

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	LU24021
Applicant	Fulton Hogan
Proposal	Application under s127 of the Resource Management Act 1991 (RMA) to: To clarify the extent of the existing quarry and change condition 1 and 3 of consent LU 2020/34 to reflect this and to change the hours of operation of the consent.
Location	209 River Road, Diamond Peak, Gore
Legal Description	Part Section 14 Block IV Waikaka SD
Activity Status	Discretionary
Decision Date	28 January 2025

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 28 January 2025 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 LU2020/34 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 proposes to change condition 1 of LU 2020/34 to reflect the accurate area where the quarrying activity will occur.

The consent LU 2020/34 specified the correct quarrying area in the decision report being 1-2 hectares, however, the site plan outlines a different area than what was identified in the decision report and the applicant wishes to clarify this.

Further, the applicant wishes to update the site hours of condition 3 of LU 2020/34 from 8.00am to 5.00 pm Monday to Friday and 8.00am to 12.00 pm Saturdays to 8.00am to 5.00 pm Monday to Saturday.

History:

Resource consent LU2016/201 was for the establishment of a commercial rock quarry and was approved on the 9th of March 2016 and is subject to 9 Conditions.

Resource consent LU2020/34 was granted in 2020 to operate the existing commercial quarry and to allow for extraction of rock by blasting, crushing and screening of the won rock to enable the protection of rock armouring for river protection works.

The applicant lodged a consent with Gore District Council in 2023 being LU23019, to increase the volume of rock that could be quarried to supply Environment Southland with rock for their river protection project and other similar projects. This application also sought to clarify the extent of the area of which quarrying is authorised.

The demand for rock from this quarry has now changed, and the previous application (LU23019) has been withdrawn. Fulton Hogan, however, still seek clarification on the quarries authorised area.

2. SITE DESCRIPTION

The site at 209 River Road, legally described as Part Section 14 Block IV Waikaka SD is located in the Rural Zone of the Gore District Plan and is approximately 76.21 hectares. The site is located approximately 3km southeast of the Gore township.

The site is located in the Rural Zone of the Gore District Plan and is located in close proximity to the Mataura River. A small portion of the western boundary is within the Mataura River Floodway as shown in Figure 1 below. However, this is a significant distance from the quarry operation. The site is subject to no additional natural hazards.

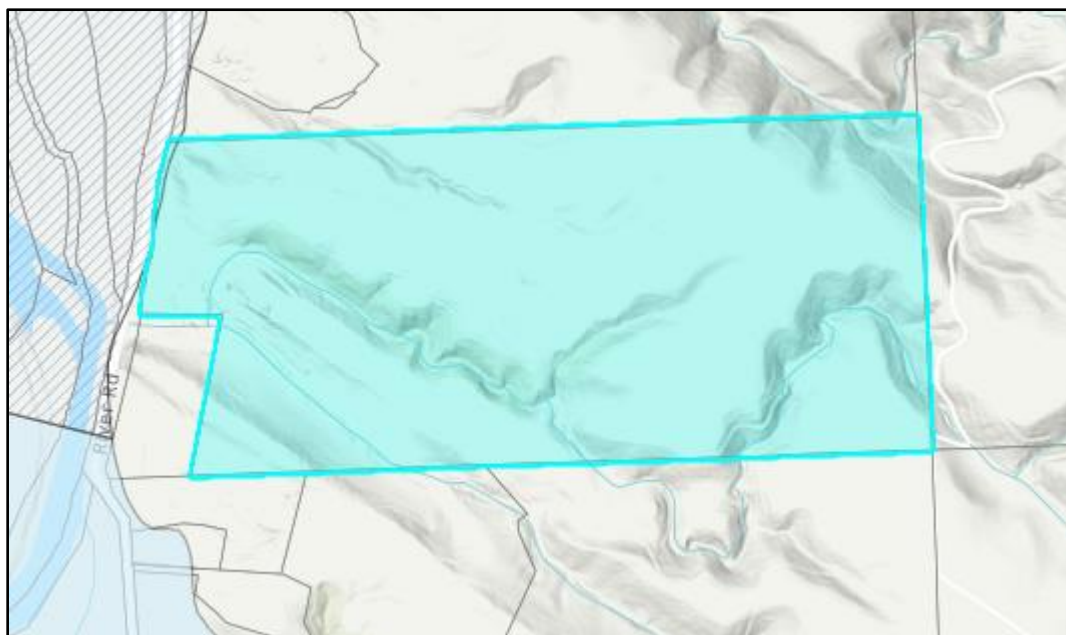


Figure 1: Maitava River Floodway mapping on western edge of Lot.

The site consists of rolling hills and is currently used for farming in addition to the existing quarry operation. On the southern and western sides of the quarry there is bunding which was constructed in accordance with condition 4d of the original consent (LU2020/34).

The site has frontage with River Road and has access to the quarry which was constructed in accordance with Condition 4c of the original consent (LU2020/34).

The majority of the surrounding area is used for farming purposes with associated residential dwellings and buildings on the sites.

There are no relevant interests on the Record of Title.

3. ACTIVITY STATUS

3.1 Resource Management Act 1991

The proposed activity requires resource consent for the following reasons:

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 Condition 1 and 3 of resource consent LU2020-34 as follows (deleted text ~~struck through~~, added text **bold** and underlined):

1. Approved plan

*The development of the rock quarry shall be undertaken generally in accordance with the application made to the consent authority 11th September 2020, ~~the undated plan drawn by the applicant and~~ the additional information provided by the applicant via email on 16/10/2020, **and the Variation of Consent conditions application on the 29TH of May 2024** except where another condition of this consent must be complied with.*

3. Hours of Operation

The hours of operation at the subject site are between 8.00am-5.00pm Monday to Saturday ~~Friday and Saturday mornings 8.00am to 12.00 midday~~. No work is to be done on public holidays.

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.

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. The permitted baseline is not relevant in this case.

Assessment of Effects

Noise

The application states that, the quarry noise levels are not anticipated to be any greater than what is produced from the existing quarry operation. This is given that the change of conditions relates to clarifying the consented area and size of the quarry specifically outlining the area correctly on the site plan.

The frequency is not expected to change, given the approved volume of material to be excavated is not changing. In addition, the quarry area to be clarified is deeper within the site, thus moving away from publicly accessible areas such as River Road and the Mataura River and any residential dwellings on surrounding properties. It is considered that the potential adverse effects relating to noise of the proposed change to conditions will be less than minor.

Traffic

Given the total volume of material is not changing the proposed changes to the conditions will not result in any amendments to the consented vehicle access arrangements. There will be on-site work but no sales or truck movements on Saturdays. It is considered that the potential adverse effects relating to traffic of the proposed change to conditions will be less than minor.

Amenity

The proposed change to the conditions will result in the quarrying area identified in the decision report for LU 2020/34 being specified.

As this is an extension to what is existing on site there is potential for this to cause amenity effects on the surrounding properties. However, the ridge of rock which is being quarried sits lower in the landscape and does not impact the skyline and hill form.

Additionally, there is existing bunding that was required as part of the previous resource consent application, no changes are proposed to the bunding, and it is expected that this will ensure that visibility from River Road is minimised. Further, the topography of the site assists in minimising the visibility of the quarry. Given, that once the rock resource is exhausted in each area and this area will then be re-topsoiled and vegetated progressively it is considered that any adverse effects are considered to be less than minor.

Erosion, Sediment and Dust Control

The existing erosion, sediment and dust controls will continue to be utilised. These current controls include:

- Progressively re-stabilising and revegetating the quarried area.
- Implementing erosion and sediment controls down slope from excavation areas.
- Ensuring that the existing rock track to the Quarry is maintained to avoid sediment being tracked onto River Road and to reduce dust effects.

It is considered that erosion, sediment and dust can continue to be managed under the existing conditions of consent and any adverse effects relating to erosion, sediment and dust will 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 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.

Neighbouring properties

The adjacent persons who are assessed below are all of the owners of the properties that share a common boundary with the subject site and those that are located opposite to the site.



Figure 2: Adjacent properties identified with stars; the blue stars represent verbal approvals.

Verbal Approvals

The following properties have provided verbal approvals to the proposed activity- 231, 165, 273 and 273B River Road.

History

231, 165, 273 and 273B River Road provided written approval with the initial LU23019 application that was applied for as discussed above. That application was subsequently withdrawn and a variation of consent conditions applied for LU 2020/34. Given that at the time of this variation, the written approvals were over a year old, it was confirmed in an email dated 11 December 2024 by the agent that Greg Caughey (Quarry Manager at the time) had spoken with the above neighbours in August, 2024 and approval was still provided.

The property at 231 River Road specifically, is approximately 90m from the existing quarrying area. The quarry activity will continuously move further away from this property as it progresses.

In order to gain an indication of the noise levels from the existing operation, noise readings were taken at the site by a Fulton Hogan staff member using a handheld noise meter while quarrying activity was underway. The Noise reading at this boundary (shown by x1 in Figure 3 below) was 48-74dBA. The District Plan Noise limit in the Rural Zone between 7.00am to 10.00 pm is 55 dBA Leq. and 75dBA Lmax. Given that this neighbour has given verbal approval (and written approval previously), the scale of quarrying is not increasing, and the activity will be moving away from this border as quarrying progresses, it is considered that Noise effects on 231 River Road are acceptable.

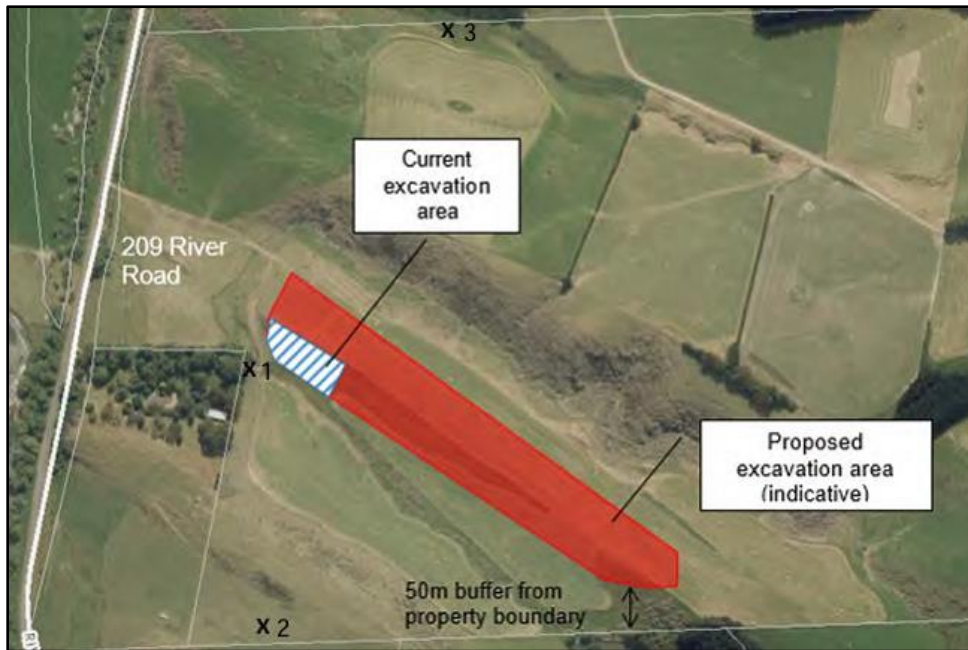


Figure 3: Location of Noise reading in relation to 231 River Road

Other Adjacent Properties

The property 167 River Road is a rural lifestyle property, there is an existing dwelling located on site which is approximately 500 metres north of the quarry to south of the dwelling there is existing vegetation which will aid in screening the quarry. It is noted that the area that is to be clarified is to the east, resulting in the excavation area becoming further away from this property.

The property CL SO 11179 is crown land which is assumed to be associated with the Mataura River. There is no development on this site. River Road separates this site and the subject site, additionally, the quarry is setback approximately 125 metres from River Road, with existing bunding. The area that is to be clarified is to the east of the existing quarry (which is further away from this site). Therefore, the existing quarry site is setback a significant distance and the area to be clarified is located a further distance from this site.

The property at 297 River Road is a rural lifestyle property with an existing dwelling located in the western portion of the site. There are three properties that are between the quarry and the existing dwelling. The topography of the area will aid in screening the quarry from this property.

The property Lot 3 DP 12099, Lot 3 DP 402781 and Section 12 Block IV Waikaka SD is a rural property with a residential dwelling located in the southern portion of Lot 3 DP 402781. There is existing vegetation on site that will help to screen the quarry site.

Effects on properties from change in quarrying hours

As part of this variation proposal, the applicant seeks to extend operating hours on Saturdays from the consented 8.00am to 12.00 pm to 8.00am to 5.00 pm providing a further 5 hours of operating time.

Given that this change is still well within daytime hours and the scale of the activity is not increasing, and it is expected that the noise levels will comply with the district plan, it is anticipated that any potential adverse effects in relation to the change in operating hours, will be less than minor on neighbouring properties.

Conclusion

Overall, it is considered that clarification of the gravel quarry boundaries and alteration of the operating times, will have no more than minor effects on neighbours.

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 for LU2020/34 and are being varied under s127 as required to avoid, remedy or mitigate adverse effects.

6.3 Relevant Provisions

Iwi Management Plan

The Cry of the People / Te Tangi a Tauria, the Ngāi Tahu ki Murihiku Natural Resource and Environmental Iwi Management Plan (2008) relevant objectives and policies were considered as part of the variation application. This assessment is considered complete and adopted in full. Fulton Hogan have also discussed the proposal with Hokonui Rūnanga representatives, who advised that they did not have concerns about the quarrying activity.

District Plan

An assessment against relevant objectives and policies of Chapter 2.6 - Mana Whenua, 3- Land Use Activities, and 5- Transportation of the Gore District Plan was undertaken by the applicant. This assessment is considered complete and accepted in full.

It is considered that the proposal is consistent with the above objectives and policies.

Overall, it is considered that the adverse effects of the previously granted consent and the changes sought are less than minor. The application is a discretionary activity by virtue of being a request to change conditions of the existing consents. It is concluded that the proposal to change conditions of existing consents creates minimal additional effects.

7. PART 2 OF THE RMA

The purpose of the RMA is to promote the sustainable management of natural and physical resources.

Section 5 – Purpose

The proposed activity takes into account Section 5 of the RMA. The proposed quarrying activity will sustain natural and physical resources and whilst enabling people and communities to provide for their social, economic and cultural well-being. As assessed above, the adverse effects of the proposal can be avoided, remedied or mitigated.

Section 6 – Matters of national importance

Attention has been given to matters of national importance. This site does not contain any outstanding natural features or landscapes, nor any area of significant indigenous vegetation. It is considered the proposal is appropriate within this rural landscape.

Section 7 – Other matters

Particular regard has been given to the maintenance and enhancement of amenity values (section 7(c)) and maintenance and enhancement of the quality of the environment (section 7(f)). The amenity of the land and surrounding area will be maintained, and the proposed activity will not have adverse effects on the quality of the environment.

Section 8 – Treaty of Waitangi

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 104B of the RMA, consent is granted for the application by Fulton Hogan to change conditions of LU 2020 34 to clarify the quarry area and extend the time of the site hours as follows (deleted text ~~struck through~~, added text **bold and underlined**):

1. Approved plan

The development of the rock quarry shall be undertaken generally in accordance with the application made to the consent authority 11th September 2020, ~~the updated plan drawn by the applicant and the additional information provided by the applicant via email on 16/10/2020,~~ **and the Variation of Consent conditions application on the 29TH of May 2024** except where another condition of this consent must be complied with.

3. Hours of Operation

The hours of operation at the subject site are between 8.00am-5.00pm Monday ~~to Saturday to Friday and Saturday mornings 8.00am to 12.00 midday.~~ **to Saturday**. No work is to be done on public holidays.

Advice note

- All other conditions of LU 2020/34 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.

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

Prepared by



Consultant Planner

Decision made by



Werner Murray
Delegate

Appendix A: Updated Conditions

Appendix A: Revised conditions for LU 2020/34

The conditions of consent are as follows:

Land Use Consent 2020/34

1. Approved plan

The development of the rock quarry shall be undertaken generally in accordance with the application made to the consent authority 11th September 2020, additional information provided by the applicant via email on 16/10/2020, and the Variation of Consent conditions application on the 29TH of May 2024 except where another condition of this consent must be complied with.

2. Review

In accordance with Section 128 of the Resource Management Act 1991, the consent authority may review any or all conditions of this consent by serving notice on the consent holder within one (1) month of the anniversary of the date of this consent notice, in order to deal with any adverse effects on the natural or built environment which may arise as a direct result of the consented activity.

3. Hours of Operation

The hours of operation at the subject site are between 8.00am-5.00pm Monday to Saturday. No work is to be done on public holidays.

4. Nature of work

- a. The volume of rock extracted in any consecutive 12 month period shall not exceed 10,000 cubic metres;
- b. The extraction of rock will include blasting subject to the following conditions:
 - i. No more than three blasting events will occur within 12 consecutive months, with a minimum period of 3 consecutive months between blasting events;
 - ii. Blasting shall be carried out by a suitably qualified experienced person with a blasting plan submitted to the Gore District Council (GDC) at least 10 working days before the proposed blasting event date;
 - iii. Property owners within one kilometre of the blasting site shall be notified of the proposed blasting date at least 10 days before the blasting event
 - iv. The road, River Road Gore, shall be closed, for a length of 500 metres either side of the site entrance at 209 River Road, to traffic for the duration of the blasting event. The road will be inspected by Fulton Hogan Staff following the blasting event removing any blast material before the road is opened for traffic.
- c. Won rock may be processed on-site by crushing and screening.
- d. The extraction site will be shielded to the west and the south by at least a three metre high vegetated bund.

5. Erosion, Sediment and Dust Control

The consent holder shall ensure that all exposed areas of earth resulting from works under this consent are effectively stabilised against erosion by vegetative cover or other methods as soon as practicable following the completion of works. The consent holder shall ensure that the erosion

and sediment controls remain in place until time as the site is fully stabilised. The consent holder shall ensure that, at all times, the soil moisture level of exposed areas is sufficient, under prevailing wind conditions, to prevent dust generated by normal earthmoving operations from remaining airborne beyond the property boundary of the work site.

6. Access

That the existing access, shown on the site plan shall be upgraded to comply with the Gore District Council Subdivision and Land Development Bylaw 2019 or as agreed to in writing by the Chief Executive of the Gore District Council or delegate.

7. Visual Amenity

The subject site is to be maintained in a tidy, safe and structurally-sound condition at all times. Topsoil is to be kept onsite and be used in rehabilitation of the site. The site will be rehabilitated as set out by the applicant in the additional information provided on 16/10/2020. The rehabilitation of the site will be completed by the date of the expiry of the consent, unless the term of consent is extended or a new consent is granted.

8. Archaeological discovery

Should any human remains, or sites of cultural significance be found, then all work in that area shall cease immediately. The Council and Hokonui Rūnanga shall be notified and no additional work may be carried out in the area until authorised by Council.

9. Work Log

No later than 1 February each year, the consent holder shall advise the Gore District Council in writing details of:

- i) The volumes of rock removed from the site over the previous twelve months; and
- ii) Areas currently being worked and
- iii) Areas where rehabilitation work has been or is currently carried out

Where appropriate, the details required in (ii) and (iii) above shall also be shown in plan form.

10. Term of Consent

This consent shall expire in 15 years from when it was granted.

Advice Notes

1. In the event the consent holder wishes to extend the life of the quarry beyond the 15 years from when it was granted, as provided in condition 10, then a further resource consent may be lodged prior to that date.
2. The applicant should liaise with Environment Southland to identify if any discharge consents are required for this activity.
3. The closure of the road before, during and after the blasting event may require a Traffic Management Plan, please discuss with Council Transportation staff.