Lance and Helen Percy

Decision of the Hearing Panel appointed by the Kaikoura District Council pursuant to the Resource Management Act 1991

APPLICANT:	L and H Percy
APPLICATION REFERENCE:	SU-2019-1672-00
APPLICATION:	Land Use and Subdivision Consents
SITE LOCATION:	871 Inland Road, Kaikoura
DECISION:	Consents Granted
DECISION DATE:	8th October 2020

HEARING APPEARANCES

The Applicant

Christine McMillan – Planner

Lance and Helen Percy - Applicant

The Council

Nirosha Seelaratne - Planner

INTRODUCTION

Introduction and Proposal Outline

1. This is a decision on resource consent applications made to the Kaikoura District Council (the Council) by L and H Percy (the Applicant) for land use and subdivision consent.
2. It is proposed to subdivision a 1.0678ha lot (Lot 1 DP6220) into two titles of 2447m^2 (Lot 1) and 8231m^2 (Lot 2), and to retain an existing dwelling (and associated ancillary buildings) on each of the new titles. Vehicle access to proposed Lot 1 will be via an existing vehicle crossing. An unsealed vehicle crossing serves proposed for Lot 2 and requires upgrading.
3. We were advised that the Applicant's intention is to reside in the dwelling on Lot 2 and dispose of Lot 1.
4. The application site is zoned Rural in the Kaikoura District Plan (the Plan). The minimum District Plan allotment size of 2ha is not meet. This is both a subdivision (rule 13.12.1.a)) and a land use matter (rule 22.8.5). The proposal, therefore, requires consent as a restricted discretionary activity (rules 13.11.2 and 22.7). These facts are not in dispute.
5. The application documentation and Ms Seelaratne's report provided an explanation as to how two dwellings currently exist on a site that is already below the minimum Plan density standards. We also received some additional verbal statements from the Percy's on this issue. In summary:
    - The dwelling on proposed Lot 1 was the original house on the site, and was significantly damaged during the 2016 Kaikoura earthquake;
    - Following an insurance settlement, funds were available to construct a new dwelling;
    - The Council granted building consent for a new dwelling in 2018, on what is now proposed to be Lot 2. At that time, no subdivision was proposed;
    - The District Plan contains a provision (rule 22.10.3) that enables dwellings to be constructed on undersize allotments, if the site existed prior to November 2005 - which was the case here; and
    - That provision did not authorise the retention of the existing earthquake damaged dwelling. As a consequence, the building consent was issued on

the understanding that the existing dwelling would be demolished on completion of the new dwelling. This matter is not in dispute.

6. Further investigation undertaken by the Applicant led them to a position that the dwelling could be repaired. As a consequence, we now have the land use and subdivision consent applications before us.

The Hearing and Adjournment

7. The hearing to consider the applications commenced on 31 July 2020 and was adjourned at the completion of the presentations to allow:

- the Panel to undertake a site visit;
- Ms Seelaratne and Ms McMillan to collaborate over consent conditions; and
- Ms McMillan to prepare a written right of reply.

8. The Panel received Ms McMillan's right of reply on 5th August. This included two sets of consent conditions for the land use and subdivision consents; one prepared by Ms McMillan and one by Ms Seelaratne. Following deliberations by the Panel, we indicated to the parties that we had sufficient information to complete our deliberations and make decisions. We did indicate, however, that due to concerns we held regarding the two sets of conditions presented to us, that we required the planners to work collaboratively to produce a consolidated set of conditions. To assist the planners, we provided a table that outlined the nature and extent of our concerns.

9. We were provided with a response by the planners on 3 September 2020. As a consequence, we closed the hearing on 8th September.

The Site and Adjoining Environment

10. The characteristics of the site and adjoining environment are described in the application, Ms Seelaratne's report and Ms McMillan's evidence. While we do not propose to repeat the detail contained in those documents, we highlight the following points as they are germane to our deliberations:

- While two single storey dwellings currently exist on the site, only one is lawful. We agree with the assessment of Ms Seelaratne (and the supporting legal advice) that this is the original dwelling and not the new dwelling;
- A mature hedge/windbreak is located on the Inland Kaikoura Road for the entire length of the proposed Lot 1 road boundary, other than at the existing vehicle entry point. This hedge extends a considerable distance eastward from the application site. As a result, the original dwelling is screened from the road, and only visible at the accessway;
- The hedge extents westwards and occupies approximately one third of the road boundary of proposed Lot 2. The applicant has established additional planting along the balance of the road boundary, other than at the vehicle crossing. Given this there are partial views of the new dwelling, primarily from the west; and

- The wider environment is of mixed character. Land opposite the Application site is in pasture with an expansive open rural character. An absence of roadside planting provides largely uninterrupted views to west, north and east. From a wider perspective there is some evidence of clustering of dwellings along the Inland Kaikoura Road in proximity to the application site. Some are located on existing undersize blocks, although these are predominantly to the east.

Affected Party Approvals

11. The Applicant provided written approvals from:
    - Bruce Ensor – 727 Inland Kaikoura Road
    - Peter and Margaret Chapman – 871 Inland Kaikoura Road
    - Michelle and John Faulks – 891 Inland Kaikoura Road
12. These sites surround the application site on the south side of the Inland Kaikoura Road. Approvals were not provided from the owner/occupier of the property on the opposite side of the road (844 Inland Kaikoura Road, PT SEC 1 DP 167 BLK I GREENBURN SD PT SEC 1 DP 166 BLK VI MT FYFFE SD).
13. Pursuant to section 104(3)(a)(ii) of the RMA we are unable to consider any effect on the parties that have provided written approval.

Our Approach to this Decision

14. We do not propose to summarise the content of the reports, evidence and statements made at the hearing. Given that pre-circulation of the section 42A report and evidence occurred, and all are a matter of record, our deliberations and the balance of this decision address the issues on a topic basis.

STATUTORY CONSIDERATIONS

15. The proposal is for a restricted discretionary activity. Section 104(1) of the RMA sets out the matters which we must consider when assessing the proposal. It is considered that in this instance, subject to Part 2, regard shall be had to:
    - *any actual and potential effects of allowing the activity (section 104(1)(a));*
    - *any relevant objectives, policies, rules, or other provisions of a ….. plan or proposed plan (section 104(1)(b)); and*
    - *any other matters the consent authority considers relevant…(section 104(1)(c).*
16. The relevant Plan is the Kaikoura District Plan. Our findings with respect to that Plan and effects issues are outlined later in this decision.
17. We discussed policy 5.3.1 of the Canterbury Regional Policy Statement (CRPS). While we have formed the view that the proposal may not be consistent with that particular policy, we do not consider that to be of any significance. As a consequence, we have found that this proposal does not give rise to matters of regional significance that require any further assessment of the Canterbury Regional Policy Statement (CRPS).

18. Section 104(1)(c) enables us to consider any other matter relevant and reasonably necessary to determine the application. In our view this includes matters of Plan integrity and precedent. We shall return this is issue later in this decision document.

19. We have commented on section 104(3)(a)(ii) earlier.

20. Section 104C(1)(b) prescribes that we may only consider matters to which the Plan has restricted the exercise of its discretion.

21. Section 104C(2) and (3) allows us to grant or refuse the application. If granted, we may only impose conditions on matters related to the restricted discretion (subject to section 108).

22. Section 104(2) states:

    When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if ….. the plan permits an activity with that effect.

23. This is commonly referred to as the "permitted baseline" argument. Ms Seelaratne advised that there are no permitted subdivision activities within the Plan. From a land use perspective, while dwellings are permitted activities they are limited by the 2ha density standard. Given this, the proposal needs to be considered on its merits.

24. We do signal, however, that the ancillary residential unit rule (22.8.6) provides a context in which to consider the land use effects that may arise from this proposal. To be clear, we are not stating that this is a reliable permitted baseline. Rather we will use it as a measuring tool to gauge effects outcomes.

THE ISSUES AND FINDINGS

Introduction – The Planning Experts Conclusions

25. Ms Seelaratne concluded that:

    - the adverse effects arising from the land use consent would be "less than minor"[1] and that the proposal would be "generally consistent"[2] with the policy framework of the Plan; and
    - the adverse effects arising from the subdivision consent were mixed[3], but that the proposal would be "inconsistent"[4] with the Plan policy framework.

26. Overall, Ms Seelaratne recommended that the land use consent be granted and that the subdivision consent be declined[5].

27. Ms McMillan considered that the adverse effects arising from both the land use and subdivision consents would be less than minor[6], and that both were

[1] Page 16
[2] Page 32 and 33
[3] Referenced from the discussion on pages 16-22
[4] ibid
[5] Page 33
[6] Paragraph 31

consistent with the policy framework of the Plan.[7] As a consequence, the consents could be granted.

28. Both planners agree on the outcome for the land use consent, but their views on the subdivision consent are disparate.

Environmental Effects (section 104(1)(a))

Introduction

29. Upon reviewing the evidence and the various Plan provisions, we have concluded that the key effects issues relate to rural amenity and rural character and, to a lesser extent, matters of reverse sensitivity. While there was some discussion at the hearing on road network issues and matters relating to vehicle access to proposed Lot 2, there was general agreement between the Planners on these issues (and agreement as to access conditions) and, as a consequence, we do not propose to discuss them further.

Rural Character and Amenity

30. There is a clear connection between the policy framework of the Plan and the rural character and amenity effects outcomes associated with the land use and subdivision non compliances. In order to assist with an effects determination, it is necessary to understand at a policy level what the Plan anticipates for the Rural Zone. Given this, we reference the relevant objectives and policies to frame our findings on effects issues.

31. The policy framework of the Subdivision chapter provides little assistance in this matter, other than to note 13.4.1 Objective 3 (and policy 13.4.2.1), and related policy 13.4.2.2 seeks, respectively, to provide allotments that are:

- suitable for "sustainable land uses"; and
- of sufficient size and shape to "maintain and enhance rural amenity values"

32. On the first matter we note that the term "sustainable land use" is not defined in the Plan. We agree with Ms McMillan that this could be a range of uses but, perhaps, more importantly, the proposal does not hinder the ability of "mainstream" rural activities to occur around the site. We will return to the issue of reverse sensitivity effects later in this decision.

33. With respect to the second matter, we have formed the view that this also does not quantify for us what rural amenity values and outcomes are being sought. While it is arguable that the default position on this matter would be a minimum allotment size of 2ha (as a controlled activity), it does not follow that subdivision below that standard cannot achieve acceptable environmental results. This is evidenced by the activity status (RDA) that applies to this proposal and also by clause 8 of the stated Anticipated Environmental Results (clause 13.9) which seeks:

"A pattern of subdivision which complements the character of the land uses in the area concerned"

[7] Paragraph 37

34. In our view, this sends a strong signal that, in some circumstances, subdivision below the minimum Plan standards may be appropriate.

35. Given this, we then examined the Rural Zone chapter and related evidence to determine if this assisted in understanding the values to be assigned to the rural area. Objective 22.2.1.1 and related polices are relevant. When determining rural amenity and character, the key themes emerging are an "open" and "spacious" character, with a "dominance of open space and plantings over buildings". The "Explanation and Reasons" provided in the Plan include:

"The rural environment has particular amenity, cultural and environmental values which are important to people. These include privacy, rural outlook, spaciousness, ease of access, clean air and peacefulness. … Subdivision controls are considered necessary, to ensure the density of residential dwellings is compatible with the rural environment…"

36. If the key measurement of rural amenity and character from the above policy framework is an open and spacious character and a dominance of open space, then it is easy for us to conclude that is not achieved by this proposal. That said, we are mindful that the land use framework of the Plan, with respect to activity status, matches that of the subdivision provisions. In other words, the Plan anticipates that development below the anticipated density may be appropriate. Again, this position is reinforced by the stated Anticipated Environmental Results (clause 22.5) for the Rural Zone which include, amongst other things (our emphasis):

"Retention of the amenities, quality and character of the different rural environments within the District."

37. In simple terms, we have formed the view that the Plan acknowledges that the key amenity and character outcomes sought for the rural area of the District may not be able to be achieved in every circumstance, due to variances in land use patterns and form. That is the case here. What is evident from the clustering of dwellings near to the application site is that when viewed from the road, land on the south side exhibits a more closed or denser rural character when compared to the open character found on the north side of the road, and when compared to land further to the west. While this arrangement of mixed character may not be unique to the rural environment throughout the District, it does provide a point of difference within the immediate vicinity of the Application site. Within this context we are of the view that, in this particular location, the area is able to absorb the additional density of development without having detrimental adverse effects on rural character and amenity.

38. That conclusion is relevant in both a land use and subdivision context. There are two other factors influencing our view on this issue:

- First, we acknowledge that the visibility of the structures is limited due primarily to the existing substantial planting that exists along the road frontage. Furthermore, the additional planting proposed will ensure further screening of the new dwelling such that at maturity, it will be visually indistinct; and
- Second, we note the provisions in rule 22.8.6 dealing with Ancillary Residential Units. While we acknowledge that this rule does not provide a permitted baseline comparison for this proposal. It does provide a context

for effects comparisons (in a land use context), in the sense of what is anticipated in the rural environment. The rule allows for a secondary unit subject to floorspace limits, spatial relationships and user relationships, irrespective of site size. While a secondary unit is limited to 100m^2 in area, the main dwelling can be of any floorspace, subject to the Plan curtilage requirements. It is clear that the Plan is signalling that, in a physical sense, the clustering of dwellings on a site that does not meet the density standard is acceptable. While the proposal we have before us does not meet these standards, we do not consider the difference in effect to be significant.

39. Overall, we have formed the view that any adverse effects on rural character and amenity from both subdivision and land use proposals will be acceptable, subject to a range of conditions dealing with landscape provision and maintenance, curtilage limitations and limitations on the addition of any further Ancillary Residential Units.

Reverse sensitivity

40. Ms Seelaratne identified this as a concern in her report and in discussion at the hearing. Reverse sensitivity effects arise in circumstances where new activities establish near to, or alongside, existing lawfully established or permitted activities, and adverse effects concerns are raised by the "new" occupiers. Typically, these concerns manifest themselves in physical ways, and pressure can then be applied on the lawfully operating land use to curtail or modify its activities. In this particular context, Ms Seelaratne notes that such concerns could include noise, dust or odour.

41. When considering this issue, we noted that the immediately adjoining landowners had provided written approval to the proposal. Within this context, we concluded that our consideration of potential reverse sensitivity impacts was limited to the adjoining land to the north of the site. We note Ms Seelaratne's overall conclusion that the effects of the land use consent would be less than minor, and that the reverse sensitivity issue was raised within the context of the subdivision consent. Given, as we have noted above, these impacts arise in a physical sense, we are not inclined to accept Ms Seelaratne's findings. In paragraph 49 of Ms McMillan's evidence she opined:

"Any analysis of reverse sensitivity effects can be subjective at best. In any case reverse sensitivity effects will be realised whether or not the dwellings are located on two lots, the subdivision does not increase the density of residential use, the land use does this and the planning officer has stated that the effects of the land use are less than minor…"

42. We agree.

Positive Effects

43. We acknowledge the statements made by the Applicant at the hearing and agree that the repair and retention of the existing dwelling, and its ongoing contribution to the District's housing stock, constitutes a positive effect.

District Plan Objectives and Policies (section 104(1)(b))

44. Both planners provided their opinions on the extent to which the proposals aligned with the policy frameworks of the Plan. As noted in paragraphs 25-28 above:

- Ms Seelaratne and Ms McMillan agreed that the land use consent was generally aligned with the Plan's policy framework; and
- Ms Seelaratne considered the subdivision consent was inconsistent. Ms McMillan disagreed with that view.

45. In our preceding effects assessment, we commented on the Plan's policy framework insofar as it relates to rural character and amenity issues which, we note, are the key issues in contention. Given that, and as both planners agree on the degree of alignment from a land use perspective, we are not inclined to assess the matter further. That said, we are strongly of the view that our overall effects conclusions provide a context to our perspectives on both land use and subdivision within a policy context. Given this we agree with Ms McMillan's overall assessment of the Plan's subdivision policy framework.

46. That said we wish to reinforce the principle reason which underpins our conclusions on these matters. Non-compliance with the 2ha density standard does not mean that the proposal will give rise to adverse effects of significance and thus should be avoided at all times. The logic of this view is obvious. Had the Plan's position been that dwelling density within the rural environment was always to be 1/2ha, then any proposal below this standard would have been classified as a Prohibited activity. It is inherent in the policy framework of the Plan, and in the activity status itself, that there will always be exceptions to the rule. This is particularly so given the RDA status of the land use and subdivision consents.

47. We do not hold the view that it is appropriate to apply the density standard across the rural area in all circumstances. There will always be variations in character and amenity that will, for example, reflect the historic land use development patterns of a particular location, and that is the case here. Given all the above we have formed the view that the proposal is not contrary to chapter 22 (Rural Zone) or chapter 13 (Subdivision) of the Plan.

48. Clearly the land use and subdivision consents are not "consistent" with all aspects of Plan's policy framework, but the proposals are not "contrary" in the sense that it is "repugnant" or diametrically opposed to the outcomes sought by the Plan. In short, the outcomes that the Plan is seeking for the Rural Zone does not exist here to a large degree and, consequently, we are of the opinion that this proposal will not frustrate the Council in its ability to apply its policy platforms in other rural locations throughout the District.

Other Matters (Section 104(1)(c))

49. We are mindful that if this consent were to be granted, arguments of equivalent treatment may be raised by other applicants. The issue of precedent and consistent Plan administration is a matter that we must consider.

50. If precedent arguments were to be successful, then it raises questions of Plan integrity. Clearly it is not possible to quantify the likelihood of such occurrences

and to do so would be pure speculation. That aside, any such application would need to be considered on its individual merits and on a case-by-case basis.

51. We accept that no two applications are ever likely to be the same, but there may of course be similarities. Should that situation arise, there is the prospect that the manner in which one application has been processed may well influence the processing of another and ultimately the outcome itself.

52. We received conflicting evidence from Ms McMillan and Ms Seelaratne on this matter. Given this we have considered the fundamental issue of whether it is a relevant consideration given the RDA status of both consent applications. In short, we have formed the view that it can not be. In arriving at this position, we rely upon *Auckland Council v Cabra Rural Developments Limited*[8] and accept Ms McMillan's assessment in her Right of Reply[9] where she states:

"In each of these cases the Environment Court found that precedent was not a relevant matter for consideration where it was not addressed in the matters for restricted discretion in the District Plan.

The matters for consideration in the Kaikoura District Plan are limited to the matter of non-compliance and the matters over which control has been reserved…none of these matters deal with issues of precedence and therefore precedence can not be considered relevant to [sic] *application."*

53. While not wishing to overstate this issue, there is logic in the Courts findings on this matter. Should we consider it appropriate to consider precedent effect (and thus lead to an inevitable need to consider Plan integrity), then that would effectively undermine the legislative intent to restrict the matters of discretion; being the matters we are able to consider.

54. While we agree with Ms McMillan that no link exists between the matters of discretion and the ability to consider matters of precedent and integrity, we understand the Council officer's concern on this issue; particularly given the RDA status that generally applies to matters of density across the rural area of the District. It is for this reason that we reference two additional matters:

- First, our overall effects and policy conclusions, which are application and site specific and not automatically transferable to other locations or proposals; and
- Second, if we are wrong and it is somehow possible to link a precedent issue to the general matter of non-compliance (as opposed to the stated matters of discretion), then there are, in our view, circumstances that set this proposal apart from the generality of cases. Fundamental to our view on this matter is the earthquake and insurance related history that has led to the development of the second unit and a subsequent discovery that the original dwelling remained viable. Had this been a "greenfield" development on an undersized site, then different conclusions would have been drawn; including any findings with respect to the Plan policy framework and effects outcomes.

[8] [2019] NZHC 1982

[9] Noting that Ms McMillan cited other Environment Court cases, and that Cabra was a High Court decision.

PART 2 OF THE ACT AND DETERMINATIONS

55. The High Court decision of RJ Davidson Family Trust v Marlborough District Council (Davidson)[10] provides direction on the application of Part 2 (purpose and principles) of the RMA. In short, unless a Plan is invalid, incomplete or uncertain, the objectives and policies are deemed to give effect to Part 2 and, thus, we need not consider the matters any further. We acknowledge also the subsequent decision of the Court of Appeal[11] which provides opportunities to return to a Part 2 assessment in some circumstances. We have adopted a cautionary approach to this matter.

56. In preceding assessments, we commented on the objectives and policies of the Plan. While there may be a disconnect between the rural and subdivision chapters, we consider that, overall, they are clear in their purpose with respect to the general character and amenity outcomes sought for the rural zone of the District. Equally clear, is the activity status and how this links to our overall policy conclusion that the Plan anticipates some circumstances where development below the minimum density standard is appropriate. We have found that to be the case here. Within that overall context we could conclude, with respect to Davidson, that we need not consider the Purposes and Principles of the RMA.

57. We do consider, however, out of an abundance of caution, that some reflection (albeit limited) on Part 2 is required. The purpose of the Act is to promote sustainable management of natural and physical resources. Section 5 of the RMA imposes a duty on consent authorities to promote sustainable management while endeavouring to avoid, remedy or mitigate adverse effects of activities on the environment. The term *sustainable management* is defined in section 5(2). In simple terms, the definition places emphasis on enabling people and communities to undertake activities, while ensuring that the 'bottom line' standards specified in subsections (a) – (c) are met.

58. Sections 6-8 of the RMA provide guidance on how the purpose of the RMA should be achieved. There are no matters in sections 6 and 8 that we consider relevant to this application.

59. Section 7 prescribes "other matters" to which we are directed to have particular regard. These matters include:

    (b) The efficient use and development of natural and physical resources;

    (c) The maintenance and enhancement of amenity values; and

    (f) Maintenance and enhancement of the quality of the environment.

60. We are satisfied, based on our earlier conclusions, that the proposal is aligned with sections 7(b), (c) and (f). We note for completeness that the circumstances relating to the retention of the original dwelling and its return to the District's housing stock is a relevant consideration under section 7(b).

61. Given the above:

    (i) **THAT** pursuant to sections 104, 104C and 108 of the Resource Management Act 1991 subdivision consent be **granted** to subdivide Lot

[10] RJ Davidson Family Trust v Marlborough District Council [2017] NZHC 52
[11] CA97/2017 [2018] NZCA 316

1 DP 6220 (871 Inland Road) into two allotments of 8231m^2 and 2447m^2, subject to the conditions listed in Appendix 1; and

(ii) **THAT** pursuant to sections 104, 104C and 108 of the Resource Management Act 1991 land use consent be **granted** to retain two existing dwellings at 871 Inland Road; one on each of the allotments created by the aforementioned subdivision consent, subject to the conditions listed in Appendix 1.

Dated at Christchurch this 30th day of September 2020

Darryl Millar
Commissioner
for and on behalf of
Commissioner Ted Howard
Commissioner Clint McConchie

APPENDIX 1 CONDITIONS OF CONSENTS

LAND USE CONSENT CONDITIONS

1. The proposal shall proceed in accordance with application and the accompanying site plan stamped A*pproved Plan for R.C. 1612* and held at Kaikōura District Council with the exception with compliance to the conditions below.
2. The consent holder shall meet all actual and reasonable costs incurred by this Council in monitoring, enforcement and administration of this consent.
3. Additional dwellings, including ancillary dwellings, shall not be permitted on this property.
4. The existing hedgerow along the Inland Road frontage of the property shall be maintained.
5. The maximum residential curtilage shall not exceed 10% of the site area.
6. Plantings with a minimum height of 3 metres at maturity shall be established and maintained along the Kaikoura Inland Road frontage of the new dwelling at the property with the exception of the vehicle access.
7. The plants required under Condition 6 shall be taken from the Department of Conservations East Coast Shrubland/Forest Ure to Kaikoura Species List and shall be planted within the first planting season following granting of consent.
8. All landscaping shall be ecologically sourced and the total assemblage be capable of providing full screening of the dwellings within three years of planting. The existing non-ecologically source landscaping shall remain.
9. Any dead or diseased boundary plants that create a break in the screen shall be replaced. The replacement shall be completed during the next planting season with suitable specimens from the Department of Conservation's East Coast Shrubland/Forest Ure to Kaikoūra Species List.
10. A standard site specific shallow geo-technical testing & analysis shall be carried out once the building plans are formed for any new dwelling or an extension, as recommended by Smart Alliances in their engineering report dated 19 March 2020.

SUBDIVISION CONSENT CONDITIONS

1. The subdivision shall be undertaken in accordance with the application and accompanying Scheme Plan stamped approved for RC 1672 and held at Kaikoura District Council.
2. The consent holder shall meet all actual and reasonable costs incurred by this Council in monitoring, enforcement and administration of this consent.
3. All services (water, storm water, etc.) traversing lots other than those being served by the service and not situated within a public road, shall be protected by easements. All such easements, including any amendments found necessary during the final engineering design shall be granted and reserved.
4. All Council utility schemes (water, etc) existing or created located within the proposed lots shall be protected by an easement in gross in favour of the Kaikōura District Council of no less than 3m wide. All such easements must be accessible by legal road.

Please note storm water from hardstand or roofed areas shall not discharge across the neighbouring boundaries, unless suitably protected by easements.

<u>As-builts</u>

5. The consent holder shall submit to Council as-built drawings of all new services created.
6. Two A3 size copies of as-built plans and copies of the electronic files (eg .dwg or .dxf files)

showing all works and information as detailed in NZS 4404:2010Schedule 1D.

7. Plans shall be certified by a suitably qualified person stating that they are a true and accurate record.
8. Where the new services connect with the existing services the location, depth and orientation of the existing services shall be confirmed on the as-built plans.
9. Above ground existing services shall also be identified on the As-built plans. Where known, the location of existing underground service shall also be shown.

Engineering standards

10. The consent holder shall ensure that all engineering works for the subdivision conform to NZ4404:2010-Standards for Land Development and Subdivision Engineering or any subsequent amendment to this standard.
11. Prior to any work being undertaken, the consent holder must obtain written approval from the Kaikōura District Council for any variation from NZ4404:2010.

Water Supply

12. A separate water connection to the Fernleigh Water Supply Scheme shall be provided for each of Lots 1 and 2.
13. The Fernleigh Water Supply Scheme serving Lot 2 shall be protected by an easement in gross over Lot 1 in favour of the Kaikoura District Council of no less than 3 metres in width.

Power and telecom

14. Any new power and telecommunications services shall be laid underground.

Access

15. Lots 1 and 2 shall be served by the accessways as shown on the approved Scheme Plan.
16. Each of the accessways shall be formed to NZ Transport Agency Diagram C Standard and the hedging shall be kept trimmed to maintain sight lines along Inland Kaikoura Road.
17. Confirmation that consultation with NZTA has been undertaken shall be submitted to the council with s 224 application.

Wastewater

18. The wastewater system serving Lot 1 shall be upgraded in accordance with the recommendations of Smart Alliance and must be fully contained within the boundaries of Lot 1. Written confirmation shall be provided from Environment Canterbury that either any necessary consents have been obtained or that consents are not required.

Consent Notices

19. The following conditions shall be complied with on an ongoing basis and a consent notice pursuant to s221 of the Resource Management Act 1991, shall be registered on the new Records of Title for Lots 1 and 2:

a. Only one dwelling is permitted. No additional ancillary residential units are permitted
b. The total residential curtilage of Lot 1 & 2 must be limited to 10% of the gross site area.
c. The maximum height of any buildings on Lot 1 &2 shall be limited to 8m.
d. No further subdivisions shall occur on either Lot 1 or Lot 2.

Note curtilage means land used principally for residential activities, and includes the residential unit, accessory buildings, parking and manoeuvring areas for residential activities and outdoor living space but does not include gardens or landscaping.

e. A restrictive covenant shall be registered on the new Records of Title for Lots 1 and 2 requiring that any owners or occupiers of these lots shall not raise any complaints with Kaikoura District Council regarding any activity permitted in the Rural Zone.

f. All landowners and occupiers must recognise that the rural environment is a working environment. The working rural environment has the potential to generate noise, smell, dust and spray.