

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

Resource Management Act 1991

Application reference	SC 23050
Applicant	A Newton
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to undertake a boundary adjustment between two titles.
Location	1172 Waipahi Highway, Pukerau
Legal Description	Section 4 Block I Town of Pukerau held in Record of Title SL27/215 and Section 5 Block I Town of Pukerau held in Record of Title SL121/156.
Activity Status	Controlled
Decision Date	17 August 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 17 August 2023 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 and Section 104A of the RMA, consent is **GRANTED SUBJECT TO CONDITIONS** outlined in this report of the Section 104 decision imposed pursuant to Section 108 and 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, under delegated authority pursuant to Section 34A of the RMA.

1. THE PROPOSAL

The applicant seeks to undertake a boundary adjustment at 1172 Waipahi Highway between Waipahi Section 4 Block I TN OF Pukerau and Section 5 Block I TN OF Pukerau. The proposal will create one rural lot and amalgamate it with the adjoining land for an effective boundary adjustment. The result of the transfer of area is 1012m². No new titles will be created as a result on the subdivision.

Section 5 Block (Lot 1) is the adjoining property on the west side of Section 4 Block I TN OF Pukerau balance title SL27/215. It is noted that the existing dwelling on section 4 Block has an existing effluent field for the septic system of the dwelling which extends onto proposed Lot 1. The proposal seeks to rationalise the title arrangement by way of subdivision and amalgamation, to effectively reconcile the titles with the existing physical arrangement of the land.

Plans Submitted:

The proposal is shown on a subdivision plan prepared by Clark Fortune McDonald & Associates (refer to Figure 1).



Figure 1: Proposed Boundary Adjustment of Section 4 Block I TN OF Pukerau and Section 5 Block I TN OF Pukerau (Lot 1)

Lot 1

Section 5 Block I TN OF Pukerau contains an area of 1012m² and will be amalgamated with Section 4 Block I TN OF Pukerau. Section 5 Block I TN OF Pukerau is currently held with Section 32-35 Block I Town of Pukerau. Section 32-35 Block I Town of Pukerau will continue to be held in one title as the balance lot following the proposed subdivision.

Proposed Section 4 Block I TN OF Pukerau

The area of Section 4 Block I TN OF Pukerau will be increased by 1012m². The total area proposed will be 2010m².

The application does not include any physical building works.

The following amalgamation condition is proposed:

“That Lot 1 hereon be transferred to the owners of Sec 4 Blk I Tn of Pukerau (RT SL27/215) and that one record of title be issued to include both of those parcels.”

2. SITE DESCRIPTION

The application sites are adjoining properties that have direct frontage on to State Highway 1 along the north boundary. The site comprises two parcels that are developed, with one existing dwelling on Section 4 Block I TN OF Pukerau, where an existing effluent field from the dwelling extends onto Lot 1 (Section 5 Block). The site comprises two allotments being legally described as Section 4 Block I TN OF Pukerau and Section 5 Block I TN OF Pukerau, held in separate records of title (RT SL27/215 and RT SL121/156).

The subject land is located in the Rural Zone and the surrounding environment is comprised of both rural and residential activities. Both sites have frontage on to State Highway 1, and Section 4 contains an existing vehicle access, which will be retained. The existing dwelling is serviced for all utility services, including water supply, sewer, stormwater drainage, telecommunications, and electricity.

The Gore District Council’s mapping system identifies the allotments as being subject to Medium Liquefaction Risk. The site is free of any flood hazards. The soils on the site are classified as Land Use Capability Class 3 (refer to section 6.3). The allotments are not identified in the Selected Land Use Sites Register (‘SLUS’) as an actual or potentially contaminated sites. There are no other known natural features and landscapes or historic heritage features on the properties. There are no high voltage powerlines located in the immediate vicinity of the allotments.



Figure 2: Aerial Image of Subject sites (source: Intramaps)

3. ACTIVITY STATUS

3.1 Gore District Plan

The site is zoned Rural in the Gore District Plan and the proposed activity is a **controlled** activity resource consent pursuant to *Rule 8.10 (2)(d)(ii)* for *boundary adjustments that reduces the size of any allotment that prior to the adjustment has an area that is less than 2 hectares in the Rural Zone*. Council's control is with respect to the following:

- a) *The suitability of the allotments for activities permitted within the zone in which they are located.*
- b) *Granting of easements;*
- c) *The design, location, construction and alignment of any access or road;*
- d) *The location, design and construction of infrastructure;*
- e) *Ensuring that the minimum environmental standards specified in this Plan can be met on any allotment that contains an existing building.*
- f) *The protection of any heritage or archaeological values on the site.*
- g) *Any adverse effects on natural features and landscapes, ecological or cultural values.*

The application documentation confirms that the subdivision proposal meets the Controlled Activity matters above and can therefore be considered as a Controlled Activity under Rule 8.10 (2)(d)(ii).

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

Based on the applicants review of 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

While there are no rules in a plan or National Environmental Standard that preclude notification; public notification is precluded as follows:

- The application is a controlled activity.

Therefore, public notification is precluded under step 2. Go to step 4.

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

No persons have given written approval as part of this resource consent application.

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.

I consider there to be no affected persons as the potential environmental effects will be less than minor for the following reasons:

1170 Waipahi Highway Pukerau (Section 6 Block I TN OF Pukerau), Section 3 Block I TN OF Pukerau, Section 31 Block I TN OF Pukerau, Section 32 Block I TN OF Pukerau, Section 33 Block I TN OF Pukerau, Section 34 Block I TN OF Pukerau, and Lot 5 Block II DP 182.

- The proposed subdivision creates one lot around the existing configuration of a lawfully established dwelling. No physical works are proposed and there would be no change to the current visual, streetscape or local amenity. The proposed subdivision will not result in any changes to the existing lawfully established situation experienced by the above-mentioned properties.
- The proposal is purely legal and hence indiscernible in the host natural and built environment in terms of resultant physical and amenity effects.
- The proposal does not involve any physical changes to the site or create additional development rights. The existing development will be unchanged from its current appearance and use from the boundary alteration, any potential effects are considered to be less than minor.

Waka Kotahi NZTA

Whilst the site is adjacent to the state highway, there is no change of land use or development right created in relation to the subdivision. Section 4 Block will utilize its existing access for the proposed lot, and as a result of the subdivision no new access or road construction is required. Waka Kotahi are therefore not considered an affected party as adverse effects on the roading authority will be less than minor.

Conclusions: Effects on Persons

In terms of section 95E of the RMA, and on the basis of the above assessment, no person is considered to be adversely affected.

Step 4 – Special Circumstances for Limited Notification

- There are no special circumstances that warrant limited notification of the application.

5. DECISION PURSUANT TO S95A AND S95B OF THE RMA

For the reasons set out above, under s95A and s95B of the RMA, the application is to be processed on a non-notified basis.

6. SECTION 104 ASSESSMENT

6.1 Matters for consideration

This application must be considered in terms of Section 104 of the RMA.

Subject to Part 2 of the RMA, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) any relevant provisions of:
 - (i) A national environmental standard;*
 - (ii) other regulations;*
 - (iii) a national policy statement;*
 - (iv) a New Zealand coastal policy statement;*
 - (v) a regional policy statement or proposed regional policy statement;*
 - (vi) a plan or proposed plan; and**
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

6.2 Effects on the Environment

Actual and potential effects on the environment have been outlined in the section 95 report. Conditions of consent can be imposed under s108 of the RMA as required to avoid, remedy or mitigate adverse effects.

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, all boundary adjustments require consent, and as such there is no permitted baseline.

The Council's assessment is limited to the matters of control, being:

- a) The suitability of the allotments for activities permitted within the zone in which they are located.*
- b) Granting of easements;*
- c) The design, location, construction and alignment of any access or road;*
- d) The location, design and construction of infrastructure;*
- e) Ensuring that the minimum environmental standards specified in this Plan can be met on any allotment that contains an existing building.*
- f) The protection of any heritage or archaeological values on the site.*
- g) Any adverse effects on natural features and landscapes, ecological or cultural values.*

The proposal is a simple boundary adjustment that amalgamates the configuration of the two allotments involved, resulting in a practical layout to effectively reconcile the title arrangements. There is no change of land use or development proposed in relation to the subdivision. Section 4 Block will utilize its existing access for the proposed lot, and as a result of the subdivision no new access or road construction is required. There are no known heritage, archaeology, ecology or cultural values known to be associated with the allotments and the allotments are not classified as a natural feature or landscape.

As a result of the boundary adjustment, the Section 4 Block will remain serviced for domestic purposes. As such, no additional domestic services are required for Lot 1.

The proposal does not involve a change of land use or enable additional development in relation to the proposed boundary adjustment.

Overall, it is considered that any adverse effects from the proposed boundary adjustment will be less than minor and acceptable.

6.3 Relevant Provisions

District Plan

The relevant objective and policies are contained within Chapter 8 - Subdivision of Land of the District Plan. The relevant objective and policies seek that the size and shape of allotments are appropriate for the location and future land use, and that access and servicing can meet Council's standards. The proposal is considered to meet the relevant objectives and policies of the Gore District Plan.

National Policy Statement for Highly Productive Land (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 controlled activity subdivision and matters of control 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.

In this case, the site is not subject to any known natural hazard risk. The proposed lot will retain the existing accessway from State Highway 1 into Section 4 Block I TN OF Pukerau, which will continue to service the proposed lot. 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. The proposed subdivision will promote sustainable management of natural and physical resources, reconciling title arrangements with the existing physical occupation and use of the land.

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 104A of the RMA, consent is **granted** to undertake a boundary adjustment subject to the following conditions imposed pursuant to Section 108 and Section 220 of the RMA:

Consent Conditions

General

1. The subdivision must be in general accordance with the application made to Council on 25 July March 2023 and the following plan:
 - *‘Proposed Subdivision of Part Section 5 Block I Tn of Pukerau [SL121/156], prepared by Clark Fortune McDonald and Associates, dated 10-07-2023’.*

This plan is attached as 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 the easement instrument of the relevant Records of Title.
4. Lot 1 (Section 5 Block I TN OF Pukerau) shall be amalgamated with 4 Block I TN OF Pukerau in accordance with the following amalgamation condition:

“That Lot 1 hereon be transferred to the owners of Sec 4 Blk I Tn of Pukerau (RT SL27/215) and that one record of title be issued to include both of those parcels.” *Reference number 1867012*

Minor wording amendments may occur following approval of amalgamation condition wording by Land Information NZ.

Advice Notes

- Any future development will be subject to the requirements of the Gore District Council Subdivision and Land Development Bylaw 2019 and the Gore District Plan and will be assessed at the building consent stage.

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



Joanne Skuse
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Decision made by



Werner Murray
Delegate

APPENDIX A – APPROVED PLANS

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