

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

*S127 Change to conditions of Consents
Resource Management Act 1991*

Application reference	LU 2019/407/6 and LU23077
Applicant	Simmons Goodwill Trust and Invercargill Education Trust
Proposal	Application under Section 127 of the Resource Management Act 1991 (RMA) to amend Condition 1 of LU 2019/407 to construct a bus shelter associated with the school on site. Land use consent for an internal yard breach
Location	87 Charlton Road, Gore
Legal Description	Lot 2 DP 544388
Activity Status	Discretionary
Decision Date	27 September 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 September 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**. An updated set of conditions of LU 2019/407/5 is provided in Appendix 1 of this decision. This consent can only be implemented if the conditions in this report are complied with by the consent holder. The decision to grant consent was considered by Werner Murray, under delegated authority pursuant to Section 34A of the RMA.

1. THE PROPOSAL

Consent is sought to change Condition 1 of land use consent LU 2019/407 (as varied by LU 2019/407/1/2/3/4/5), which authorised the construction of a private school in the rural zone.

The Applicant proposes a variation seeking to authorise a change to Condition 1 of LU 2019/407 to allow for the construction of a bus shelter for the existing school on site. It is proposed to construct a 54m by 2m shelter along the western boundary of the existing access, which will be 2.5m high. The proposal has been submitted for building consent, reference BC211039.

The bus shelter will be located adjacent to the existing 1.8m high boundary fence between 87 Charlton Road and the subject site, with a setback of 0.1m. Due to this setback Fire and Emergency NZ (FENZ) approval was obtained. FENZ recommended that the west wall be fire rated to a certain extent. The Applicants have followed that advice, designing the bus shelter with full height, metal cladding, a non-combustible material. Due to FENZ comments and the actions taken from the Applicant, the Building Department approved a waiver for this reduced setback. This has been documented on Council Files in the 'approved plans and documentation' under the CCC issued for BC211039.

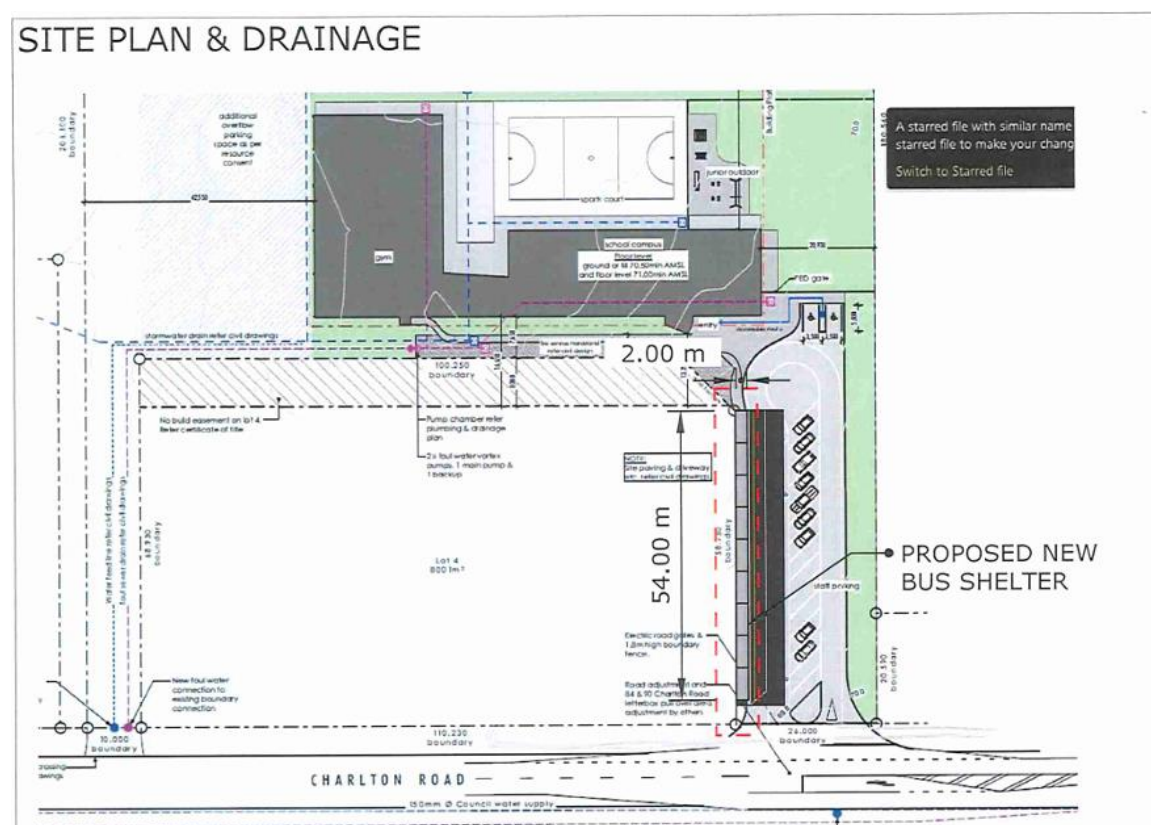


Figure 1: Proposed site plan

The Applicant seeks to change Condition 1 of LU 2019/407, as follows (amendments are shown in **bold and underlined** and deleted wording denoted by ~~strikethrough~~ text):

1. The proposal shall be undertaken in general accordance with:
 - (a) the application dated 12/02/2019, and further information provided by emails dated 15 March 2019, 29 April 2019, 13 May 2019 including the Preliminary Site Investigation of 89 Charlton Road by e3Scientific Limited Dated April 2019, and

(b) the scheme plan titled “Four Lot Subdivision, Charlton Road, East Gore, Gore” prepared by Bonisch Consultants Job No 6762 Rev J dated 16/03/2021 and attached as Appendix 1, **and**

(c) the application submitted on the 5 September 2023 for the construction of a bus shelter and the following plans:

i. **The design set titled ‘New Bus Shelter – OneSchool Gore – prepared by Design Engineering dated May 30 2023 and attached as Appendix 1.**

No other change to the proposal consented under LU 2019/407 is sought. Appendix 1 of this report outlines the full revised consent conditions for LU 2019/407.

2. SITE DESCRIPTION & CONSENT HISTORY

Consent History

On 28 May 2019 the consent holder obtained approval for the subdivision of the land at 89 Charlton Road, Gore being Lots 17-18 Deposited Plan 181 (held in Computer Freehold Title Register SLB4/1225). SC 2019/406 permitted the creation of four lots, and a land use consent (LU 2019/407) to establish a school on one of the lots (proposed Lot 2).

On 19 August 2019 approval was granted to vary the conditions of consent for both the subdivision and land use consents, although the only change made was to amend the timing of when the access to the school site was to be constructed.

Additional changes were made to the conditions of consent by way of a decision dated 5 February 2021 to shift the school building platform closer to the eastern boundary of proposed Lot 2, and to increase the width of the access to proposed Lot 2, with a resultant decrease in the area of proposed Lot 4.

Further changes to the conditions were sought by way of an application dated 19 February 2021 but that was subsequently withdrawn. It was replaced by an application dated 17 March 2021 seeking again to vary the subdivision consent to include an easement for a right of way over proposed Lot 1 in favour of proposed Lot 3. The purpose of the easement is to allow the future purchasers of Lot 3 access over an existing bridge to enable access to the western end of their property.

On 14 April 2021 approval was granted to widen the width of the access to proposed Lot 2 to allow for stormwater drainage from the access alongside the parking and traffic lanes. In addition, Condition 1 of the land use consent was amended to facilitate future processing of the consent after consultation with the agent of the consent holder at the time.

Site Description

The subject site is located at 87 Charlton Road. The site surrounds 89 Charlton Road, that has an existing dwelling and accessory sheds. There are two existing gated accesses to the site from Charlton Road. Overall, the site area is approximately 2.19 hectares located in the Rural zone. The private school has been established along with a playing field, associated carpark, and manoeuvring areas.

The Council's mapping systems identifies part of the site is subject to actual or potential flooding, in the northwest corner. The existing buildings on site and proposed bus shelter are not located near to this inundation overlay. The site is identified by the Council's mapping systems the liquefaction risk across the site as 'negligible'.

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



Figure 2: Subject site outlined in red.

3. ACTIVITY STATUS

3.1 Resource Management Act

It is proposed to change condition 1 of the land use consent LU 2019/407

- A **discretionary** activity consent pursuant to section 127(3)(a) of the RMA, which deems any application to change or cancel consent conditions to be a discretionary activity. It is proposed to amend condition 1 as detailed in Section 1 of this report.

3.2 Operative District Plan

- A **restricted discretionary** activity pursuant to Rule 4.7A.1(4) as the proposal breaches standard 4.7A.1(2) in regard to yards, as the proposed bus shelter will encroach the 6m yard, measured from the internal boundary. It is proposed to establish the bus shelter 0.1m from the western boundary.

Overall, the activity is a **discretionary** activity.

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

Person (owner/occupier)	Address (location in respect of subject site)
Nicholas Ivan and Kylie Anne Crisp	89 Charlton Road, 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. In this case, as any change of conditions is a discretionary activity, there is not considered to be any relevant permitted baseline. Nonetheless, the assessment required is in relation to the potential effects resulting from the proposed change.

Existing Environment

The site contains an established school, 6,320m² in area. This includes a playing field located north of the school and hard surfacing for the carpark and manoeuvring. The rest of the site is vacant grass. Due to these facilities on the site, the existing rural environment has changed. The site is located in proximity to the urban edge of Gore and is located on Charlton Road, a high-volume traffic road into the township of Gore.

The Applicant has provided an assessment of effects on the environment within the application, prepared by Christine McMillian of Bonisch Consultants attached as Appendix C. This assessment is adopted for the purpose of this report with the following summary added for clarity.

Character and Amenity

“The general layout of the site remains unchanged with the proposed area already utilised as a waiting area for the pupils. The structure does represent a significant length at 54 metres and there will be some effect on views from Charlton Road as a result. This is mitigated to a degree as there is an existing 1.8m fence along the same boundary which the shelter will sit against, the visual effects are therefore already largely existing. The shelter will exceed the height of the fence by 0.7 metres and there will be some additional impacts on visual amenity as a result of this.

From the east the structure is more open with the bulk of the shelter being most imposing when viewed from the west as discussed above. The open nature of the shelter when viewed from the east will mitigate the visual effects of the structure and the existing fences along both the eastern and western boundaries of the accessway already provide for quite high structures in this location reducing the impact of the bus shelter.

The shelter will be clad in recessive coloursteel with low reflectivity value ensuring there are no resultant effects on traffic. The structure is setback from the road boundary and will not impede

visibility of vehicles entering or exiting the site, or the visibility of vehicles travelling in either direction along Charlton Road.”

The bus shelter will be visible from Charlton Road to passersby. The site is fenced and gated, reducing the visual effects of the built form on the surrounding Rural environment. In addition, the bus shelter will be located within an existing hard surfaced environment and will be located by an established 1.8m fence, along the western boundary and behind gates. The addition of the bus shelter in the existing environment is considered to have no more than minor effects on the character and amenity of the Rural zone.

Traffic

The bus shelter will be located on the subject site, accessed from Charlton Road with an existing slip lane for right turning traffic to the site. The shelter is required in order to provide a covered area for school pupils and teachers to wait for transport. This will be located on the existing hard surfaced driveway of the site. The addition of the shelter does not affect the number of buses entering and leaving the site for the purpose of the school. Therefore, the adverse effects from traffic are considered to be less 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.

It is necessary to have regard to those persons considered in the original decision. The original application LU 2019/407 and SC 2019/406 was issued without public notification. At the time written approvals from all nearby landowners were provided in the application. The land use activity on the site already has consent and the addition of the bus shelter along the western boundary affects the owners and occupiers of 89 Charlton Road. Written approval has been obtained and provided within this application.

It is considered that the adverse effects of the proposal on persons would 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 3 – Land Use Activities – A Framework of the District Plan.

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.*

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.*
- (12) *Require any adverse effects of land use activities upon infrastructure to be rectified.*

“The bus shelter is considered a necessary part of the operation of the school in relation to health and safety of the pupils as they wait for buses throughout the year. The bus shelter has been designed to be simplistic as possible resulting in a recessive and functional design which will not overly detract from the surrounding environment. The existing fences provide some mitigation for the bulk of the structure with the height of the structure above the existing fence necessary to provide suitable clearance for taller people. The bus shelter will site in line with the school and will not be out of the place when taken in context of the overall development.”

The proposal will support the existing land use on site, being a private school. It will not adversely affect the characteristics and the amenity values of the existing environment that has established in the rural area, given the existing built form on site permitted under LU 2019/407. Due to the existing built form on site, including extensive hard surfacing, the addition of the bus shelter will not adversely affect the quality of the environment.

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

Part of the subject site is subject to the Land Use Capability 3 Overlay and is therefore considered to be High Class Soil under the National Policy Statement for Highly Productive Land (NPS-HPL). 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.

The location of the proposed bus shelter is located outside of this area. Due to this area not being identified under the definition of Highly Productive Land, the NPS-HPL does not apply.

7. PART 2 OF THE RMA

The purpose of the RMA is to promote the sustainable management of natural and physical resources. The proposal will enable the continued land use consent on site and promote the sustainable management of natural and physical resources providing for a space which enables the community to have social, economic, and cultural well-being.

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

8. DECISION ON RESOURCE CONSENT

Decision A

Pursuant to Section 104B of the RMA, consent is **granted** for the application by Simmons Goodwill Trust to change Condition 1 of LU 2019/407 to construct a bus shelter that is 45m in length and 2.5m high as follows (deleted text struck-through, added text **bold** and underlined):

1. The proposal shall be undertaken in general accordance with:
 - (a) the application dated 12/02/2019, and further information provided by emails dated 15 March 2019, 29 April 2019, 13 May 2019 including the Preliminary Site Investigation of 89 Charlton Road by e3Scientific Limited Dated April 2019, and
 - (b) the scheme plan titled “Four Lot Subdivision, Charlton Road, East Gore, Gore” prepared by Bonisch Consultants Job No 6762 Rev J dated 16/03/2021 and attached as Appendix 1, **and**
 - (c) the application submitted on the 12 September 2023 for the construction of a bus shelter and the following plans:**
 - ii. **design set titled ‘New Bus Shelter – OneSchool Gore – prepared by Design Engineering dated May 30 2023 and attached as Appendix B.**

Advice Notes:

All other conditions of consent LU 2019/407, as varied by LU 2019/407/2/3/4/5 shall continue to apply.

Decision B – LU23077

Pursuant to Section 104C of the RMA, consent is **granted** for the application by Simmons Goodwill Trust to construct a bus shelter within the internal setback, subject to the following conditions:

1. The proposal shall be undertaken in general accordance with the application submitted on the 12 September 2023 and the following plans:
 - design set titled ‘New Bus Shelter – OneSchool Gore – prepared by Design Engineering dated May 30 2023 and attached as Appendix B.

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.

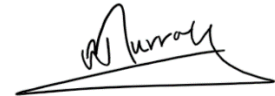
If you have any enquiries, please contact the duty planner on phone (03) 209 0330 or email planning@goredc.govt.nz.

Prepared by



Bridget Sim
Graduate Planner

Decision made by



Werner Murray
Delegate

Appendix A: Updated Consent Conditions LU 2019/407

Appendix B: Approved Amendment Plans

Appendix C: Applicant's AEE

APPENDIX A – Updated Consent Conditions of LU 2019/407

GENERAL CONDITIONS OF CONSENT:

1. The proposal shall be undertaken in general accordance with:
 - a) the application dated 12/02/2019, and further information provided by emails dated 15 March 2019, 29 April 2019, 13 May 2019 including the Preliminary Site Investigation of 89 Charlton Road by e3Scientific Limited Dated April 2019, and
 - b) the scheme plan titled “Four Lot Subdivision, Charlton Road, East Gore, Gore” prepared by Bonisch Consultants Job No 6762 Rev J dated 16/03/2021 and attached as Appendix 1 and,
 - c) the application submitted on the 12 September 2023 for the construction of a bus shelter and the following plans:
 - ii. design set titled ‘New Bus Shelter – OneSchool Gore – prepared by Design Engineering dated May 30 2023 and attached as Appendix 1.
2. The school building must:
 - a) be located on natural ground or fill with a finished level no less than 70.50 metres above mean sea level; and
 - b) have a floor level no less than 71.00 metres above mean sea level.
3. The noise and lightspill from the school shall meet the requirements in Rules 4.5.1 and 4.6 of the Gore District Plan, with the added exemption of noise from school sports and school recreational activities occurring between 8am and 6pm Monday to Sunday.
4. The surface of all parking, associated access and manoeuvring areas that is accessed from the eastern vehicle access must be formed, hard surfaced and adequately drained for their entirety, and parking spaces permanently marked in accordance with the application plans.
5. In the event that the Council’s reticulated water supply to any lot is insufficient to meet the Council’s requirements for fire-fighting purposes, as set out in the Gore District Council Subdivision and Land Development Bylaw 2019, onsite storage for fire-fighting purposes in compliance with the requirements and procedures of that Bylaw must be provided.
6. Stormwater from the lot must be disposed of to the satisfaction of the Gore District Council General Manager Regulatory and Community Services, either:
 - a) on that lot; and/or
 - b) directed to an adjoining watercourse, in which case, post development peak flows from any lot from all impermeable areas within the lot must not exceed predevelopment peak flows from that lot.
7. The school activity authorised by this consent shall not commence until the following works are completed to the written satisfaction of the Gore District Council General Manager of Regulatory and Community Services:
 - b. Alterations to Charlton Road to give safe access and egress to proposed Lot 2, created by subdivision approved in SC 2019/406, by means of a proposed slip

lane, right turn bay and main vehicle access, must be constructed in compliance with the New Zealand Transport Agency's Manual of Traffic Signs and Markings (MOTSAM).

- c. Adjustment to the letter box pull over areas at 84 and 90 Charlton Road, ensuring that there is no disruption to the postal service for these premises.
8. Pursuant to section 128 of the Resource Management Act 1991, Council may, within one month following each anniversary date of this consent, serve notice on the consent holder of its intention to review conditions 1 and 3 as a consequence of any adverse effects beyond the site boundaries, including limiting the number of pupils and staff, and limiting activities outside normal school hours.

APPENDIX B – Approved Plans

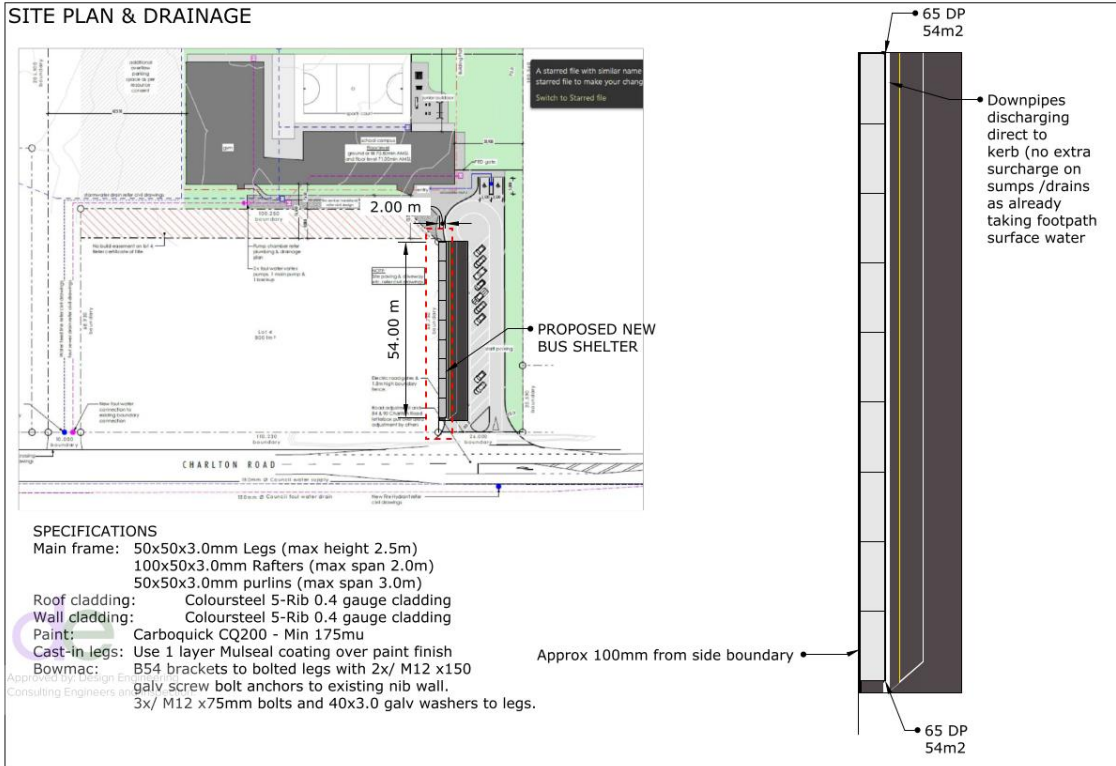
OVERALL VIEW - 3D



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Approved by: Design Engineering
Consulting Engineers and Inspection.

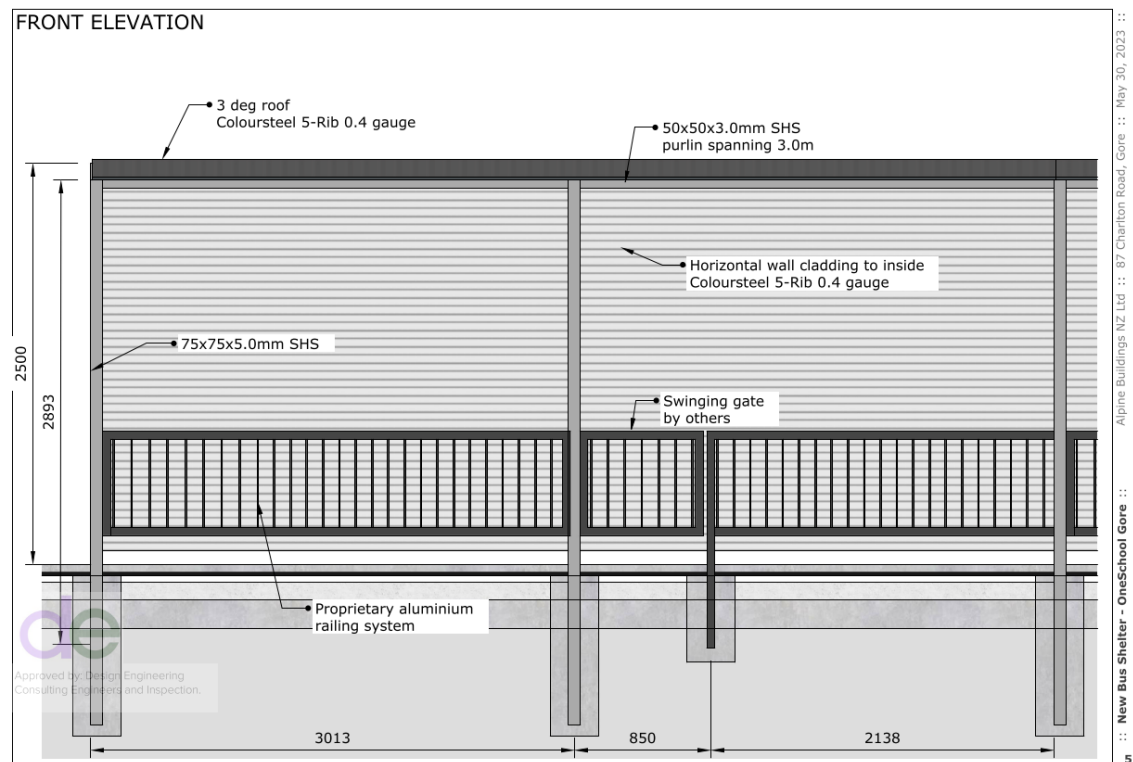
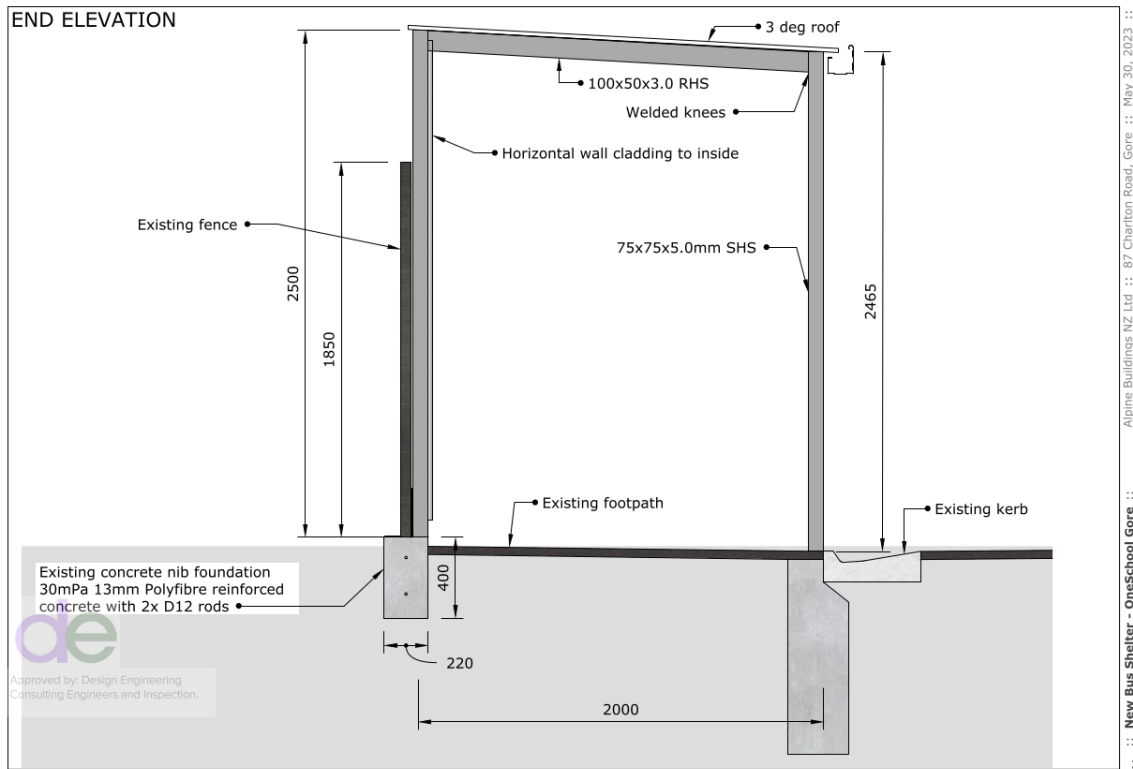
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New Bus Shelter - OneSchool Gore

SITE PLAN & DRAINAGE

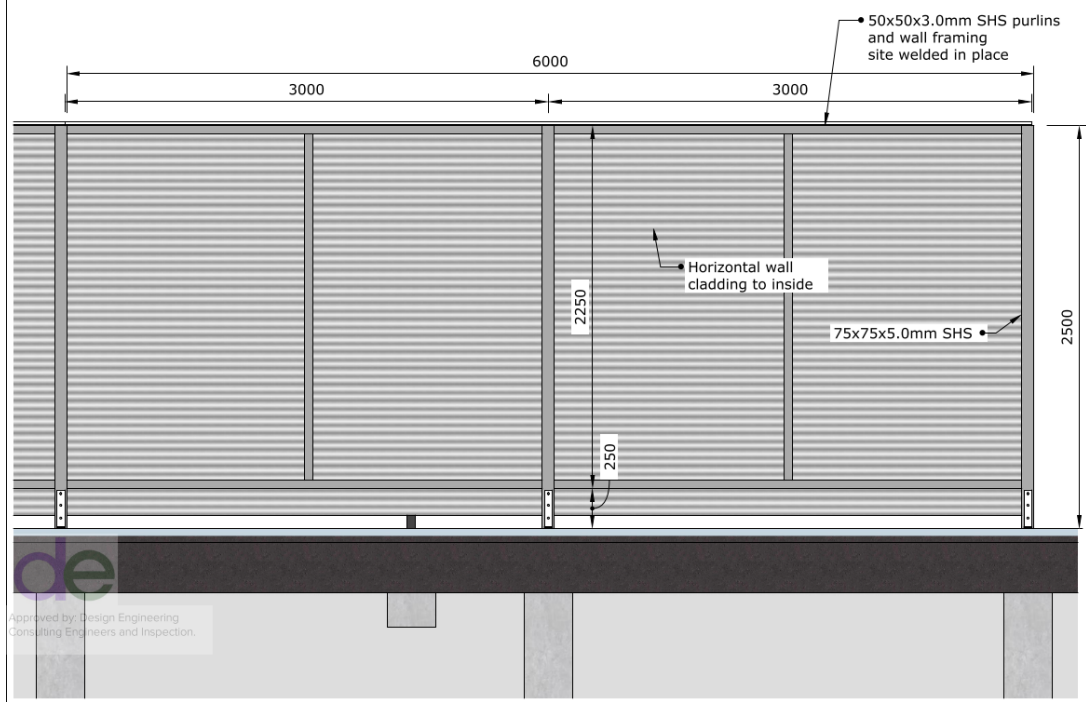


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Consulting Engineers and Inspection.

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REAR ELEVATION



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APPENDIX C – Applicant’s AEE

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ASSESSMENT OF ACTUAL AND POTENTIAL EFFECTS

The proposed amendment to the consent conditions will result in less than minor adverse effects.

The shelter is required in order to provide a covered area for school pupils and teachers to wait for transport during all weather conditions and provides for health and safety of the pupils. The general layout of the site remains unchanged with the proposed area already utilised as a waiting area for the pupils. The structure does represent a significant length at 54 metres and there will be some effect on views from Charlton Road as a result. This is mitigated to a degree as there is an existing 1.8m fence along the same boundary which the shelter will sit against, the visual effects are therefore already largely existing. The shelter will exceed the height of the fence by 0.7 metres and there will be some additional impacts on visual amenity as a result of this.

From the east the structure is more open with the bulk of the shelter being most imposing when viewed from the west as discussed above. The open nature of the shelter when viewed from the east will mitigate the visual effects of the structure and the existing fences along both the eastern and western boundaries of the accessway already provide for quite high structures in this location reducing the impact of the bus shelter.

The shelter will be clad in recessive coloursteel with low reflectivity value ensuring there are no resultant effects on traffic. The structure is setback from the road boundary and will not impede visibility of vehicles entering or exiting the site, or the visibility of vehicles travelling in either direction along Charlton Road.

There will be no change in stormwater volumes generated from the site as the area that the shelter is to be built on is currently sealed. Impervious surfaces will remain the same following completion of the bus shelter construction.

Overall it is considered that the adverse effects related to the proposed changes will be less than minor.

EXISTING TITLE ENCUMBRANCES

RT 921916 has a consent notice and two land covenants registered on the title. These instruments are attached for reference. None of the instruments affect the ability to construct the bus shelter as proposed. Lot 2, DP 544388 (the subject site) is the benefited land for both Land Covenants with any restrictions applying to other land.

Please contact me if you require any further information.

Enclosed:

1. Copy of SC 2019/406/5 and LU 2019/407/5
2. Design Engineering plan set
3. Copy of RT 921916 and Instruments
4. FENZ Correspondence
5. Neighbouring landowner approval

Please invoice the costs of the application fee as follows:

Invercargill Education Trust
c/ Owen Brewerton
owen@alpinebuildings.co.nz

BONISCH.NZ