

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

Resource Management Act 1991

Application reference	LU24051
Applicant	Waimea Trust
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to undertake disturbance and disposal of contaminated soils on a registered HAIL site under the SLUS register.
Location	4 Stratford Street, 13 and 17 Gorton Street, Gore.
Legal Description	Lot 1 DP 304224, Lot 2 DP 304224, Section 1 Survey Office Plan 12121 and Section 4 Block XII TN OF Gore
Activity Status	Restricted Discretionary
Decision Date	28 November 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 Penny Weng on 28 November 2024 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 108 of the RMA. This consent can only be implemented if the conditions in this report are complied with by the consent holder. The decision to grant consent was

considered by Penny Weng under delegated authority pursuant to Section 34A of the RMA.

1. THE PROPOSAL

The Applicant seeks resource consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS) to undertake a soil disturbance activity at 4 Stratford Street and 13 and 17 Gorton Street, including disposal of the soil at an authorised landfill.

The site is registered on Environment Southland's Selected Land Use Sites (SLUS) register as having a history that includes multiple activities on the Ministry for the Environment Hazardous Activities and Industries List (Hail). Furthermore, it is expected that the proposed development will disturb and dispose of greater volumes of soil than that permitted by Regulation 8 of the NES-CS. Under the NES-CS, in accordance with Regulation 8(3)(c), the volume of the disturbance of the soil of the piece of land must be no more than 25m³ per 500m².

The removal of topsoil is required to establish a suitable bearing ground for the foundation of a proposed two-storey structure consisting of a joinery factory and showroom. The proposed structure will be approximately 2,127.5m². Additional excavation may be required for piles. An area of approximately 2,130m² of the site will have fill removed to an average depth of 0.35m below ground level. This material will be taken to a consented landfill for disposal. The total excavation for the project is estimated to have an approximate volume of approximately 896m³. The location of the proposed soil disturbance is highlighted in yellow in Figure 1.



Figure 1: Extract of the area of the proposed soil disturbance highlighted in yellow (source: WM Environmental, Figure 1).

The excavated soil will be replaced where required with a gravel fill to create the base for the foundation slab and to reinstate sealed areas. Areas outside of the building foundation will be asphalt to match the existing site areas. The excavated soil will be disposed of at S J Timpany Landfill located in Otatara.

The application is supported by a Preliminary and Detailed Site Investigation (PSI/ DSI), prepared by e3 Scientific Limited (e3 Scientific), dated August 2024. The investigation identified that in the area of the proposed ground disturbance, the soil contaminants (heavy metals, total petroleum hydrocarbon and Polycyclic Aromatic Hydrocabrons) are elevated over background but below commercial/industrial standards. However, asbestos is present in the soil in sufficient concentrations to pose a risk to human health. Specifically, asbestos exceeds human health guidelines for all land uses across the site. Based on the concentrations of asbestos in the soil, e3 Scientific have identified that works should take place as Class B asbestos work.

The existing buildings on the site, which have since been demolished were identified by Asbestos Surveys and Monitoring NZ Limited (March 2022) that areas of the site have a potential source of asbestos material. Prior to the preparation of the PSI/DSI, the buildings had been demolished and removed from site.

A Remedial Action Plan (RAP), prepared by e3 Scientific, dated September 2024 and a Contaminated Site Management Plan (CSMP), prepared by e3 Scientific, dated October 2024 have been prepared to address the risk to human health from contaminated soils on the site and supports this application.

2. SITE DESCRIPTION

The Applicant has included a full description of the site at Section 2 of the AEE titled “Application for Resource Consent under the NESCS” prepared by Casey Carass of WM Environmental, dated 15 October 2024. This description has been adopted for this report.



Figure 2: Site outlined in blue, and area subject to this consent is highlighted in green.

3. ACTIVITY STATUS

3.1 Operative Gore District Plan

The site is zoned Mixed Use in the Gore District Plan.
No consent is required under the Gore District Plan.

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

Based on the Preliminary and Detailed Site Investigation prepared on behalf of the applicant, the proposed activity is on a piece of land that is, or is more than likely to be, a HAIL site.

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) came into force on the 1 January 2021 and deals with territorial authority functions under section 31 of the Act.

Environment Southland’s Selected Land Use Sites Register (‘SLUS’) identifies the site as contaminated site with a HAIL category under reference ID SLUS: 20173287 and SLUS-20221178.

The register indicates the site has a history of hazardous substance, storage, use or disposal associated with HAIL Categories:

- A2. Chemical manufacture, formulation or bulk storage (11-17 Gorton Street)
- A17. Storage tanks or drums for fuel, chemicals or liquid waste (11-17 Gorton Street)
- E5. Coal or coke yards (4 Stratford Street)
- F8. Transport depots or yards including areas used for refuelling or the bulk storage of hazardous substances (4 Stratford Street)

The site is therefore considered a ‘piece of land’ for the purposes of the NES-CS.

Regulation 8(3)(c) of the NES-CS states that the volume of the disturbance of the soil of the piece of land must be no more than 25m³ per 500m². Regulation 8(3)(d)(ii) of the NES-CS states that soil must not be taken away in the course of the activity, except that for all other purposes combined, a maximum of 5m³ per 500m² of soil may be taken away per year.

The Applicant seeks to disturb a total of 896m³ of soil over 2,130m² of the site and this is all to be taken away from the site and disposed elsewhere.

Regulation 9(1) of the NES-CS states that disturbing soil is a controlled activity, provided that a DSI exists, and the soil contamination does not exceed the applicable standard in Regulation 7. The DSI provided identifies that the soil contamination at the site does exceed the applicable standard in Regulation 7.

The proposal therefore does not comply with Regulation 9(1) of the NES-CS.

The proposed subdivision is therefore assessed as a **restricted discretionary** activity pursuant to Regulation 10(2) of the NES-CS.

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 provided.

The following effects may be disregarded:

- An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect – referred to as the “permitted baseline”. The relevance of a permitted baseline to this application is as follows:

Permitted Baseline

The consent authority **may** disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect. In this case, Regulation 8 sets out the permitted activities under the NES-CS. This is considered relevant to the proposal.

The adequacy of the DSI

The submitted Preliminary and Detailed Site Investigation has been prepared and certified by suitably qualified and experienced practitioners from HAIL Environmental and reported in accordance with the current edition of Contaminated Land management guidelines No 1 – Reporting on contaminated sites in New Zealand, in accordance with the requirements of the NES-CS. The investigation sets out the site sampling, laboratory reports and risk assessment.

It is therefore considered that the Preliminary and Detailed Site Investigation is adequate and can be relied upon.

The suitability of the piece of land for the proposed activity, given the amount and kind of soil contamination

The site is located in the Mixed Use Zone. The land use surrounding the site is generally mixed industrial and commercial. Immediately to the west of the site is the Main South Line railway. The site is relatively flat. It is expected that once the contaminated soil has been removed in accordance with the Contaminated Site Management Plan (CSMP) and Remedial Action Plan (RAP), the potential health hazard from soil contamination will be removed. Once the site has been developed, the site will be fully sealed thus creating a barrier between any future site workers and any residual contamination.

It is therefore considered that the piece of land is suitable for the proposed activity.

The approach to the remediation or ongoing management of the piece of land

A CSMP has been prepared to control the earthworks, material handling and disposal associated with preparing the site for a new building. This has been offered as a condition of consent to ensure mitigation measures are outlined to earthwork contractors to avoid potential adverse effects associated with the proposed soil disturbance. It is considered that this will best ensure that management and monitoring requirements are implemented during the disturbance of soils at the site and that the works are reported upon.

In conjunction, a Remedial Action Plan has been prepared to address the risk to human health from the earthworks, material handling and disposal of soil. This outlines that a Site Validation Report is to be provided to Environment Southland and Gore District Council within three months of the

completion of the remedial works. This report will be prepared in accordance with Contaminated Land Management Guideline No 1: Reporting on Contaminated Sites (MfE, 2021A) and confirm that risks to human health associated with contaminants in soil are acceptable, either as a result of the excavation and off-site disposal of soils or on-going management.

If there are concentrations of asbestos identified in the soil exceeding the criteria, then there are measures to be taken to reduce risks to human health. The risks from asbestos are to be controlled by preparing an ongoing site management plan (OSMP) to document the presence of asbestos at depth and outline the monitoring and management requirements to ensure that the risks remain acceptable.

Any contaminated soil will be removed, contained and disposed of properly, so that any effects on the environment are no more than minor.

The adequacy of the site management plan or the site validation report

The submitted CSMP has been prepared and certified by suitably qualified and experienced practitioners from HAIL Environmental and reported in accordance with the current edition of Contaminated Land management guidelines No 1 – Reporting on contaminated sites in New Zealand, in accordance with the requirements of the NES-CS. The investigation sets out the site sampling, laboratory reports and risk assessment.

It is therefore considered that the Site Management Plan is adequate and can be relied upon.

The transport, disposal, and tracking of soil taken away in the course of the activity

As outlined in the Remedial Action Plan, the soil material will be fully wrapped prior to leaving the site to avoid the spread of contaminated soil. Furthermore, the truck wheels will be decontaminated prior to leaving the site to ensure that the debris is not tracked onto local streets. These methods of mitigation avoid potential impacts on human health through the remediation and management of the Site and activity.

All waste material will be taken to S J Timpany landfill, which is an authorised facility to accept contaminated soils. The Landfill was contacted during the development of the PSI/DSI and has approved the material from the site for disposal. S J Timpany Landfill has a soil remediation pad where soils exceeding the contamination acceptance criteria outlined in Regulation 7 of the NESCS, can be mixed with cement to reduce the risk of leachable concentrations. SJ Timpany Landfill requires a 10% cement by weight prior to being placed in the landfill.

Contact will be made with the Landfill prior to the cartage of any material and records of disposal location shall be kept for all loads. The management and mitigation measures in place for the disposal of the contaminated soil will avoid any impact on human health during the course of this activity.

The timing and nature of the review of the conditions in the resource consent

The Applicant does not volunteer any review conditions or monitoring conditions.

The duration of the resource consent

The duration of soil disturbance including removal and disposal at a licenced landfill will be completed within a two month period, in order to comply with Regulation 8(3)(f) of the NES-CS.

The subject site is in an industrial area and the proposed works are temporary in nature and will last no more than 2 months.

Overall, any adverse effects on any adjacent persons will be less than minor. Given the extent of the proposed soil disturbance and soil removal, it is expected that ground stability on neighbouring sites will not be affected. The proposal is also not expected to affect or exacerbate the flooding risk to any adjacent buildings, given the depth of the works.

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 activity.
- 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.

The assessment provided under section 4.1 of this report also applies to adjacent persons.

The Applicant has prepared a Remedial Action Plan and Contaminated Site Management Plan as part of their application. These plans outline the proposed remediation to address the risk to human health from the contaminated soil on the site. These plans control the earthworks, material handling and disposal of soil associated with preparing the site for a new building.

Overall, any adverse effects on any adjacent persons will be less than minor. Given the extent of the proposed soil disturbance and soil removal, it is expected that ground stability on neighbouring sites will not be affected. The proposal is also not expected to affect or exacerbate the flooding risk to any adjacent buildings, given the depth of the works.

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

Operative District Plan

The relevant operative objectives and policies are set out in Chapter 3 (Land Use Activities – A Framework).

Earthworks will only be undertaken as necessary to prepare the site for a new building. The proposed soil disturbance and removal will be carried out in accordance with the CSMP, in order to ensure that any adverse environmental effects and/or nuisance effects do not extend beyond the boundaries of the site and impact upon adjoining properties.

The proposal is therefore considered to be consistent with Objectives 3.3(2) and (7) and Policies 3.4(10) and (11). Overall, the proposal is considered to be consistent with the relevant objectives and policies of the District Plan.

Proposed District Plan

The Proposed District Plan was notified for public submissions on 31 August 2023. The submission period closed on 26 October 2023. The further submission period closed on 12 April 2024 and hearings are currently underway. As the rules that have immediate legal effect are not relevant to this proposal, it is unnecessary to apply any weighting to the Proposed District Plan at present time.

NES – CS

The policy intent of the NES-CS is to assess and manage contaminants in soil to protect human health. All works will be undertaken in accordance with a CSMP, which has been prepared to manage the works at this site and manage the potential effects of the works upon human health. It is considered that the proposal is in accordance with the policy intent of the NES-CS.

Southland Regional Policy Statement 2017

No contaminants will be discharged to water or land as a result of the works, and the contaminated soils will be transported to an authorised landfill. The Applicant is obligated to determine whether separate consents are required under the Regional Water Plan or Proposed Water and Land Plan.

Health and Safety (Asbestos) Regulations 2016

Asbestos was detected in samples across the site and therefore the Health and Safety (Asbestos) Regulations 2016 apply. The proposed works include the removal of asbestos and the CSMP and RAP provided with the application has outlined methods for managing the risk associated with the asbestos. WorkSafe will be notified that Class B asbestos removal work will occur on the site in accordance with Regulation 8(1) of the Regulations.

7. PART 2 OF THE RMA

The purpose of the RMA is to promote the sustainable management of natural and physical resources. Sections 6, 7 and 8 of the Act identify the matters of national importance that must be recognised and provided for, and other matters that must be given regard to or considered.

The potential adverse effects on the environment can be appropriately avoided, remedied or mitigated. This site does not contain any outstanding natural features or landscapes, nor any area of significant indigenous vegetation. The amenity of the land and surrounding area, which is mixed use (commercial/industrial) in nature will be maintained, and the proposal will not have adverse effects on the quality of the environment. This site is not within any known heritage sites or statutory acknowledgement areas and therefore, this recommendation is not inconsistent with the principles of the Treaty of Waitangi.

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

8. DECISION ON RESOURCE CONSENT

Pursuant to Section 104C of the RMA, consent is **granted** to the following conditions imposed pursuant to Section 108 of the RMA:

Consent Conditions

1. The proposed soil disturbance and removal activity must be undertaken generally in accordance with the application made to the the Council, reference LU24051, and the further information received on 25 November 2024, including the following plans:
 - Figure 1: Earthworks area – (blue shaded area has no proposed earthworks)

- Contaminated Site Management Plan – 17 Gorton Street, prepared by e3Scientific Limited, dated 11/10/2024.
 - Remedial Action Plan – CP 17 Gorton Street, prepared by e3Scientific Limited, dated September 2024.
2. Where contaminated soil is to be removed from the site, it shall be removed under controlled conditions and transported to a licensed waste facility or landfill for disposal, in accordance with the requirements of the disposal site.
 3. In the event of accidental discovery of contamination during soil disturbance which has not been previously identified, the consent holder must immediately cease the works in the vicinity of the contamination, notify the Council, and engage a suitably qualified and experienced practitioner to assess the situation (including possible sampling and testing) and decide on the best option for managing the material.
 4. The consent holder shall notify the Council’s Planning department 48 hours prior to starting soil disturbance works on site. Contact details are contained in the Advice Notes below.
 5. At the completion of remedial works, a Site Validation Report (SVR) is required to be prepared, detailing the additional sampling and analysis would be required to verify the effectiveness of these works. This must be provided to the Council within three months of the works being completed to confirm the methods outlined in the Remedial Action Plan were enforced and the measures were successful in ensuring potential risks were adequately managed.

Advice Note: If residual contamination remains on site (e.g., beneath a building or capping) at concentrations that pose a risk to human health, an Ongoing Site Management Plan (OSMP) is required to be prepared and submitted to Council.

Advice Note

1. Council’s planning department can be contacted via email at planning@goredc.govt.nz

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



Penny Weng
Delegate

Appendix A: Approved Plan

APPENDIX A – APPROVED PLAN



Figure 1: Earthworks Area – blue shaded area has no proposed earthworks