

## Report / Decision on a Non-notified Subdivision Consent Application

Sections 95A / 95B and 104 and 104B / 104D

**Application Number:** RMA/2021/1630  
**Applicant:** Sharon Stirling & Nelida L Johnston  
**Site address:** 132 Hoon Hay Road  
**Legal Description:** Flats 1 & 2 DP 34234 on Lot 11 DP 16769  
**Zoning:** Residential Suburban  
**Overlays and map notations:** Liquefaction Management Area  
**Activity Status - subdivision:** Non-Complying  
**Activity Status - land use:** Non-Complying

**Description of Application:** Two lot fee simple subdivision (Change of Tenure)

### The proposal

This is an application to subdivide Flats 1 & 2 DP 34234 on Lot 11 DP 16769 into two fee simple titles by way of change of tenure. BCN/2016/5889 has issued for the rebuild of the two units with Code Compliance Certificate issued on 23 November 2017.

### Relevant rules and activity status

#### Christchurch District Plan

The site is zoned Residential Suburban.

#### Land use rules

The proposal requires land use consent for a non-complying activity under the following rule(s):

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
14.4.1.5 NC2/NC3	14.4.2.1 Site density	Proposed Lot 1 has a net site area of 237m <sup>2</sup> , which is less than 400m <sup>2</sup>		No clause
14.4.1.5 NC4	14.4.2.4 Site coverage	The existing dwelling on proposed Lot 1 has a site coverage exceeding 40%.		No clause
14.4.1.3 RD27	14.4.2.8 Minimum setback for balconies and living space windows from internal boundaries	A portion of the dwelling on proposed Lot 1 is not setback 1m from the access	14.15.3 - Impacts on neighbouring property 14.15.18 - Minimum building, window and balcony setbacks	No clause

#### Subdivision rules

The proposal requires subdivision consent for a non-complying activity under the following rule(s):

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
8.5.1.5 NC1	-	The net site area of Lot 1 is 237m <sup>2</sup> and does not meet the minimum site density	N/A	8.4.1.1 - Must be notified to NZTA where

Activity status rule	Standard not met	Reason	Matters of control or discretion	Notification clause
		under 8.6.1 & 8.6.2		access to a State Highway is proposed (absent written approval)

### National Environmental Standard

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES) controls subdivision of land and soil disturbance where an activity on the Hazardous Activities and Industries List (HAIL) is being carried out or is more likely than not to have been carried out.

In this case there is no evidence to suggest that the application site is HAIL land therefore the NES does not apply.

### Effects on the environment and adversely affected persons [Sections 95D, 95E and 104(1)(a)]

#### Subdivision & Land Use

As a non-complying activity the assessment of the effects of the subdivision is unrestricted and all actual and potential effects must be considered. Guidance as to the effects that require consideration is contained in the relevant objectives and policies in Chapter 8 & 14, and any associated matters of discretion or control.

In my opinion the effects of this proposal relate to site density, site coverage and setbacks.

Each residential dwelling on proposed Lots 1 & 2 is existing, it is proposed to create a fee simple title for each residential dwelling. The proposed boundaries follow existing physical boundaries and user areas as used by the owners at present around the dwellings which have been lawfully established through an issued building consent and since no new buildings are to be erected, the site density and physical situation will not alter due to the proposed free holding of the existing property. The proposed subdivision is merely to create a fee simple title for each site, the new titles will only reflect what actually exists on the ground, therefore there are no effects on neighbours or the wider community as this subdivision application will not cause any affects visually.

In regard to the setback from the access, the access has a legal width of 4.2m and a formed width of 3.9m giving sufficient room for vehicles using the access to pass without any conflict from the opening window. However if the opening of the windows becomes problematic, window stays could be fixed to the windows to limit their opening.

#### General Matters

As a requirement of The Christchurch District Plan under Chapter 8, General Matters 8.7.4 have been assessed to determine the conditions of this consent. General matters include assessing criteria for subdivision design, transport networks, servicing and infrastructure, hazard constraints, open spaces, reserves and recreation spaces, natural and cultural values and consent notices. Specialist input from council staff and relevant experts have been obtained for servicing & infrastructure, natural hazards management assessments and conditions of consent have been recommended to meet the relevant criteria. This includes conditions for servicing & infrastructure.

In regards to the land use component of this application, some non-compliances require a notification decision. The effects of these non-compliances are less than minor when compared to the previously consented development, and there are no affected parties. I therefore recommend that this consent is processed as a non-notified application.

#### Conclusion

The proposed subdivision is generally anticipated within the zone, and I consider that any adverse effects on the environment can be adequately mitigated by the recommended conditions of consent.

The applicant has agreed to condition 2 for Water supply.

## Notification assessment [Sections 95A and 95B]

Sections 95A and 95B set out the steps that must be followed to determine whether public notified or limited notification of an application is required.

### Public notification

- Step 1. The application does not meet any of the criteria for mandatory notification in section 95A(2).
- Step 2. The application does not meet any of the criteria in section 95(A)(5) precluding public notification.
- Step 3. There are no rules or NES requiring public notification, and any adverse effects on the environment will be no more than minor (section 95A(8)).
- Step 4. There are no special circumstances that warrant public notification (section 95A(9)).

### Limited notification assessment

- Step 1. There are no affected groups or persons as outlined in section 95B(2) and (3).
- Step 2. The application does not meet any of the criteria in section 95B(6) precluding limited notification, as there are no rules precluding it and the application is not for a controlled activity land use consent.
- Step 3. As discussed above, no persons are considered to be affected under section 95E (sections 95B(7) and (8)).
- Step 4. There are no special circumstances that warrant notification to any other persons (section 95B(10)).

### Conclusion on notification

There is no requirement for public or limited notification of either the subdivision or land use aspect of this application.

## Other Section 104 matters

The application is:

- Consistent with the relevant objectives, policies and matters of control and matters of discretion in the District Plan which essentially seek to maintain or enhance the amenities of the built environment, and ensure that the creation of new allotments does not adversely impact on physical infrastructure or the cost of its provision.
- Consistent with the relevant objectives and policies in Chapter 8 of the District Plan, as the new allotments will be appropriately designed and serviced for the anticipated purpose.
- Able to be granted consent without public notification, pursuant to Section 104(3)(d).

The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health is not relevant to this application as there is no evidence to suggest that the land has been used, or is more likely than not to have been used, for an activity on the Hazardous Activities and Industries List.

For completeness, I note that the District Plan gives effect to the relevant higher order planning documents referred to in s104(1)(b). The Plan was competently prepared and appropriately reflects the higher order provisions, so they do not need to be specifically addressed in this report<sup>1</sup>.

## Non complying activity threshold test [Section 104D(1)]

Both tests are met, as the application will not be contrary to the objectives and policies of the District Plan and any adverse effects will be no more than minor.

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<sup>1</sup> R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316

## Section 106

### **s106 Consent authority may refuse subdivision consent in certain circumstances**

- (1) A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that—
- (a) there is a significant risk from natural hazards; or
  - (b) (repealed)
  - (c) sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.
- (1A) For the purpose of subsection (1)(a), an assessment of the risk from natural hazards requires a combined assessment of—
- (a) the likelihood of natural hazards occurring (whether individually or in combination); and
  - (b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and
  - (c) any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).

This section of the Act is particularly relevant in relation to geotechnical concerns following the Canterbury earthquakes. The land is identified as being within the Liquefaction Management Area in the Christchurch District Plan and rule 5.5.2a does not apply as the sites are not vacant. The land is classified by CERA as Technical Category 3 where moderate to significant land damage from liquefaction is possible in future significant earthquakes.

Soil investigations by Aecom were included in the issued Building Consent BCN/2016/5889 for the rebuild of the two units. Provisions under the Building Act ensure that new dwellings are constructed to a standard which ensures that they have adequate resistance to seismic events. The subdivision will not change the use of the land, nor is it likely to accelerate or worsen any natural hazard or increase the likelihood of material damage to the land or the buildings.

In regard to the risk of natural hazards, I conclude that there are no grounds to refuse consent under section 106(1)(a). In terms of section 106(1)(c) I am satisfied that adequate legal and physical access is provided to each allotment.

## Recommendations

### **LAND USE CONSENT**

- (A) That the application be processed on a **non-notified** basis in accordance with Sections 95A – 95E of the Resource Management Act 1991.
- (B) That the application **be granted** pursuant to Sections 104, 104B/104D, 108 and 108AA of the Resource Management Act 1991, subject to the following condition:
  - 1. The development shall proceed in accordance with the attached stamped approved plan.

### **SUBDIVISION CONSENT**

- (A) That the application be processed on a **non-notified** basis in accordance with Sections 95A – 95E of the Resource Management Act 1991.
- (B) That the application **be granted** pursuant to Sections 104, 104B/104D and 106 of the Resource Management Act 1991, subject to the following conditions imposed pursuant to Sections 108, 108AA and 220 of the Resource Management Act 1991:
  - 1. **Compliance with Application Information**  
The survey plan, when submitted to Council for certification, is to be substantially in accordance with the stamped approved application plan.

## 2. **Water Supply**

All lots shall be supplied by individual water meters, as approved by Council's Three Waters & Waste Team.

Any cross boundary water supply connections must be approved by Team Leader Three Waters & Waste [Will.Rowson@ccc.govt.nz](mailto:Will.Rowson@ccc.govt.nz) in writing.

*Note: A new water connection to the CCC network requires a Water supply Application Form WS1 to be applied for and approved by Council's Water Supply Team, Three Waters and Waste.*

Photos as proof of location of water meters to be provided at the time of the s224 application.

## 3. **Telecommunications and Energy Supply**

All lots shall have telecommunications and electrical supply laid to the net site area of each lot.

As-built plans and photographic evidence of the telecommunications and energy supply ducts or cables is to be supplied showing that the ducts or cables have been laid to the net area of each lot.

The consent holder is to provide a copy of the reticulation agreement letter from the telecommunications network operator and a letter from the electrical energy network operator, or their approved agent, to confirm capacity is available to adequately service the sites.

## 4. **Right of Way Easements (Private Ways)**

The rights of way easements as set out on the application plan shall be duly granted or reserved.

## 5. **Service Easements**

The service easements as set out on the application plan or required to protect services crossing other lots shall be duly granted or reserved.

## 6. **Party Wall Easements**

The party wall easements as set on the application plan shall be duly granted or reserved.

## 7. **Lapsing of Consent**

The period within which this consent may be given effect to shall be 5 years from the date on which consent was granted. The consent will be given effect to when the survey plan has been certified pursuant to Section 223 of the Resource Management Act 1991.

### **ADVICE NOTES FOR CONSENT HOLDERS, TO BE READ IN CONJUNCTION WITH THE DECISION**

#### **Your Rights of Objection**

If you do not agree with the Council's decision on this resource consent application, the conditions, or any additional fees that have been charged, you may lodge an objection with the Council under Section 357 or 357B of the Resource Management Act 1991. You have 15 working days from the date you receive this letter within which to lodge your objection **to the decision**. Objections **to additional fees** must be received within 15 working days of the date on which you receive the invoice. Your objection must be in writing and should clearly explain the reasons for your objection.

#### **Commencement of this consent**

The commencement date for your resource consent is the date of this letter advising you of the Council's decision, unless you lodge an objection against the decision. The commencement date will then be the date on which the decision on the objection is determined.

#### **Lapsing of this consent**

This resource consent for subdivision will lapse 5 years after the date of commencement of consent (i.e. the date of this letter) unless it has been given effect to by the Council issuing a certificate pursuant to Section 223 of the Resource Management Act 1991.

Application may be made under Section 125 of the Resource Management Act 1991 to extend the duration of the resource consent, and this must be submitted and approved prior to the consent lapsing.

### Lapsing of s223 Certification

The s223 certification will lapse 3 years after the date of issue, the Section 223 certificate will lapse (if that certified plan has not been deposited in accordance with Section 224 of the Resource Management Act 1991). The s223 certificate can be re-certified only if the subdivision consent has not lapsed.

### Development Contributions

No development contributions are payable on this consent.

### Payments to Council

If any payments to Council are to be made through internet banking please email the details to [resourceconsentapplications@ccc.govt.nz](mailto:resourceconsentapplications@ccc.govt.nz) and a tax invoice will be raised. The internet banking details are:

Bank: *Bank of New Zealand*  
Account Name: *Christchurch City Council*  
Account Number: *02 0800 0044765 003*

The information you need to enter to help us identify your payment will be specified at the bottom of the invoice (i.e. Particulars, Code and Reference details).

Please note that all payments will be credited to our account on the next business day. Any payment made without the details above may take some time to be lodged against the correct account.

Please email [resourceconsentapplications@ccc.govt.nz](mailto:resourceconsentapplications@ccc.govt.nz) to notify us when you have made payment.

### Council Site Characteristics Information

The Councils Site Characteristics Information on this site is as follows:

Administrative Purposes	Guest accommodation (including whole unit listings on Airbnb; BookaBach; etc.) generally requires a resource consent in this zone when the owner is not residing on the site. For more information, please refer to: <a href="https://ccc.govt.nz/providing-guest-accommodation/">https://ccc.govt.nz/providing-guest-accommodation/</a> .
Community Board	Property located in Spreydon-Cashmere Community Board.
District Plan	Property or part of property within the Liquefaction Management Area (LMA) Overlay which is operative.
District Plan Zone	Property or part of property within the Residential Suburban Zone which is operative.
Ecan Requirement	There may be objectives, policies or rules in a regional plan or a regional bylaw that regulate land use and activities on this site. Please direct enquiries to Canterbury Regional Council (Environment Canterbury).
Electoral Ward	Property located in Spreydon Electoral Ward
Flooding Related	This property is not in a tsunami evacuation zone. It is not necessary to evacuate in a long or strong earthquake or during an official Civil Defence tsunami warning. Residents may wish to offer to open their home to family or friends who need to evacuate from a tsunami zone, and should plan with potential guests to do so in advance. More information can be found at <a href="https://ccc.govt.nz/services/civil-defence/hazards/tsunami-evacuation-zones-and-routes/">https://ccc.govt.nz/services/civil-defence/hazards/tsunami-evacuation-zones-and-routes/</a>
Ground Characteristic	Christchurch City Council holds indicative information on liquefaction hazard for Christchurch. Information on liquefaction, including an interactive web tool, can be found on the Council website at <a href="https://ccc.govt.nz/liquefaction">ccc.govt.nz/liquefaction</a> . Depending on the liquefaction potential of the area that the property is in, the Council may require site-specific investigations before granting future subdivision or building consent for the property.
Ground Characteristic	Council records show that site contains Soft Ground. Predominant Ground Material: N/A Reason for Assessment: N/A Should further buildings be proposed on this site, specific foundation design may be required.
Land Characteristic Other	Land Information New Zealand (LINZ) engaged Tonkin and Taylor to provide a Geotechnical Report on Ground Movements that occurred as a result of the Canterbury Earthquake Sequence. The report indicates this property may have been effected by a degree of earthquake induced subsidence. The report obtained by LINZ can be accessed on their website at <a href="https://www.linz.govt.nz/land/surveying/earthquakes/canterbury-">https://www.linz.govt.nz/land/surveying/earthquakes/canterbury-</a>

**Health of Land**

In the event that soils are found to have visible staining, odours and/or other conditions that indicate soil contamination, then work must cease until a Suitably Qualified and Experienced Practitioner (SQEP) engaged by the consent holder has assessed the matter and advised of the appropriate remediation and/or disposal options for these soils. The consent holder shall immediately notify the Council Attention: Team Leader Environmental Health, by way of email to [rcmon@ccc.govt.nz](mailto:rcmon@ccc.govt.nz). Any measures to manage the risk from potential soil contamination shall also be communicated to the Council prior to work re-commencing.

**Archaeological Sites**

This site may be an archaeological site as declared by Heritage New Zealand Pouhere Taonga. Under Section 43 of the Heritage New Zealand Pouhere Taonga Act 2014, an archaeological site may be any place that was associated with human activity in or after 1900, and provides or may be able to provide, through investigation by archaeological methods, significant evidence relating to the historical and cultural heritage of New Zealand. **Please contact Heritage New Zealand Pouhere Taonga on [infosouthern@heritage.org.nz](mailto:infosouthern@heritage.org.nz) or (03) 357 9629 before commencing work on the land.**

**Earthworks**

Chapter 8, Rule 8.9 of the Christchurch District Plan refers to Earthworks and specifies the maximum permitted depth of excavation and fill. There is no exemption for subdivisions, therefore any excavating or filling exceeding this depth will require a further resource consent.

**Allocated Street Numbers**

The lots created by this subdivision have been allocated street addresses as per the provided street numbering plan. For any street number allocation enquiries please email [streetnumbering@ccc.govt.nz](mailto:streetnumbering@ccc.govt.nz)

**Building consent requirements**

This subdivision consent has been processed under the Resource Management Act 1991 and relates to planning matters only. You will also need to comply with the requirements of the Building Act 2004. Please contact a Building Consent Officer (941-8999) for advice on the building consent process.

**Reported and recommended by:** Judy Benyon, Subdivision Planner

**Date:** 2 July 2021

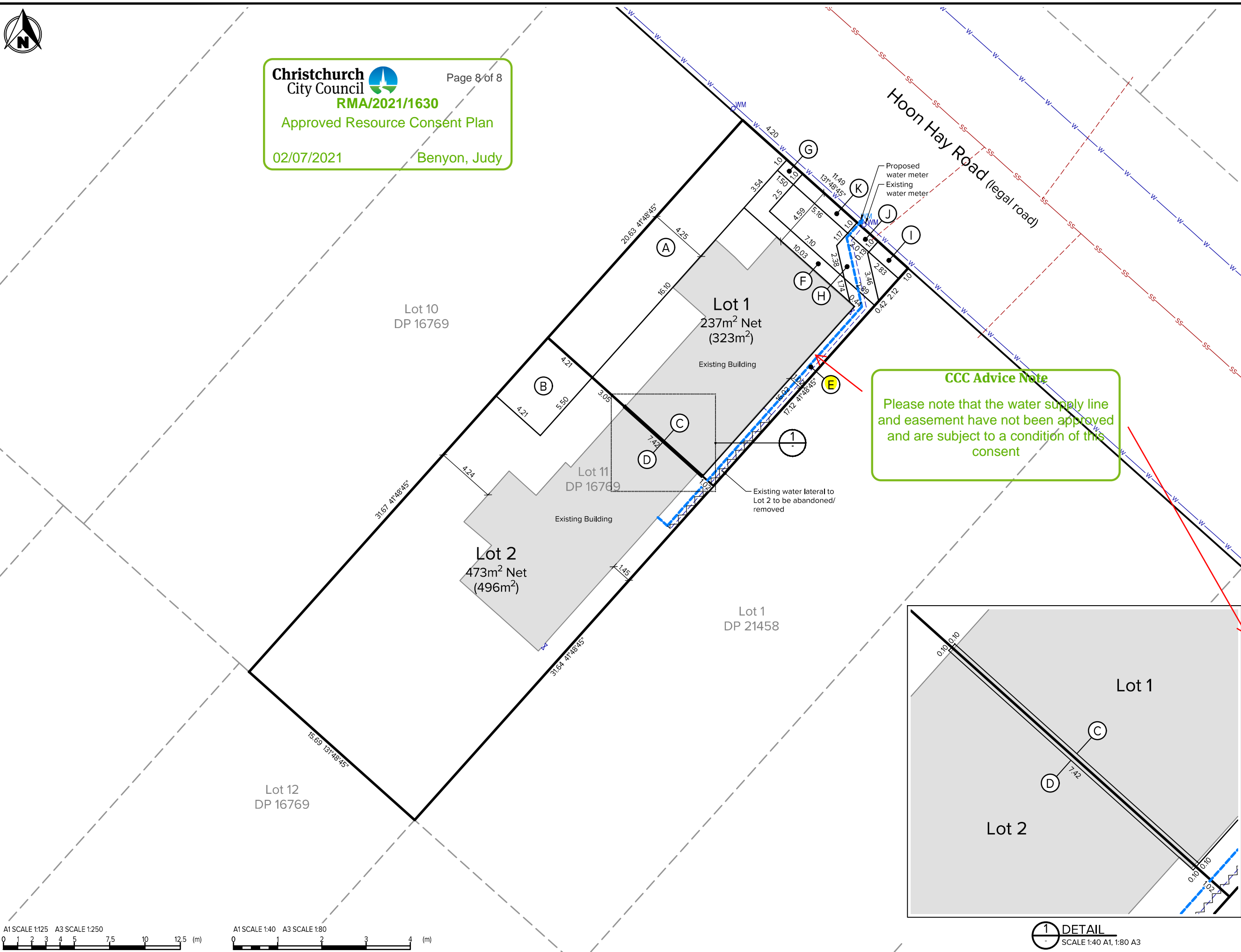
**Decision**

That the above recommendations be adopted for the reasons outlined in the report.

**Delegated officer:**



Emma Chapman  
Senior Planner  
02/07/2021 10:04 am



**NOTES**

Survey District: Canterbury  
 Legal Description: Lot 11 DP 16769  
 Area: 819m<sup>2</sup>  
 Applicants: Nelida Lee Johnston  
 Registered Owners: Sharon Stirling (Flat 1) and Nelida Lee Johnston (Flat 2)  
 Comprised In: CB13F/1325 (Flat 1) and CB13F/1326 (Flat 2)  
 Local Authority: Christchurch City Council  
 Zone: Residential Suburban Zone  
 Horizontal Datum: NZGD 2000 Mt Pleasant Circuit

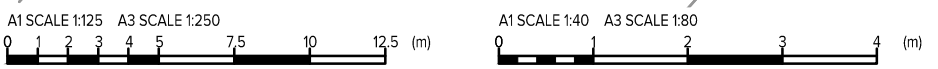
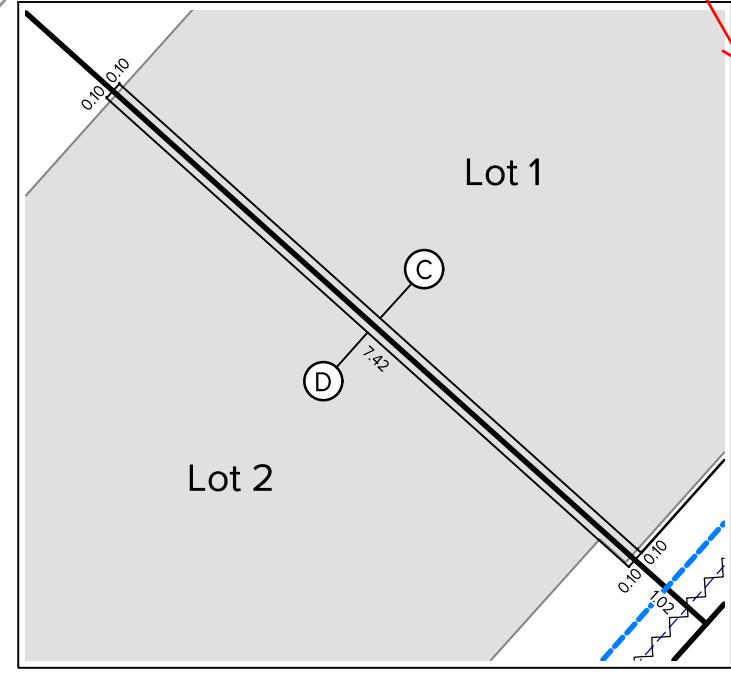
- All dimensions subject to final survey.
- Easements to be confirmed on site.
- Locations of services are approximate only, to be confirmed on site.
- Applicable Prior Consents: BCN/2016/5889

**LEGEND**

- Lot Boundary
- Legal Road Boundary
- Easement Boundary
- - - Abuttal Boundary
- SS — SS Existing Sewer Main
- - - Existing Sewer Lateral
- W — W Existing Water Main
- - - Existing Water Lateral
- WM Existing Water Meter
- WM Proposed Water Lateral
- WM Proposed Water Meter

**Memorandum of Proposed Easements**

Purpose	Shown	Burdened Land	Benefited Land
Right of Way, Right to drain water, Right to convey electricity & telecommunications	A	Lot 1	Lot 2
Right of Way, Right to drain water	B	Lot 2	Lot 1
Party Wall	C	Lot 1	Lot 2
	D	Lot 2	Lot 1
Right to drain water & sewerage, <b>Right to convey water</b>	E	Lot 1	Lot 2
Right to drain water	F		
Right to drain water, Right to convey electricity & telecommunications	G		
Right to drain sewerage, Right to convey water	H		
Right to convey electricity & telecommunications	I		
Right to drain sewerage, Right to convey water, electricity & telecommunications	J		
Right to convey electricity & telecommunications	K		



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