



NOTICE OF DECISION

Resource Management Act 1991 (RMA)

Prepared in accordance with s42A of the RMA 1991

Application Number:	SU -2021-1735-00
Applicant:	Eniscote Farm Limited
Consent Sought:	2 Lot Subdivision & Land Use
Address of Activity:	466-486 SH1, Kaikōura
Legal Description:	Section 8 and Pt 9 SO Plan 3911
Valuation Number:	21100 151 00
Kaikōura District Plan Zone	Rural
Status of the Activity	Restricted Discretionary

REASONS FOR DECISION:

- Resource consent is required under the Kaikoura District Plan for a restricted discretionary activity.
- The application has been processed on a publicly notified basis under Section 95 of the RMA.
- It is considered that the land use consent application is generally consistent with the policy and objectives of the Kaikoura District Plan, but subdivision consent is inconsistent with the plan.
- It is considered that the land use consent application is consistent with and does not contravene the Purpose the Resource Management Act 1991 (section 5). It is considered that the land use application is consistent with the Principles of the Resource Management Act 1991 (sections 6, 7 and 8). The Land use activity is therefore assessed as being consistent with, and not contravening Part II of the Act. But the subdivision application will contravene part II of the Act.
- Council may grant the land use consent & decline the subdivision consent under section 104, 104C of the RMA and may set conditions under 108 of the RMA.

DECISION: GRANTED

Consent is granted Pursuant to sections 104, 104C and 108 of the Resource Management Act 1991, at 466 to 486 State Highway 1, Kaikoura as set out in the application SU-2020-1735-00 subject to the conditions in Appendix 1


Signed:

Date: 2nd September 2021

Matt Hoggard

Strategy, Policy & District Plan Manager

Acting under delegated authority by the Kaikōura District Council

PLEASE NOTE: THAT IT IS YOUR RESPONSIBILITY TO ENSURE THAT ALL CONTRACTORS ARE PROVIDED WITH A COPY THE ABOVE RESOURCE CONSENT, CONDITIONS AND UNDERSTAND THE ACCIDENTAL DISCOVERY PROTOCOL. SEE APPENDIX III.

APPENDIX I

LAND USE: GENERAL CONDITIONS

1. The proposal shall proceed in accordance with application and the accompanying site plan stamped *Approved Plan for R.C. 1735* and held at Kaikōura District Council with the exception with compliance to the conditions below.
2. In accordance with section 128 of the Resource Management Act 1991, the Kaikōura District Council may review any or all of the conditions of this consent by giving notice of review during June in any year after granting consent for the purpose of ensuring that the conditions are adequate to deal with any adverse effects on the environment arising from the exercise of this consent, which were not foreseen at the time of application or where it was not appropriate to deal with at that time.
3. The consent holder shall meet all actual and reasonable costs incurred by this Council in monitoring, enforcement and administration of this consent.

LAND USE: SPECIFIC CONDITIONS

1. The existing dwelling on proposed Lot 2 may be retained, no additional dwellings or ancillary dwellings are permitted without resource consent.
2. The maximum residential curtilage shall not exceed 2000m²
3. Further subdivision shall not occur on this property

Advice Note - The whole of Lot 1 and parts of Lot 2 are located within archaeological area A12 "Elms Pa" the application has stated that no earthworks are required to be undertaken in the vicinity of this site as part of the subdivision process. Earthworks within this area will trigger the need for resource consent. Outside of the this area the accidental discovery protocol identified in Appendix III applies.

SUBDIVISION CONDITIONS

1. The proposal shall proceed in accordance with application and the accompanying site plan stamped *Approved Plan for R.C. 1735* and held at Kaikōura District Council with the exception with compliance to the conditions below.
2. In accordance with section 128 of the Resource Management Act 1991, the Kaikōura District Council may review any or all of the conditions of this consent by giving notice of review during June in any year after granting consent for the purpose of ensuring that the conditions are adequate to deal with any adverse effects on the environment arising from the exercise of this consent, which were not foreseen at the time of application or where it was not appropriate to deal with at that time.
3. The consent holder shall meet all actual and reasonable costs incurred by this Council in monitoring, enforcement and administration of this consent.
4. 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.
5. 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.

Advice note - stormwater from hardstand or roofed areas shall not discharge across the neighbouring boundaries, unless suitably protected by easements.

As-builts

6. The consent holder shall submit to Council as-built drawings of all new services created.
7. 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.
8. Plans shall be certified by a suitably qualified person stating that they are a true and accurate record.
9. 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.
10. 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

11. 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.

12. Prior to any work being undertaken, the consent holder must obtain written approval from the Kaikōura District Council for any variation from NZ4404:2010.

Telecom and power connections

13. Written confirmation shall be supplied to the Kaikoura District Council that separate connections for telecommunication and power have been installed to the road boundary of each of Lots 1 and 2. A location plan of services shall be provided to determine if easements are required.
14. Any new services shall be laid underground.
15. If the powerlines remain in the current location an easement shall be created to protect this service.

Vehicle crossings and access

16. The consent holder shall provide compliant vehicle access to all lots, existing vehicle crossings shall be upgraded in accordance with Waka Kotahi letter 10 February 2021.
17. No Work on any vehicle crossings shall begin until a Corridor Access Request has been approved by Waka Kotahi.
18. Confirmation that vehicle crossings have been upgraded to meet Waka Kotahi standards shall be provided.

Water Supply

19. The consent holder shall provide a separate water connection for Lot 1& Lot 2 from the Fernleigh Scheme, evidence of the location of the water connection shall be provide to Council.
20. Of the existing 12 units 11 shall be allocated to Lot 1 and 1 to Lot 2

Please note this resource consent does not constitute written approval to form a water connection if a new connection is required. Written approval can only be obtained by submitting an application for water connection form to Kaikōura District Council.

Effluent disposal:

21. The location of septic tanks and effluent disposal fields shall be identified prior to the issue of the S223 certificate. The effluent disposal systems on both Lots 1 and 2 shall be fully self-contained within each individual lot.
22. The consent holder shall supply Kaikoura District Council with confirmation from Environment Canterbury that a compliant effluent disposal system exists for Lots 1 and 2.

Advice note: Wastewater discharge permit may be required from the Canterbury Regional Council.

Amalgamation Condition

23. *That Pursuant to Section 220(1)(b)(iii) That Lot 1 shall be amalgamated with Sec 8 SO 3911 (Bal RT MB5B/386)*

Esplanade Provisions

24. Pursuant to Section 230 and 232 an esplanade strip for conservation purposes with a minimum width of 7.5m (*note 7.5m is the minimum setback required for fencing in the Canterbury Regional Flood Protection and Drainage Bylaw2013*) either side of the waterway shall be created along waterways in:
- a) Lot 2 which have a width greater than 3.0m.
 - b) Lot 1 which have a width greater than 3.0m and are located between Lot 2 and the driveway to the house of Lot 1

Note: To determining which areas the 7.5m strip applies to the definition of “bed” in the Resource Management Act shall be used, being the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks.

25. In respect of conditions 24 and 25 above:
- a) The conditions applying to esplanade strips shall be set out in an Instrument for an Esplanade Strip in accordance with the Tenth Schedule of the Resource Management Act 1991.
 - b) A stock proof fence shall be installed/maintained by the owner to prevent access of stock to Elms Creek or its tributaries.

Advice Notes

You have the right of objection to the consent authority pursuant to section 357 of the Resource Management Act 1991 in respect to the above decision. This objection should be made within fifteen working days of receipt of this decision. Should you wish to object to this decision please advise Kaikōura District Council in writing, setting out the reasons for your objections, within the above time limit.

Pursuant to section 125 of the Resource Management Act 1991 these consents will lapse on the expiry of 5 years after date of commencement of the consent, or such other date as provided for in the consent, unless:

- The consent is given effect to or;

Application for an extension of time is made within 3 months after expiry of that period. In accordance with section 127 of the Resource Management Act 1991, the consent holder at any time prior to the issue of a section 224 certificate may apply for the change or cancellation of any of the conditions of this consent.

Appendix II

Relevant Sections of the Resource Management Act 1991

Applications for resource consents are considered under sections 104, 106 and 108 of the RMA.

Section 104(1) sets out the matters to which the Council shall have regard when considering an application for resource consent. Subject to Part II of the Act, which contains the Act's purpose and principles, the following matters are relevant:

any actual and potential effects on the environment of allowing the activity;

any relevant provision of;

a national policy statement:

a New Zealand coastal policy statement:

a regional policy statement or proposed regional policy statement:

a plan or proposed plan; and

any other matters that the consent authority considers relevant and reasonably necessary to determine the application.

In accordance with section 104(2) a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

Under section 104(3) a consent authority must not-

have regard to trade competition when considering an application:

when considering an application, have regard to any effect on a person who has given written approval to the application:

grant a resource consent contrary to provision of section 107 (Coastal Permits) or section 217(Water Conservation Order) or any Order in Council in force under section 152 (Coastal Permits), or under any regulations:

grant a resource consent if the application should have been publicly notified and was not.

Under section 104(A),(B),(C),(D)(determination and restrictions on applications), council must grant consent for controlled activities. May grant or refuse applications for (restricted) discretionary and non-complying activities.

If the activity is non-complying under section 104(D) then it may only be granted if council is satisfied that either-

The adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or

The application is for an activity that will not be contrary to the objectives and policies of the relevant plans (operative or proposed).

Part II of the Resource Management Act

Any decision of the Council is subject to the provisions contained in Part Two of the Resource Management Act 1991. In considering the application, the consent authority must give pre-eminence to Part II of the Act.

Section 5 of the Act contains the purpose of the Act, which is to promote the sustainable management of natural and physical resources. Sustainable management is defined in the Act as:

“managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-

Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

Sections 6, 7, and 8 of the Resource Management Act (1991) outline the principles of the Act. All persons exercising functions and powers under the Act shall consider:

Matters of National Importance (s.6);

Other Matters (s.7); and

The Treaty of Waitangi (s.8).

Appendix III

Accidental Discovery Protocol: Archaeological sites, archaeological areas, historic areas or Waahi Tapu

This rule does not apply to the Kaikōura Peninsula Tourism Zone and the Ocean Ridge Comprehensive Living Zone

Where, during earthworks on any site, any archaeological feature, artefact or human remains are accidentally discovered or are suspected to have been discovered, the following protocol shall apply:

- i. Immediately that it becomes apparent that a suspected archaeological site, burial site, waahi tapu or waahi taonga site has been uncovered, all excavation shall cease.

In cases other than suspected human remains

- ii. The contractor must shut down all machinery immediately, secure the area and advise the consent holder or proponent and Kaikōura District Council of the occurrence.
- iii. The consent holder or proponent must notify the Heritage NZ Trust so that the appropriate consent procedure can be initiated.
- iv. The consent holder or proponent must consult with a representative of the Te Rūnanga o Kaikōura to determine what further actions are appropriate to safeguard the site of its contents.

Where human remains are suspected

- v. The contractor must take steps immediately to secure the area in a way which ensures human remains are not further disturbed. The contractor shall advise the consent holder or proponent of the steps taken.
- vi. The contractor shall notify the Police of the suspected human remains as soon as practicably possible after the remains have been disturbed. The consent holder or proponent shall notify Te Rūnanga o Kaikōura and Heritage NZ within 12 hours of the suspected human remains being disturbed, or otherwise as soon as practically possible.

- vii. Excavation of the site shall not resume until the Police, Heritage NZ and the relevant Kaumatua have each given the necessary approvals for excavation to proceed.

Note: If any land use activity (such as earthworks, fencing or landscaping) is likely to modify, damage or destroy any archaeological site (whether recorded or unrecorded), an “authority” consent from Heritage NZ must also be obtained for the work to lawfully proceed.