

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	SC 2021/95/2
Applicant	Craig and Justine Abernethy
Proposal	Application under Section 127 of the Resource Management Act 1991 (RMA) to vary condition 1, condition 3 and cancel condition 7 of subdivision consent SC 2021/95.
Location	187 Waikaka Valley Highway
Legal Description	Part Section 5 Block II Waikaka Survey District, held in RoT SLA1/1071 and Section 42, Block II Waikaka Survey District held in RoT SLB3/828.
Activity Status	Discretionary
Decision Date	20 June 2024

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 20 June 2024 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 SC 2021/95 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

The Applicant is seeking changes to consent conditions of the subdivision consent SC 2021/95, which approved a four-lot subdivision in the rural zone. The original consent was granted 1 February 2022 and was subject to 18 conditions.

The land subject to this application is located at 187 Waikaka Valley Highway, SH90 and is legally described as Part Section 5 Block II Waikaka Survey District, held in RoT SLA1/1071 and Section 42, Block II Waikaka Survey District held in RoT SLB3/828.

It is proposed to amend Condition 1, Condition 3 and cancel Condition 7, which refer to the previous scheme plan, electricity easement and contractor yard setback requirements. The amended subdivision layout scheme plan now includes the contractor's yard within Lot 2 rather than within Lot 4. This will result in Lot 2 increasing from 2.44ha to be 6.31ha, and Lot 4 decreasing from 23.26ha to be 19.39ha. Consequently, the electricity easement E proposed by the original consent is no longer required as the area which the easement cross is now contained within Lot 2 now. As such easement E is no longer necessary and sought to be removed.

The resulted changed scheme plan has resulted in the contractor's yard now to be within Lot 2. Due to this the boundary of the new proposed Lot 4 is now proposed to be more than 12 meters from the existing contractor's

s yard. Thus Condition 7, which required the boundary between Lot 2 and Lot 4 to be at least 12 meters from the existing sheds shown on the subdivision plan approved under condition 1 is demonstrated to be achieved. This has meant that Condition 7 is no longer required and has been requested to be deleted.

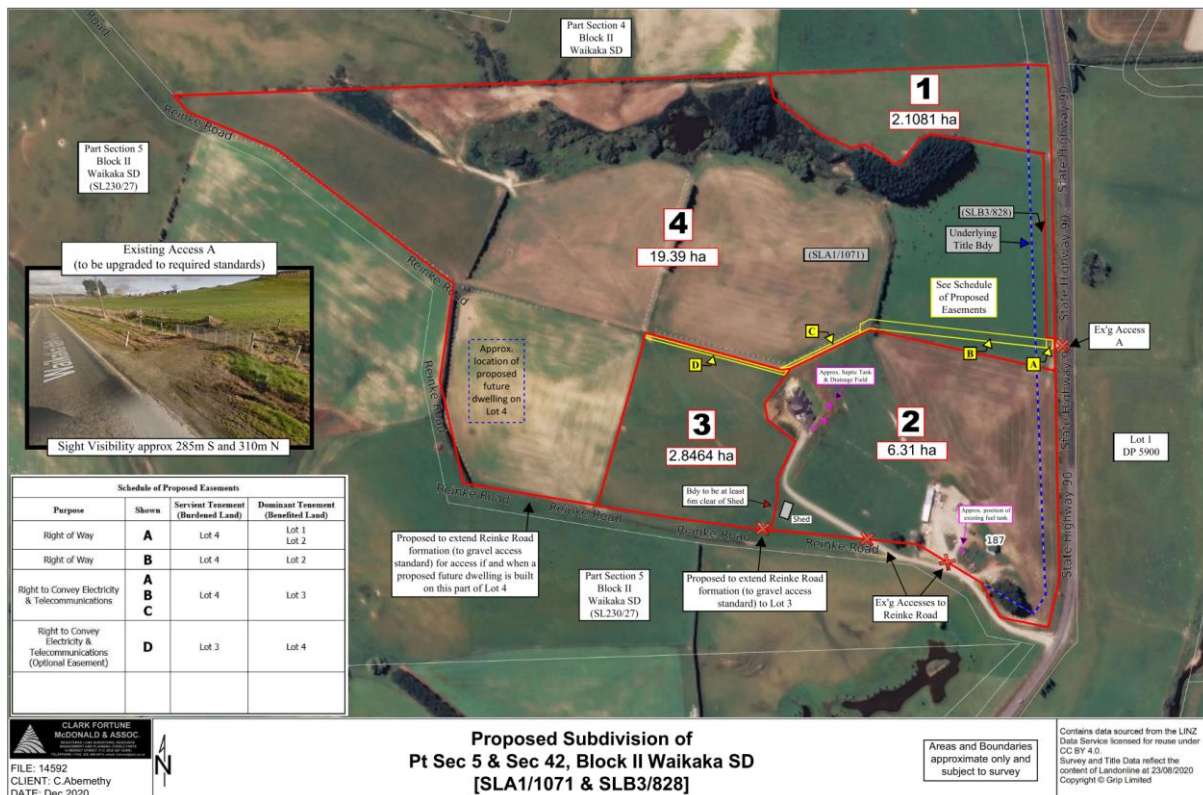


Figure 1: Proposed amended scheme plan

Specifically, the consent holder has requested changes to Condition 1 and Condition 2 as follows (amendments are shown in **bold and underlined** and deleted wording denoted by ~~strikethrough text~~):

- 1) The subdivision must be undertaken generally in accordance with the application made to Council and further information provided and the following plans:
 - ~~'Proposed Subdivision of Pt Sec 5 & Sec 42, Block II Waikaka SD [SLA1/1071 & SLB3/828]', drawn by Clark Fortune McDonald & Associates, rev A3 dated October 2021, file number 14592.~~
 - **'Proposed Subdivision of Pt Sec 5 & Sec 42, Block II Waikaka SD [SLA1/1071 & SLB3/828]', drawn by Clark Fortune McDonald & Associates, rev B, dated May 2024, file number 14592.**
 - Waka Kotahi NZ Transport Agency Diagram C vehicle access standard.
- 3) The services easement shown on the scheme plan as easements A, B, C, **and D** ~~and E~~ must be registered on the relevant Record of Titles.
Note: Easement D is required to be included and is not optional.
- 7) ~~The boundary between Lot 2 and Lot 4 must be at least 12 metres from the existing sheds shown on the subdivision plan approved under condition 1.~~

No other change to the proposal consented under reference SC 2021/95 is sought.

Appendix B of this report outlines the full revised consent conditions for SC 2021/95

2. SITE DESCRIPTION

The subject site is located off State Highway 90, which is a limited access road. The site also gain access off an unformed legal road, Reinke Road. There is a known flood hazard on the eastern portion of the subject site.

The site is within two Record of Titles, with the majority in one title (Part Section 5), and then a sliver of land to the east in a separate title (Section 42). Section 42 has a condition on the title in relation to holders of miners' rights and miners privileges being able to use a watercourse and discharge tailings and waste water onto this land. The proposed subdivision does not affect this.

3. ACTIVITY STATUS

3.1 Resource Management Act 1991

The proposed activity requires resource consent for the following reasons:

- 1 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 change Conditions 1 and 3 and cancel Condition 7 of resource consent SC 2021/95 to change the boundaries of Lot 2 and 4, thus changing the lot areas.

3.2 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

No written approvals have been given.

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 the original application is for a subdivision there is no relevant permitted baseline.

Existing environment

The underlying consent for the development, SC 2021/95 forms the existing environment for the consideration of adverse effects associated with this application. In relation to the variation, it is only those effects arising from the proposed changes that require assessment below.

Subdivision design

The proposed changed scheme plan layout, now including the contractor’s yard with the existing residential dwelling in Lot 2 reflects a practical layout. This now creates new boundaries of Lot 2 and Lot 4, thus resulting in new site areas of each allotment. The changes to the areas and layout of the subdivision will not detract from the existing amenity and character of the surrounding area. Lot 4, not having the contractor’s yard still provides an allotment of sufficient size and shape to accommodate future rural and rural/lifestyle activities. All of the lots are above 2ha in area and rural lifestyle sites of this size can reasonably be anticipated and in this context are not considered to detract from the rural character of amenity of the area. Access to the lots is to be retained and are still feasible to accommodate the four proposed lots.

Overall, I consider the adverse effects of the subdivision design as a result of changes to Condition 1 will be no more than minor on the wider environment as the minimum lot sizes are still met and is anticipated by the District Plan.

Services

The proposed scheme plan amendment will result in the contractor yard to be within Lot 2 with the existing dwelling. This has removed the boundary between the dwelling and the yard. Due to this there is no longer an easement required for the provision of services for the existing dwelling. Legal easements for services recognised as E is no longer required and can be removed from the conditions.

The four allotments can be serviced by the existing proposed arrangements, and Lot 2 will be able to be serviced. Overall, the adverse effects on the environment will be no more than minor.

Natural Hazards

A portion of the site is shown as within the flood risk zone. Environment Southland reviewed the original proposal and confirmed it is suitable subject to a condition requiring no buildings be located within the flood risk area. This condition is to be secured by way of consent notice. This is not proposed to change by the proposal and is to be retained. This still recognises the risks to property and accesses being subject to the inundation hazard.

Overall, adverse hazard effects in terms of natural hazards are considered to be minor.

Effects as a result of deleting Condition 7

Condition 7 required the boundary between then Lot 4 and Lot 2 to be at least 12m from the existing sheds of the contractor's yard. The proposed amendment to the subdivision plan will result in Lot 2 to now incorporate the contractor yards thus removing the previously granted boundary that would have existed between Lot 2 and Lot 4. The amended scheme plan has resulted in the new boundary between Lot 2 and Lot 4, which is greater than 12 meters from these sheds.

As this boundary is no longer applicable, the adverse effects of this condition being removed 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 have adverse effects on the environment that are less 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.

Waka Kotahi New Zealand Transport Agency

Waka Kotahi NZ Transport Agency reviewed the original proposal, where they agreed on conditions, volunteered by the applicant, which require the upgrade of the access to Waka Kotahi’s satisfaction and for any buildings within 50m of the site highway to be acoustically insulated to mitigate reverse sensitivity effects. As the proposed amendment changes relate to the boundary changes of Lot 2 and Lot 4 only, this has not affected the existing and proposed accesses to the site. It is considered that Waka Kotahi are not affected in relation to this s127 amendment as the condition relating to access is to be retained.

Overall, it is considered the proposed changes will have less than minor effects on Waka Kotahi.

Neighbouring properties

No neighbouring properties were considered as affected parties during the original subdivision consent. In relation to this change of conditions it is considered the adverse effects will be less than minor on the neighbouring properties. The proposed allotments still met the minimum lot size as anticipated by the District Plan and therefore anticipated the adverse effects associated with future activities on such lots and deemed it appropriate.

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 specific 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 4A Natural Hazards, and Chapter 8 Subdivision of the District Plan.

Chapter 4 – Natural Hazards

Chapter 4A aims to ensure people are aware of the flood hazard, and that risk to people and property from inundation is minimised. In this case, there is a portion of flood risk area on the site. People can be made aware of this hazard through having it noted on the title. Further a consent notice can be included, in line with Environment Southland's request, that there are no buildings in the flood risk area. This will minimise damage to people and property. This condition is not proposed to be changed through the variation and will remain.

Chapter 8 – Subdivision of the District Plan

The objectives and policies were considered in the decision for the original application and given the nature of the changes to conditions now sought there are no additional matters that arise. It is considered the proposed changes will not be contrary to the objectives and policies in the Subdivision chapter of the Gore District Plan.

Overall, the proposal is considered to be consistent with the Gore District Plan.

7. SECTION 106 REQUIREMENT FOR SUBDIVISION

A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to, or is likely to, accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made. In this case all sites have legal and physical access and is not subject to or will accelerate material damage from natural hazards.

8. 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 as anticipated under the District Plan and promote the sustainable management of natural and physical resources.

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

9. DECISION ON RESOURCE CONSENT

Consent is **granted** for the application by Gore District Council to change Condition 1, Condition 3 and delete Condition 7 of resource consent SC 2021/95 such that:

- 1) The subdivision must be undertaken generally in accordance with the application made to Council and further information provided and the following plans:
 - 'Proposed Subdivision of Pt Sec 5 & Sec 42, Block II Waikaka SD [SLA1/1071 & SLB3/828]', drawn by Clark Fortune McDonald & Associates, rev B, dated May 2024, file number 14592.
 - Waka Kotahi NZ Transport Agency Diagram C vehicle access standard.
- 2) The services easement shown on the scheme plan as easements A, B, C, and D must be registered on the relevant Record of Titles.

Note: Easement D is required to be included and is not optional.

Advice Note

- All other conditions of SC 2021/95 shall continue to apply.

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.

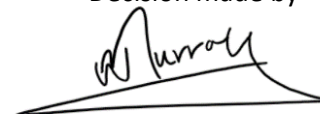
If you have any enquiries, please contact the duty planner on phone (03) 209 0330 or email planning@goredc.govt.nz.

Prepared by



Bridget Sim
Planner

Decision made by



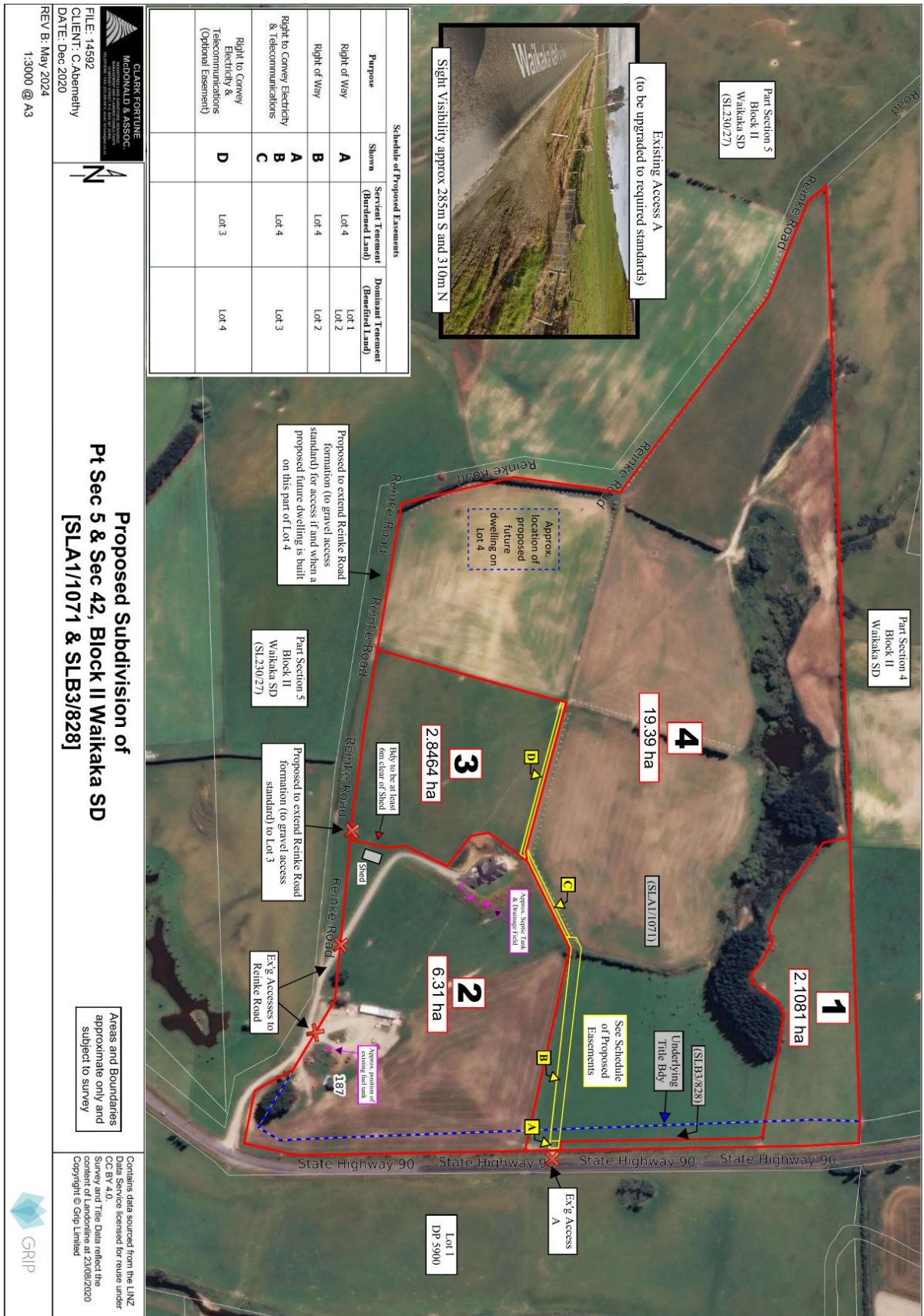
Werner Murray
Delegate

Appendix A: Amended Scheme Plan

Appendix B: Updated Conditions of SC 2021/95

Appendix C: Waka Kotahi Access Diagram

Appendix A – Amended Scheme Plan



Appendix B - Revised conditions for SC 2021/95/2

Subdivision consent SC 2021/95/2

Pursuant to sections 34A(1), 104, 104B and 127 of the Resource Management Act 1991, the Gore District Council grants consent to subdivide the land identified as Part Section 5 Block II Waikaka Survey District, held in RoT SLA1/1071 and Section 42, Block II Waikaka Survey District held in RoT SLB3/828 into four lots subject to the following conditions imposed under sections 108 and 220 of the Act:

The conditions of consent are as follows:

General

1. The subdivision must be undertaken generally in accordance with the application made to Council and further information provided and the following plans:
 - “Proposed Subdivision of Pt Sec 5 & Sec 42, Block II Waikaka SD [SLA1/1071 & SLB3/828]’, drawn by Clark Fortune McDonald & Associates, rev B, dated May 2024, file number 14592.
 - Waka Kotahi NZ Transport Agency Diagram C vehicle access standard.

Survey Plans and Easements

2. The Right of Way easement shown on the scheme plan as easement A and B over Lot 4 to provide access to Lot 1 and Lot 2 must be registered on the relevant Record of Titles.
3. The services easement shown on the scheme plan as easements A, B, C and D must be registered on the relevant Record of Titles.

Note: Easement D is required to be included and is not optional.

4. Any other easements over Lots 1, 2, 3 and 4 must be included a memorandum of easements endorsed on the section 223 survey plan and must be created, granted or reserved as necessary.
5. The consent holder must meet the costs for the preparation, review and registration of the easement instrument of the relevant Record of Titles.
6. The boundary between Lot 2 and Lot 3 must be at least 6 metres from the existing shed shown on the subdivision plan approved under condition 1.
7. Deleted
8. A building restriction area must be shown on the survey plan over the relevant parts of Lot 1 and Lot 4 showing the mapped floodplain shown on the Gore District Plan Hazard Maps.

Vehicle Access

9. Prior to s224(c) of the Resource Management Act 1991 for Lot 1 and 4, the consent holder must:
 - a) upgrade the vehicle crossing onto State Highway 90 in accordance with the Waka Kotahi NZ Transport Agency’s Diagram C standard as outlined in the Planning Policy Manual (2007) and to the satisfaction of the Waka Kotahi NZ Transport Agency’s Network Manager.

- b) provide to Council correspondence from Waka Kotahi NZ Transport Agency confirming that works to the State Highway, including the vehicle crossing, have been constructed to Waka Kotahi NZ Transport Agency standards.
 - c) Upgrade the vehicle crossing within Right of Way areas A, in accordance with the Gore District Council Subdivision and Land Development Bylaw 2019, to the satisfaction of Council's Roding Department.
10. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991 for Lot 3, the consent holder, shall, to the satisfaction of the Chief Executive of the Gore District Council:
- a) Upgrade and extend Reinke Road with a gravel road to the specifications of the Gore District Council Subdivision and Land Development Bylaw 2019. The work itself must be undertaken by a Council approved contractor.
 - b) Prior to undertaking the works required in 9.a) above, the consent holder must get the prior approval of the Council's Roding Department to ensure the appropriate processes are being followed and the work is being carried out to the correct standard.

Services

11. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991 for any lot, the consent holder must disconnect water supply for Lot 4 from the balance of the site.
12. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, the consent holder must extend electricity to the boundary of Lot 3. The consent holder must provide Council written confirmation from the electricity network supplier responsible for the area, that provision of underground electricity supply has been made available to the boundary of Lot 3 and that all the network supplier's requirements for making such means of supply available have been met.

Earthworks

13. All earthworks associated with the subdivision works must be managed to prevent erosion, sediment and dust beyond the site.

Note: erosion and sediment control measures are identified in section 2.3.7.2 of the Gore District Council Subdivision and Land Development Bylaw 2019.

14. All exposed earthwork areas shall be top-soiled and grassed/revegetated or otherwise permanently stabilised.

Staging

15. This subdivision may be staged. For the purposes of issuing approvals under sections 223 and 224(c) of the Resource Management Act 1991, the conditions of this consent shall be complied with only to the extent that they are relevant to each particular stage proposed. This consent may be progressed in the following stages:
- Stage 1: Lot 1
 - Stage 2: Lot 2
 - Stage 3: Lot 3

- Stage 4: Lot 4

The staging may occur in any order, or may occur together.

Consent Notices

16. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, a consent notice, in accordance with Section 221 of the Resource Management Act, shall be issued and registered against the Records of Title for Lots 1 and 4 to record that:
 - a) Any new dwelling on the site that is built within 100 metres of the edge of the carriageway of the state highway must be designed, constructed and maintained to achieve a design noise level of 40 dB LAeq (24 hours) inside all habitable spaces.
 - b) There shall be no building/s within the mapped floodplain building restriction area on the title.
17. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, a consent notice, in accordance with Section 221 of the Resource Management Act, shall be issued and registered against the Records of Title for Lots 1-4 to record that:
 - a) At the time of lodging a building consent for a dwelling, if rainwater collection is used for water supply, 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 applications.
 - b) At the time of lodging a building consent for a dwelling, each 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 dwelling, 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.
18. Prior to certification pursuant to section 224(c) of the Resource Management Act 1991, a consent notice, in accordance with Section 221 of the Resource Management Act, shall be issued and registered against the Records of Title for Lots 4 to record that:
 - a) Vehicle access must be attained solely off State Highway 90, or the portion of Reinke Road east of Lot 2. Should the landowner wish to gain access to the south-western portion of the site directly off Reinke Road, they must upgrade and extend Reinke Road with a gravel road to the specifications of the Gore District Council Subdivision and Land Development Bylaw 2019, or any standard that supersedes this document. The work itself must be undertaken by a Council approved contractor.
 - b) Prior to undertaking the works required in a) above, the consent holder must get the prior approval of the Council's Roading Department to ensure the appropriate processes are being followed and the work is being carried out to the correct standard.

Appendix C – Waka Kotahi Access Diagram

