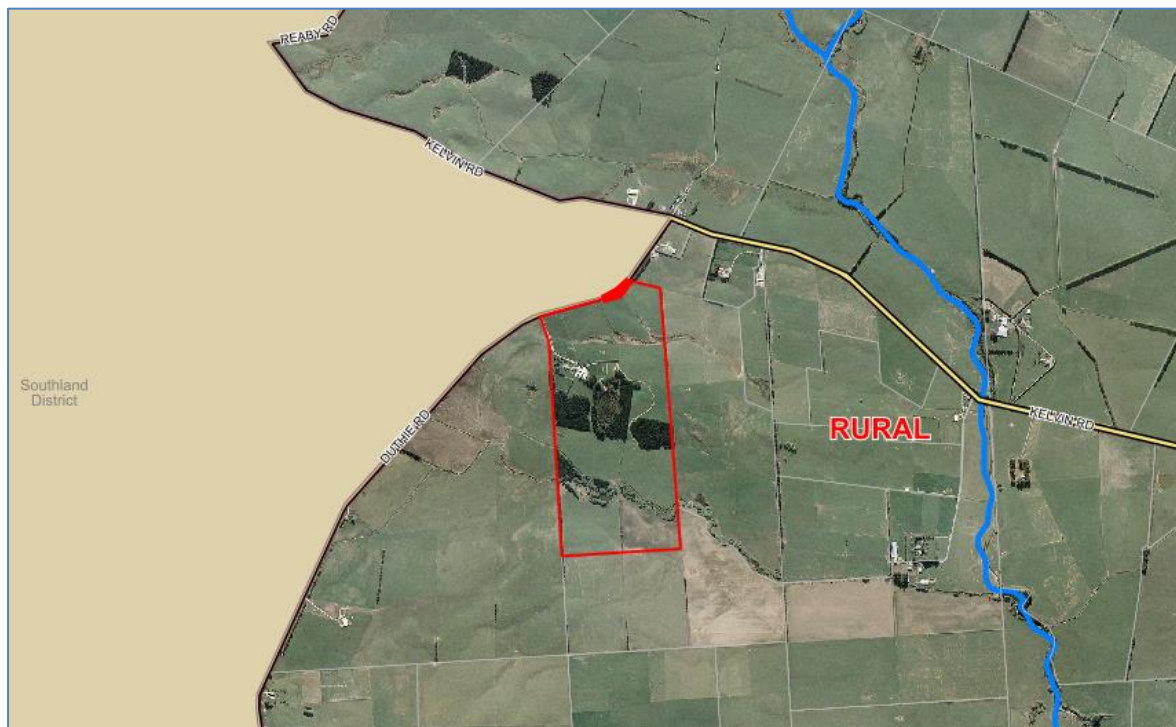


Figure 3. Aerial image of subject site (Source: GDC IntraMaps)

The Gore District Councils mapping system and Environmental Southland flood mapping identifies the southern portion of subject site as subject to actual or potential flooding (Policy 3.4 (8)) (refer to Figure 4). It identifies the liquefaction risk as 'Negligible' (grey) within the northern portion of the subject site. The liquefaction risk is 'Medium' (beige) within the southern portion of the site (refer to Figure 4). The site is not identified in the Selected Land Use Sites Register ('SLUS') as an actual or potentially contaminated site. The subject site has been identified as containing 41ha of LUC 3 High Class Soils. There are no known natural features and landscapes or historic heritage features on the site. There are no high voltage powerlines located in the immediate vicinity of the allotments.

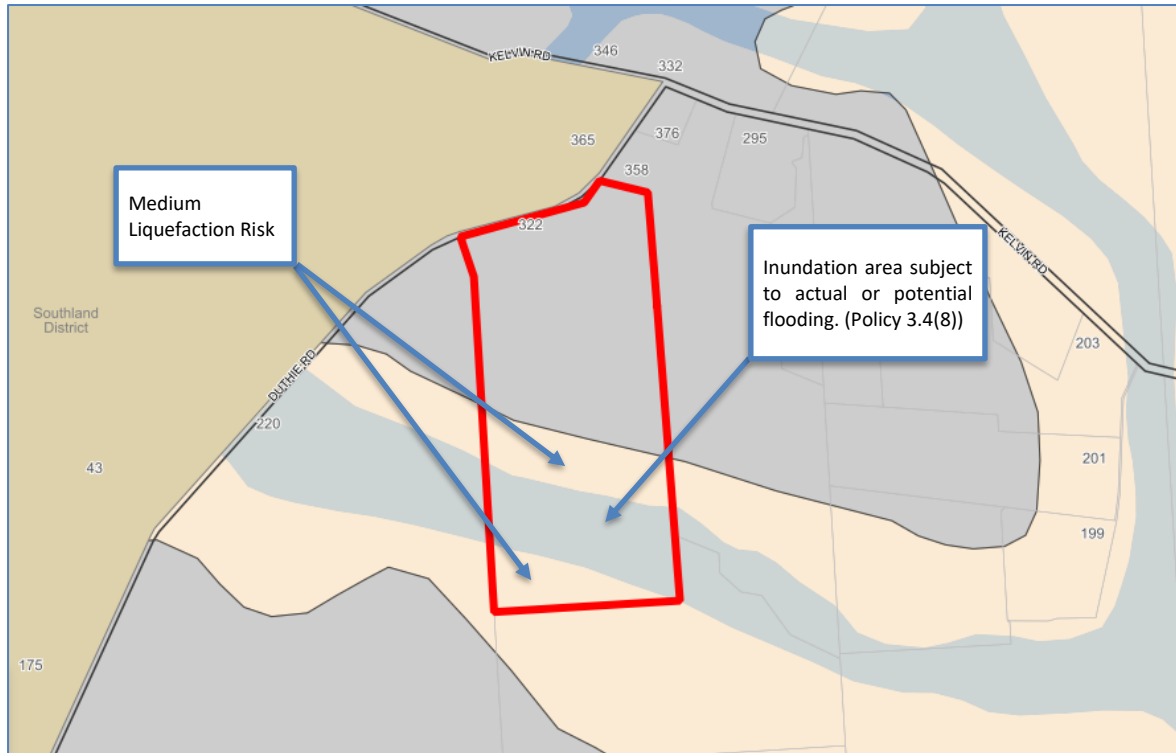


Figure 4: Aerial image of subject site showing Liquefaction and Inundation overlay (Source: GDC IntraMaps)

3. ACTIVITY STATUS

3.1 Gore District Plan

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

- A **Restricted Discretionary** activity resource consent pursuant to Rule 8.10(4)(b) to undertake a two-lot subdivision of the site, where each lot 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

Land use

- A **Restricted Discretionary** activity resource consent pursuant to Rule 4.7A.1.4 for an existing woolshed (a building associated with agricultural use within which animals are present) on Lot 1 which is located within 50m of the boundary of Lot 2 (standard Rule 4.7A.1(2)(c)(ii)).

Overall, the proposal requires consent as a **Restricted Discretionary** activity.

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

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

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 no 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 given.

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 subdivision requires resource consent, there is no permitted baseline.

Suitability of the allotments and future land use

The subdivision layout is consistent with what the District Plan enables in the Rural Zone.

Proposed Lot 1 and proposed Lot 2 meet the 2ha minimum area specified in the Gore District Plan. Proposed Lot 1 is 2.48ha, while the proposed Lot 2 will be 38.07ha. Proposed Lot 1 can continue to accommodate the existing rural residential activity. It is anticipated that proposed Lot 2 will retain the rural land use for agriculture activities such as pastoral farming and tree plantation. It is noted that Lot 2 can accommodate a future residential unit and the existing farm service buildings. Any future development is expected to comply with the Performance Standards in the District Plan for the Rural Zone and associated effects on the surrounding environment are considered to be less than minor. Future developments are required to adhere to the District Plan bulk and location standards, specifically boundary rules which ensure effects on neighbouring properties are acceptable.

The application and scheme plan does not include a building platform on proposed Lot 2, however given the size of the lot and the intended use of the farming land use is to be retained, it is considered unnecessary to require a fixed area for a building platform in order to reduce effects. The southern portion of proposed Lot 2 is identified as being subject to actual or potential inundation, however this area is clear of the proposed boundary and existing buildings by approximately 200m and 300m respectively. The proposed lots include ample areas of high ground for stock safety and appropriate building areas. Environment Southland have reviewed the proposal and raised no concerns given the availability of

Any future development on proposed Lot 2 will be subject to the requirements of the Gore District Council Subdivision and Land Development Bylaw 2019 (Bylaw) and the Gore District Plan and will be assessed at the building consent stage.

The proposed lots are considered to be consistent with the anticipated type of subdivision within the Rural Zone. It is considered that the size and configuration of the proposed allotments are appropriate to be used for rural lifestyle or rural purposes and that any adverse effects on the wider environment will be less than minor.

Suitability of land for subdivision – Natural Hazards and Other Hazards

The Gore District Council's mapping system identifies the southern portion of the site as subject to actual or potential flooding hazard. The existing buildings within proposed Lot 2 are not habitable and are located well outside the flooding hazard. The proposed boundaries do not dissect this area of land, alter the land use, or increase the potential density of the sites.

The Gore District Council's GIS mapping system identifies the liquefaction risk being approximately 22.92ha of the site as 'Negligible'. The southern portion of the subject site specifically proposed Lot 2 being approximately 17.58ha of liquefaction risk identified as 'Medium'. The proposed subdivision will not alter the land use while proposed Lot 2 is anticipated to retain its productive use and will therefore not exacerbate the risk of inundation upon the wider environment.

The subject site is not identified as a HAIL site and therefore any risk of the spread of contamination to the wider environment is less than minor.

The nearest high voltage powerlines are located 2.1km to the south-east. The powerlines are an adequate distance away so as to not be affected by the proposed lots.

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 are no Council reticulated services located in the Rural Zone. Proposed Lot 1 contains an existing dwelling, and no changes are proposed to the existing servicing arrangements. Proposed Lot 1 has existing on-site services for domestic purposes in terms of water supply, wastewater, stormwater and that these on-site services will be retained.

As proposed Lot 2 will retain the existing farming land use, a potable water supply is not required and is not anticipated to have any domestic wastewater and stormwater discharges. However, proposed Lot 2 is over 2ha in area and a dwelling could be constructed in future as a permitted activity. The applicant has demonstrated that services can be provided for a future dwelling on Lot 2. Potable water is proposed to be supplied via onsite rainwater collection. Wastewater disposal will be via an on-site septic tank and a drainage field. Stormwater runoff will be disposed of to the ground and is expected to be fully contained within the proposed boundaries. The detailed design of these services will be assessed at the time a building consent is submitted to the Council for future development on the lot.

The Council's Building Control Manager, Russell Paterson, has reviewed the application and noted that the proposal is acceptable to meet the intention of C/AS2 Protection from Fire, for Lot 2. It is noted, the minimum fire separations are relevant in this case to protect each lot from the other.

Proposed Lot 2 is no longer associated with the existing dwelling on the subject site, so is assessed under C/AS2. The buildings associated with Lot 1 are assessed under C/AS1 and can be as close as 1m from any boundary. A recommendation has been made that the existing garden shed that crosses the boundary line without fire rated protection will need to be removed (Refer to Figure 2 – Detail Sheet). Consent conditions are included regarding the recommended garden shed removal, that have been accepted by the applicant.

A researched and designed wastewater and stormwater system will need to be provided with any future building consent application. The rainwater collection system will need to include treatment facilities and an approved firefighting water supply and site services design. The details of the above requirements will be included as consent notice conditions, which have been accepted by the Applicant.

In terms of telecommunication services and power, there is power supply to the existing buildings on the site across both proposed lots. There are existing telecommunications services (low-speed copper only) available within the Duthie Road corridor. Wireless communications are available for future telecommunications. The applicant has provided confirmation from PowerNet that its network can be extended to provide connections to proposed Lots 1 and 2 (reference emails from Fraser Neil – Operations (Distribution) Project Manager, dated 4 September 2023).

Overall, proposed Lots 1 and 2 can be feasibly serviced. Any potential adverse effects on the wider environment in relation to servicing will 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 can be 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 any areas shown as having identified ecological or cultural values.

All existing buildings are adequately separated from the area subject to actual or potential flooding. Proposed Lot 2 is anticipated to utilise the land for the existing pastoral and tree planting activities. No additional buildings and/or residential units are proposed on Lot 2. It is considered that any impacts on water quality, including groundwater would be less than minor.

Effects on traffic

In the assessment conducted by Murray Hasler, Roading Asset Manager at the Council, it was observed that the road is an unsealed, low-volume, local access road, located on the boundary between Gore and Southland Districts. The road is maintained by the Southland District Council and features steep rises and falls along with gentle horizontal curves. A 100kph speed restriction applies, but the gravel surface, along with the road's geometry, results in estimated operating speeds of approximately 60kph to the south and 70kph to the north.

In terms of the application assessment, the Gore District Council Subdivision and Land Development Bylaw's access standards were applied to the situation. It was proposed that the existing single access point would serve both proposed lots. While sight distances were acceptable on the southern approach, Mr. Hasler's assessment found that there was a need to remove vegetation

within the road berm between the access point and power pole #02908 to achieve the necessary visibility to the east of the access.

The assessment and recommendations of Mr Hasler have been adopted.

In light of these considerations and given the applicants acceptance of the recommended conditions, Mr. Hasler recommended approving the application from a transportation perspective.

Provision of easements

- Area 'A' establishes Rights of Way across proposed Lot 1, facilitating access for proposed Lots 1 and 2, as well as the Benefitted Land being Lot 2.
- Area 'B' designates Rights to Convey Water across proposed Lot 1, for proposed Lot 1 and the Benefitted Land being Lot 2.
- Area 'C' outlines Rights to Convey Electricity and Telecommunications across proposed Lot 2, benefiting proposed Lots 1 and 2, and the Benefitted Land being Lot 1.
- Area 'D' designates Rights to Convey Electricity and Telecommunications across proposed Lot 1, benefiting both proposed Lots 1 and 2, and the Benefitted Land being Lot 2.

Any additional easements will be determined at the time of survey. 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.

Land Use

The non-compliant woolshed on proposed Lot 2 is located 32m from the common boundary shared with proposed Lot 1. The creation of the boundary between them results in the setback breach if animals are housed in the shed. The proposed yard non-compliance of the existing woolshed on the new internal boundary will not result in any adverse effects on the wider environment, with potential effects being internal to the site(s) only. The yard breach has existing screening measures in place by existing vegetation and existing detached accessory building on the site. This will ensure any privacy and amenity effects between both the proposed lots, and beyond the site boundaries are less than minor.

Animal housing facilities can potentially create noise and unpleasant odours, primarily during intermittent periods aligned with the agricultural calendar. The presence of animals and agricultural activities is anticipated in the Rural Zone, offering a lower level of amenity to residential living. Moreover, the existing woolshed can be easily identified by future property owners through due diligence. In summary, the nuisances and reverse sensitivity effects are considered to be minor.

Conclusion: Effects On The Environment

On the basis of the above assessment, in terms of s95D, it is assessed that the proposed subdivision 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.

95E(3)(a) stipulates that those individuals who give written approval to a proposal cannot be considered to be an “affected party”. No persons have given written approval to the application, however the applicants also own the property at Lot 2 DP 516616. As such, written approval is inferred, and effects on these properties have been disregarded.

Taking into account the exclusions in section 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.

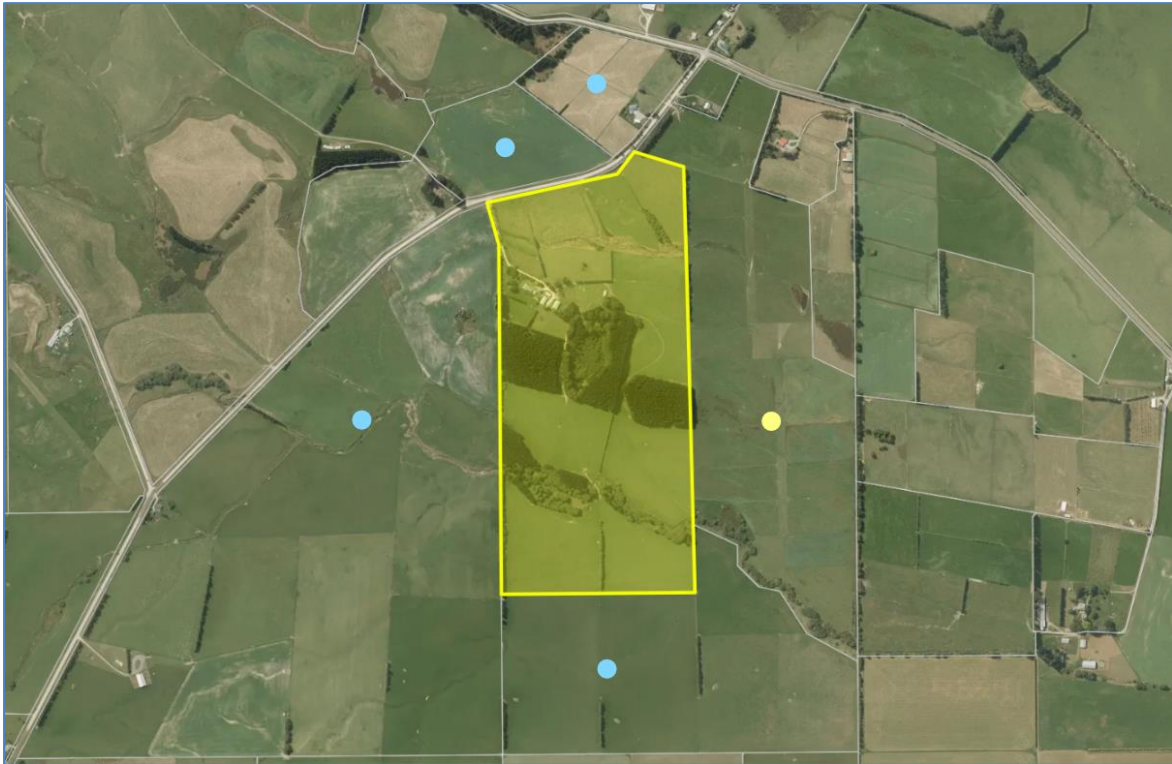


Figure 4: The neighbouring properties identified by blue circles. The yellow circle indicates land owned by the applicants (Source: Grip Maps)

356 Duthie Road (Lot 2 DP 14656) and Lot 3 DP 14656

- 365 Duthie Road (Lot 2 DP 14656) and Lot 3 DP 14656 are located on the north side of the subject site, across the Duthie carriageway approximately 100m from the closest neighbouring dwelling. The aforementioned sites are 6ha to 7ha rural lots, utilised for rural and rural lifestyle activities.
- The proposed subdivision will not result in any changes to the existing lawfully established situation experienced by the occupants at 356 Duthie Road and the existing farming activity on both lots.
- As such the proposed subdivision is not expected to generate adverse visual amenity and character effects towards the north. The proposal is not expected to have any adverse impacts on the established environment or surroundings.

Lot 1 DP 13237

- Lot 1 DP 13237 located to the south side if the overall subject site, where the common boundary shared between the subject site and Lot 1 DP 13237 is occupied primarily by rural pasture.
- Lot 1 DP 13237 is an undeveloped 29.07ha rural farm lot occupied by rural pastures and areas of vegetation.
- Proposed lot 2 will maintain its existing farming land use resulting in an activity that is materially different to the existing situation. There are no proposed non-compliances

pertaining to the boundary shared with Lot 1 DP 13237. As such the proposed subdivision is not expected to generate adverse visual amenity and character effects towards the south.

220 Duthie Road (Part Lot 2 DP 12413)

- 220 Duthie Road is located along the western boundary and is an 84.90ha site used for rural activities. The common boundary between the subject site and 220 Duthie Road is occupied primarily by mature vegetation. The existing building on 220 Duthie Road is located approximately 830m from the boundary of proposed Lot 2.
- Due to the open rural landscaped views, existing rural lifestyle and farming land use on the subject site, coupled with the separation distance involved, the subdivision creates no adverse visual dominance and character effects.
- The proposed subdivision will not result in any changes to the existing lawfully established situation experienced by the 220 Duthie Road.
- There are no proposed non-compliances pertaining to the common boundary shared with 220 Duthie Road. Furthermore, there are no non-compliances created as a result of the proposed internal boundaries. Any adverse effects on the rural character and amenity experienced by persons residing on or working on 220 Duthie Road will be less than minor.

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. Therefore, the adverse effects are considered to be less than minor and there are no persons that would be adversely affected by the proposed subdivision.

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 s220 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 - Subdivision of Land 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 in Chapter 8. The size and layout of the proposed allotments are practical and appropriate for the Rural Zone. Proposed Lot 1 can accommodate the existing rural residential activity portion of the site, while proposed Lot 2 can accommodate the existing rural farmland use of the site. Overall, it is considered that the subdivision is appropriate and will not lead to adverse effects on the amenity and character of the surrounding area. Each proposed lot can also be serviced appropriately and provided with suitable access via an existing vehicle crossing on to Duthie Road.

Overall, the subdivision is considered to be consistent with the objectives and policies of the Operative District Plan.

Southland Regional Policy Statement 2017

Chapter 5 of the RPS (Regional Policy Statement) relating to Rural Land/ Soils is particularly relevant to this proposal.

Objectives

Rural 1: Sustainable use of rural land resource

Rural 2: Life-supporting capacity of soils

Policies

Rural 1: Social, economic, and cultural wellbeing

Rural 2: Land use change and land development activities

Rural 4: Loss of high value soils from productive use

Rural 5: Effects of rural land development

The proposal is consistent with the relevant objectives and policies in the Southland Regional Policy Statement (RPS), specifically the provisions contained in Chapter 5 (Rural Land/Soils). Objective RURAL.1 seeks to achieve sustainable use of Southlands rural land resources, in respect of a number of matters including (a) agriculture and primary sector activities; (b) subdivision, use and development activities; (d) the use of soil resources; and (f) on-site wastewater systems. Policy RURAL.2 seeks to manage subdivision and land development activities in rural areas of Southland in a way that maintains or enhances rural amenity values and character.

The RPS generally recognises that subdivision and land development activities in rural areas need to be managed in a manner that takes into account the potential for reverse sensitivity issues that could lead to constraints on the ability to access significant rural land resource and undertake reasonable productive uses of land.

The proposed subdivision will allow one additional lot to be created, which will enable the opportunity for proposed Lot 2 to continue to be used for rural farmland activities, while proposed Lot 1 can continue to be utilized rural residential purposes. The site comprises Class 3 soils. These soils can continue to provide for a small-scale rural activity following the subdivision. Outside of this

resource consent, proposed Lot 2 can be provided with an on-site wastewater system at the time of development. Overall, it is considered that the proposal is aligned with the relevant objectives and policies in the RPS.

National Policy Statement – Highly Productive Land 2022 (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 restricted discretionary activity subdivision and matters of discretion do not provide scope for the consideration of highly productive land. No further assessment of the NPS-HPL is required.

6.4 Other Matters

Section 104(1)(c) provides that when considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine that application.

I consider there are no other matters that are relevant to this application that need to be considered.

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. For the purpose of subsection (1)(a), an assessment of the risk from natural hazards requires a combined assessment of -

- (a) the likelihood of natural hazards occurring (whether individually or in combination); and
- (b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and
- (c) any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).

In this case, a portion of the site specifically the southern portion of proposed Lot 2 is subject to actual or potential flooding. The proposed boundaries are located outside of this hazard area. The existing residential unit and only habitable building is situated on proposed Lot 1 located approximately over 350m from the hazard prone area. The closest existing accessory farm service building located on proposed Lot 2 is approximately 340m from the hazard area. Proposed Lot 2 is anticipated to retain the existing farmland use and is not proposing additional density. Additionally, if a dwelling were to be constructed on proposed Lot 2, there is ample area of high ground for stock and suitable building locations outside the flooding hazard area. Proposed Lots 1 and 2 will have legal and physical access. The Council's Senior Roading Operations Officer, Murray Hasler, confirms that the use of the existing access is acceptable. Overall, the proposal meets the requirements of s106 of the RMA.

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 104C of the RMA, **subdivision** consent is **granted** to undertake a two-lot subdivision of the site subject to the following conditions imposed pursuant to Section 220 of the RMA:

Consent Conditions

1. The subdivision must be undertaken in general accordance with the application made to the Council, reference SC 23067, and the further information received 13 October 2023 and the following plan:
 - *Clark Fortune McDonald & Assoc., Proposed Subdivision of Part Lot 1 DP 12413 and Section 1 SO 11571 [RT 596534], File: 16023, Rev Date: 12-10-2023*
 - *Clark Fortune McDonald & Assoc., Detail Sheet – Building Setback Information, Proposed Subdivision of Part Lot 1 DP 12413 and Section 1 SO 11571 [RT 596534], File: 16023, Rev Date: 12-10-2023*
- The plans are attached at 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 any easement instrument(s) on the relevant Records of Title.
 4. Prior to subdivision certification pursuant to Section 224c, the existing garden shed which crosses the proposed boundary between proposed Lots 1 and 2 shall be removed, as shown on the Detailed Sheet plan, “*Clark Fortune McDonald & Assoc., Detail Sheet – Building Setback Information, Proposed Subdivision of Part Lot 1 DP 12413 and Section 1 SO 11571 [RT 596534], File: 16023, Rev Date: 12-10-2023*”.

5. Prior to subdivision certification pursuant to Section 224c, the vegetation within the road berm between the vehicle access and power pole #02908 will need to be removed to achieve the required visibility east of the access.
6. Prior to certification of the subdivision, 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 for registration against the Record of Title for Lot 2 to record that:
 - a) At the time of lodging a building consent for a residential unit, a rainwater collection system must be verified as being potable; this shall include provision for UV filters or UV treatment or alternative treatment provision and shall be submitted with the building consent application(s).
 - b) At the time of lodging a building consent for a residential unit, the lot is to have a specifically researched, designed, and verified system for wastewater and stormwater disposal.
 - c) At the time of lodging a building consent for a residential unit, each application is to include an approved firefighting water supply and site services design by Fire and Emergency New Zealand (FENZ) to comply with SNZ PAS 4509 and the Subdivision and Land Development Bylaw 2019.
 - d) At the time of this subdivision, a fixed-line telecommunication connection was not provided and either a fixed-line telecommunication connection or an alternative service (wireless broadband or mobile data) needs to be installed at a cost to the owner at the time that the connection is applied for.

Advice Notes

1. Any future development on Lots 1 and 2 will be subject to the requirements of the Gore District Council Subdivision and Land Development Bylaw 2019 and the Gore District Plan.
2. Any work carried out on the legal roadway requires the prior approval of the Council and the consent holder must consult with the Council's Roading 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.

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.

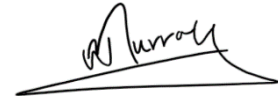
If you have any enquiries, please contact the duty planner on phone (03) 209 0330 or email planning@goredc.govt.nz.

Prepared by



Jo Skuse
Consultant Planner

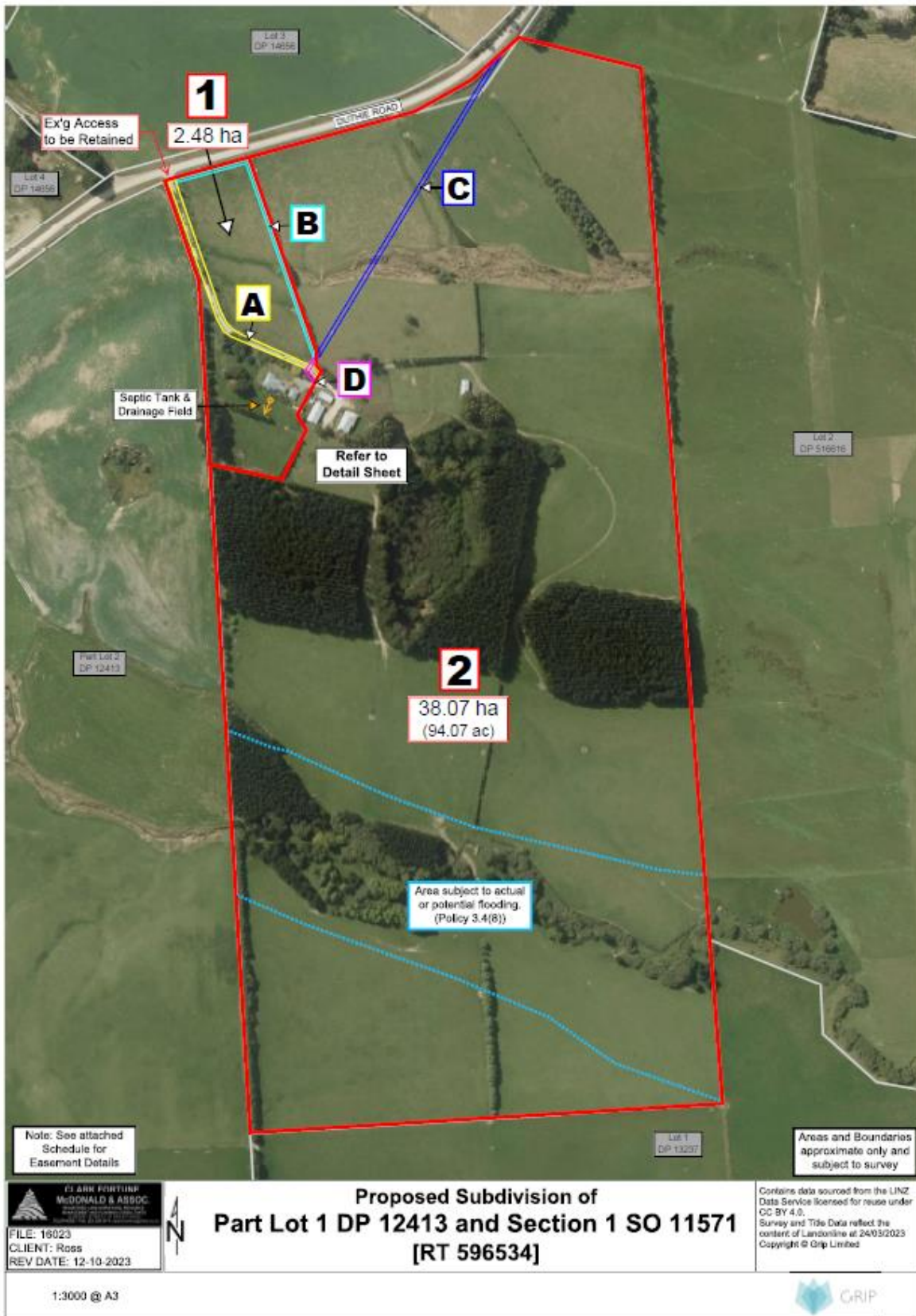
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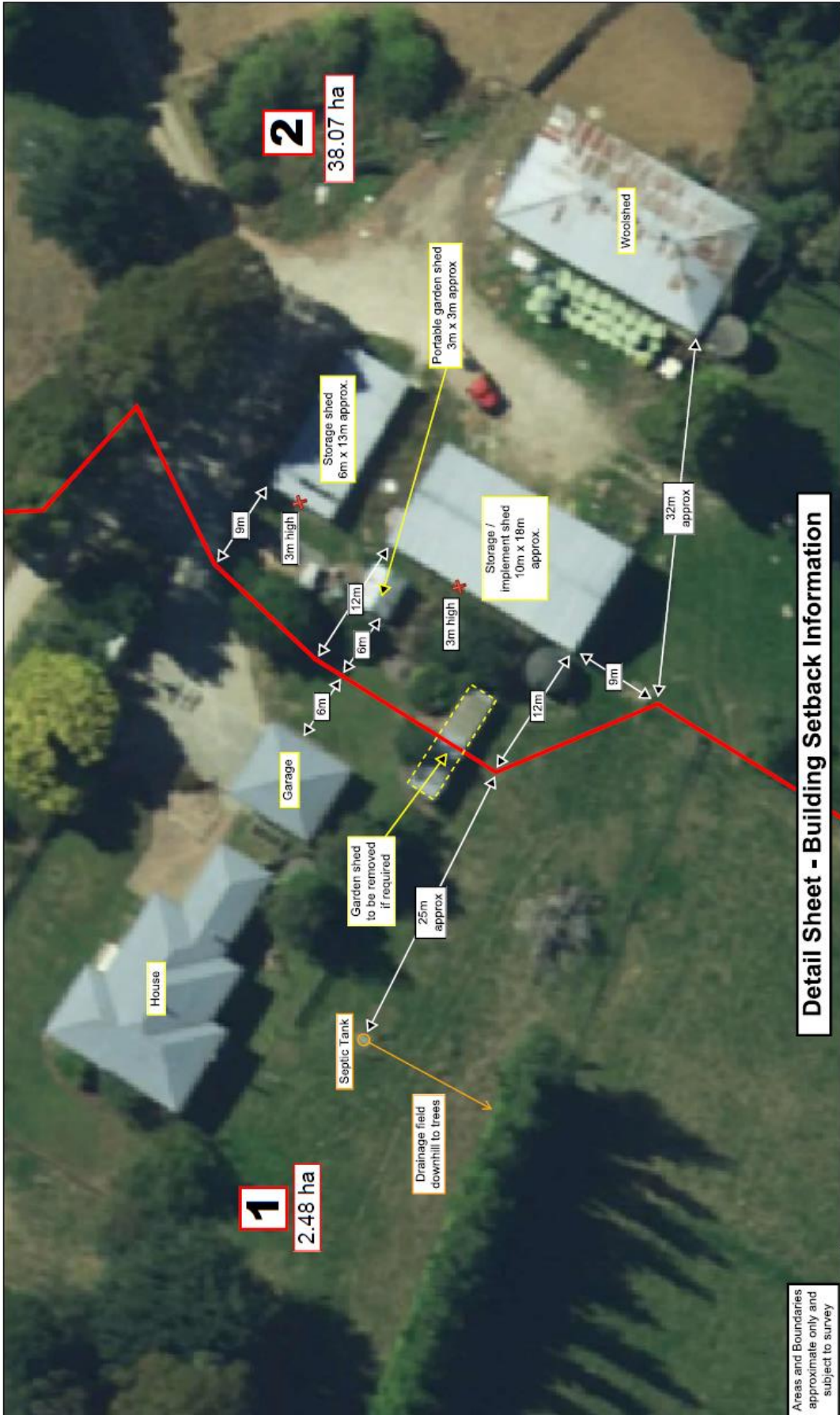


Werner Murray
Delegate

Appendix A – Approved Plan

APPENDIX A – APPROVED PLAN





Areas and Boundaries approximate only and subject to survey.

CLARK FORTUNE
MCDONALD & ASSOC.
REGISTERED PROFESSIONAL ENGINEERS
REGISTERED PROFESSIONAL SURVEYORS
REGISTERED PROFESSIONAL LANDSCAPE ARCHITECTS

FILE: 16023
CLIENT: Ross
REV DATE: 12-10-2023



1:300 @ A3

Detail Sheet - Building Setback Information

**Proposed Subdivision of
Part Lot 1 DP 12413 and Section 1 SO 11571
[RT 596534]**

DISCLAIMER: This map/plan is illustrative only and all information should be independently verified on site before taking any action. Whilst due care has been taken, Crip gives no warranty as to the accuracy and plan completeness of any information on this map/plan and accepts no liability for any error, omission or use of the information.

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12 October 2023

