



Mackenzie

DISTRICT COUNCIL

SECTION 95A-F NOTIFICATION DECISION FOR RESOURCE CONSENT APPLICATION– RM220074

APPLICANT:	BL & SJ RAE FAMILY TRUST
APPLICATION DESCRIPTION:	TO VARY A CONSENT NOTICE AND LAND USE CONSENT TO EXCEED 50% SITE COVERAGE
APPLICATION STATUS:	DISCRETIONARY
PROPERTY ADDRESS:	14A ALLAN STREET LAKE TEKAPO
LEGAL DESCRIPTION:	LOT 1 DP 489462 HELD IN RECORD OF TITLE 704335
VALUATION REFERENCE:	25311-16801
DISTRICT PLAN ZONE:	RESIDENTIAL 1
AUTHOR:	KIRSTYN LINDSAY, CONSULTANT PLANNER
Date of Report:	4 JULY 2022

1.0 INTRODUCTION

This report has been prepared under sections 95A to 95G of the Resource Management Act 1991 (the Act) to document the notification assessment of the application to change a consent notice on a Record of Title and for land use to exceed the site coverage thresholds for the Residential 1 Zone of the Mackenzie District Plan.

2.0 BACKGROUND PROPOSAL AND SITE DESCRIPTION

2.1 PROPOSAL DESCRIPTION

The applicant has applied to amend a consent notice condition to allow a two storied dwelling on the subject site and for land use consent to exceed the 50% site coverage requirement. The dwelling will comprise a garage and workshop on the ground level and a three bedroom dwelling on the first floor level. The dwelling will be occupied by the applicant as a permanent residence. The developed site will comprise a site coverage area of residential dwelling area of 136m² and driveway/parking area of 58.37m², giving a total coverage area of 194.37m² or 55%. All other District Plan performance standards will be complied with.

For completeness, I note that the ground floor workshop area will be fitted out with a bathroom and toilet. The applicant has not applied to establish residential activity within the workshop space and this is not a consideration of this report.

The site is legally described as Lot 1 Deposited Plan 483462 as contained within Record of Title 704335.

2.2 BACKGROUND

The subject site was created via subdivision consent RM140051 on 10 April 2014 to subdivide Section 18 Tekapo Village into two residential allotments at 14 Allan Street, Tekapo. The proposal did not comply with the primary subdivision standards for allotment size or dimensions. The application was publicly notified. Nineteen submissions were received in support of the application and five affected party approvals were also submitted with the application. No hearing was required and the decision on the proposal was made by an independent hearings commissioner.

The consent was granted subject to conditions. The subject site is Lot 1 of that subdivision. The conditions included the imposition of a consent notice under Section 221 of the Resource Management Act 1991 intended to control the scale of the development. The Record of Title for the site was issued 6 October 2016. Consent Notice CONO 10569802.5 was registered against the title.

The consent notice condition on Lot 1 Deposited Plan 489462 is as follows:

“Any residential unit constructed on the allotment shall be limited to a single storey dwelling with a maximum height of 5m and shall comply with the Lake Tekapo Design Guidelines (Appendix P -Mackenzie District Plan).”

The applicant seeks to amend the above condition. A similar resource consent application was made in 2019 (RM190119) but this was subsequently withdrawn.

2.3 SITE AND SURROUNDING ENVIRONMENT DESCRIPTION

The subject site is located at 14 Allan Street, Lake Tekapo and is zoned Residential 1 in the Operative Mackenzie District Plan 2004. The land has an area of approximately 350m² and is legally described as Lot 801 DP 48683 as contained within Record of Title 704335. The site is subject to the Outdoor Lighting Restriction Area overlay on the planning maps. No other overlays or notations are applicable to the site.

The site is currently vacant, an area of land has been excavated in preparation for the construction of a dwelling at the site. Vehicle access to the site is obtained from Allan Street. The surrounding environment comprises of residential dwellings, the majority of which have landscaping along the road boundary.

The location of the site is illustrated in Figure 1, an aerial photograph of the site is provided as Figure 2.



Figure 1 - Site location map. The subject land is outlined in red.



Figure 2 - Aerial photograph. The subject land is outlined in red.

3.0 MACKENZIE DISTRICT PLAN

The subject site is zoned Residential 1 within the Operative Mackenzie District Plan 2004 (the District Plan). The proposal complies with all performance standards except for:

- Rule 3.1.1.b.i which requires that the maximum building and hard surface coverage of the net area of any Residential 1 site shall be 50%. In this instance, site coverage will be 55% and the proposal is assessed as a discretionary (restricted) activity pursuant to Rule 3.1.1.b.

4.0 CANCELLATION OF A CONSENT NOTICE

Sections 221(3) and 221(3A) of the Resource Management Act 1991 read:

- (3) *At any time after the deposit of the survey plan,—*
- (a) *the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:*
- (b) *the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.*
- (3A) *Sections 88 to 121 and 127(4) to 132 apply, with all necessary modifications, in relation to an application made or review conducted under subsection (3).*

The applicant seeks to vary Consent Notice 10569802.5 as it relates to Lot 1 Deposited Plan 483462 held in Computer Freehold Register 704335 as follows (deletions shown as strikethrough):

“Any residential unit constructed on the allotment shall be limited to a ~~single-storey~~ dwelling with a maximum height of 5m and shall comply with the Lake Tekapo Design Guidelines (Appendix P- Mackenzie District Plan). “

Applications under S221(3) are assessed as a discretionary activity.

Overall Status

Where an activity requires resource consent under more than one activity status, and the effects of the activity are inextricably linked, the general principle from case law is that the different components should be bundled and the most restrictive activity classification applied to the whole proposal.

In this case, there is more than one activity involved, and the effects are linked. As a result, having regard to the most restrictive activity classification, the proposal is considered to be a discretionary activity pursuant to sections 104 and 104B of the Resource Management Act 1991 ('the Act').

5.0 PUBLIC NOTIFICATION

5.1 Step 1 - Mandatory Public Notification in Certain Circumstances s95A(3)

In this case, public notification is not required under Step 1 as:

- the applicant has not requested public notification of the application (section 95A(3)(a)); and
- public notification is not required under section 95C due to the refusal/failure to provide further information or to agree to the commissioning of a report (section 95A(3)(b)); and
- a joint application was not lodged to exchange reserve land under the Reserves Act 1977 (section 95A(3)(c)).

3.2 Step 2 - If not required by Step 1, Public Notification is Precluded in Certain Circumstances s95A(5)

In this case, public notification is not precluded under Step 2 as:

- the application is not subject to a rule or national environmental standard that precludes public notification (section 95A(5)(a)); and
- the application is not for one of the following:
 - a controlled activity; or
 - a restricted discretionary, discretionary, or non-complying activity, but only if the activity is a boundary activity.

3.3 Step 3 - If not Precluded by Step 2, Public Notification is Required in Certain Circumstances s95A(8)

In this case, public notification is not required under Step 3 as:

- the application is not subject to a rule or national environmental standard that requires public notification (section 95A(8)(a)); and

- the adverse effects of the activity on the wider environment will not be more than minor (section 95A(8)(b)).

An assessment of the adverse effects of the activity is provided below:

3.3.1 Mandatory Exclusions from Assessment (s95D)

- A: Effects on the owners or occupiers of land on which the activity will occur and on adjacent land (s95D(a)).
- B: An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect (s95D(b) (the permitted baseline)).
- C: Effects that do not relate to a matter of discretion, if the activity is Restricted Discretionary Activity must be disregarded (s95D(c)).
- D: Trade competition and the effects of trade competition (s95D(d)).
- E: Effects on persons who have given written approval to the application (s95D(e)).

3.3.2 Permitted Baseline (s95D(b))

Under section **s95D(b)** of the Resource Management Act 1991, the adverse effects of the activity on the environment may be disregarded if the district plan or a national environmental standard permits an activity with that effect. This is referred to as the permitted baseline.

In this instance, the permitted baseline is curtailed by the imposition of the consent notice condition which prevents a two storied dwelling. As such the permitted baseline provides for a one-storied dwelling which complies with the performance standards set out in the District Plan.

Receiving Environment

The receiving environment is the reasonably foreseeable environment within which the adverse effects of the proposal are considered. The receiving environment is made up of:

- the existing environment as modified by any resource consents granted and likely to be implemented; and
- the environment as likely to be modified by activities permitted in the plan; and
- the effects from any consents on the subject site (not impacted by the proposal) that are likely to be implemented.

In terms of the existing environment for the subject site, I note the subject site was recently created by way of subdivision in 2016 and is a vacant site. It appears that some earthworks have occurred on the site resulting in an unretained cut face along the rear and side boundaries.

One defining factor for the receiving environment, is the development expectations for the subject site. The consent notice is clear that while the site has less area than that generally anticipated within the Residential 1 Zone, this will be mitigated by the fact that only a single storied dwelling is permitted for this site.

In terms of the surrounding sites, the dwellings on the southside of Allan Street are generally set well back and above the road. The dwellings on the northside of Allan Street are set down below the road but also have good separation from the road.

3.3.3 Assessment of Effects

Landscape and Residential Amenity Effects

The application notes that the scale of the activity will be controlled by the 5.0m height limit, which the applicant does not seek to change and, as such, the applicant has determined that there will be no effects arising from the two- storied dwelling.

Ground level is defined in the Mackenzie District Plan as:

“the finished ground level when all works associated with any prior subdivision of the land were completed, prior to excavation of a building platform.”

I note that there have been earthworks undertaken on the site with a unretained cut face along the shared boundary with 14 Allan Street. The site prior to the earthworks is shown in Figure 3 below. The applicant confirmed that the house platform was excavated in 2018. There are no rules in the District Plan relating to earthworks and in this regard the earthworks did not result in a breach of any District Plan rules¹. In this instance, the earthworks have resulted in a cut which will set the dwelling into the site.

The subject site sits above Allan Street and, in this regard, any dwelling on the site has the potential to be dominant. It assumed that it is this potential dominance that the consent notice seeks to manage in part. In this instance, the earthworks assist in reducing the dominance of the dwelling as shown in the elevations shown in Figure 5 as the dwelling will be somewhat set down into the site.



Figure 3 – The subject site in 2017 at the time of subdivision and prior to site development

¹ It is unclear if the earthworks required a building consent due to the proximity to the boundary and neighbour's driveway but I consider it is likely that a building consent and retaining works would have been required due to the driveway surcharge. It is also unclear if consent was required from the Regional Council.



Figure 4 – The subject site after 2018 earthworks in its current state

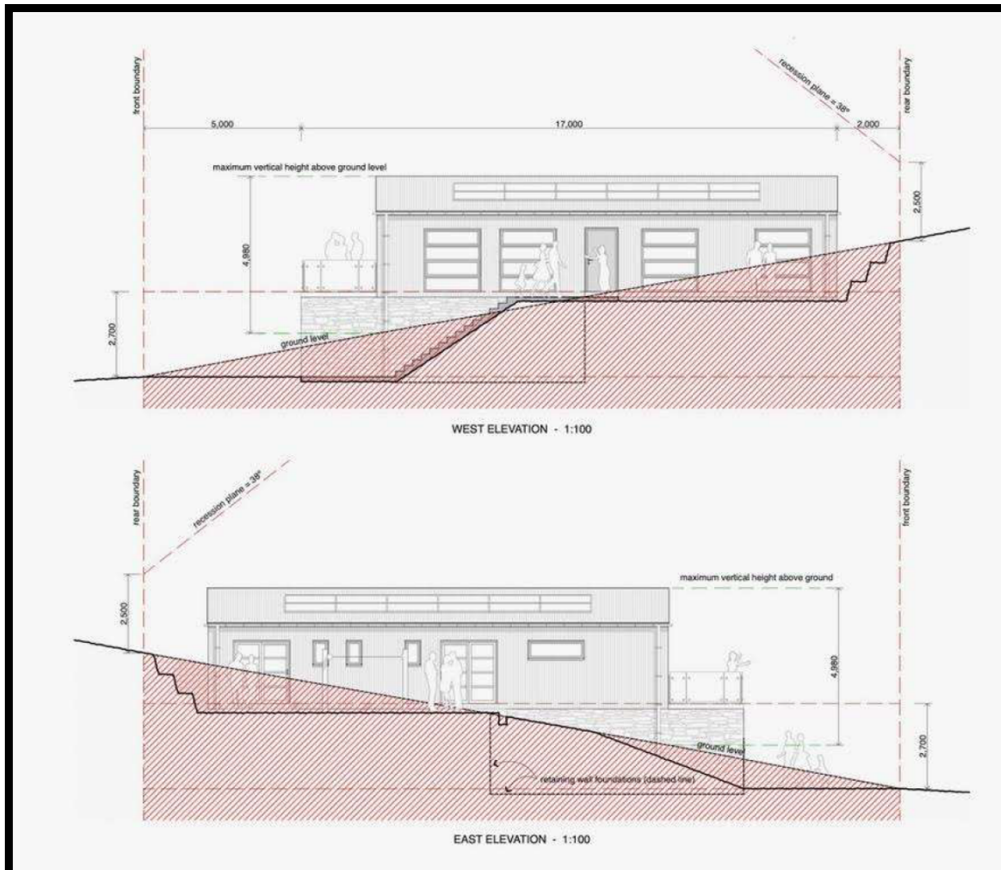


Figure 5 - Elevations

The elevations show that there is a sliding door along with a solid garage door along the ground floor frontage. The sliding door is expected to soften the presentation to the street as opposed to two solid garage doors at street level which could further increase the built form dominance. The dwelling will

have a 3.0 wide deck located along the entire dwelling frontage accessed from the first floor living area. I consider that the elevated deck is likely to increase dominance of the dwelling when viewed from Allan Street. I note that the elevation of the deck is only made possible by the dwelling taking a two-storied form. However, I consider that any adverse effects of the deck will not extend beyond the immediate neighbouring properties.

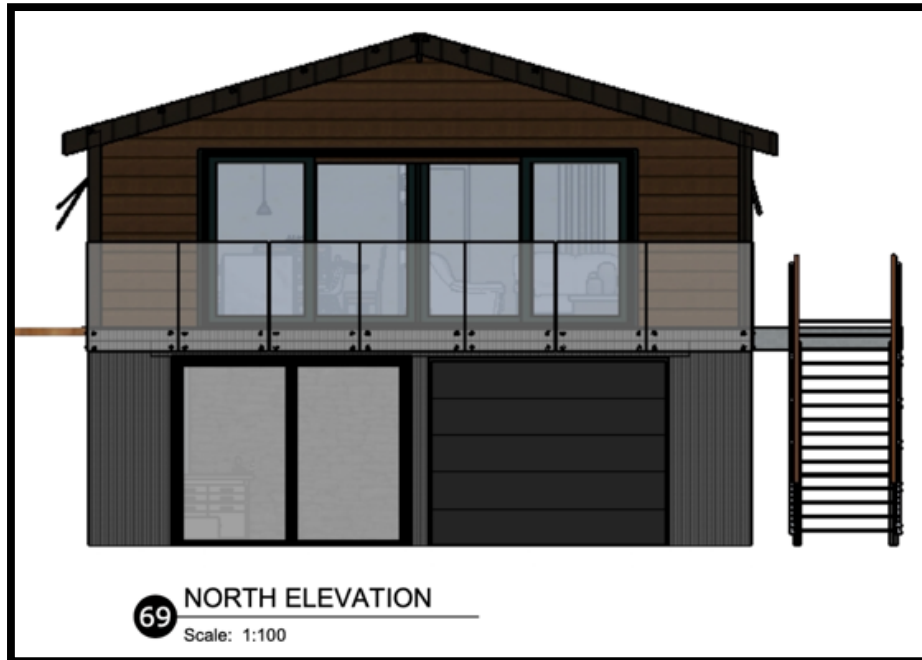


Figure 6 – Front Elevation

The applicant advises that the proposed driveway/carpark area will be constructed of reinforced concrete, charcoal in colour to match the driveways to 12 and 14 Allan Street Lake Tekapo. The applicant confirms that the dwelling design will meet the Lake Tekapo Design Guidelines (Appendix P – Mackenzie District Plan). Landscaping, as shown in a landscaping plan provided in support of the application, is proposed to screen the carparking area from the road frontage to mitigate the effects of the hard surfacing. The landscaped areas will be planted out with native plantings. Drystone walls will be used to terrace the land at the rear of the site. I consider the landscaping to be a positive design approach.

Overall, I consider that any adverse effects of the two-storied (including deck), as mitigated by the hard surfacing treatments and landscaping and front yard setback, will be limited to those surrounding properties and will not have an adverse effect on the wider environment which is more than minor.

3.3.4 Summary of Effects

Based on the above assessment, the proposal will not have adverse effects on the wider environment that are more than minor.

3.4 Step 4 - Public Notification in Special Circumstances s95A(9)

With regard to special circumstances, I note that recent case law *Ballantyne Barker Holdings v Queenstown Lakes District Council [2019] NZHC 2844* determined that:

“case law makes it clear that because a consent notice gives a high degree of certainty both to the immediately affected parties at the time subdivision consent is granted, and

to the public at large, it should only be altered when there is a material change in circumstances (such as a rezoning through a plan change process), which means the consent notice condition no longer achieves, but rather obstructs, the sustainable management purposes of the RMA. In such circumstances, the ability to vary or cancel the consent notice condition can hardly be seen as objectionable.”

In this instance, I consider that the consent notice condition is site specific intended to manage the effects of the site development on the neighbouring properties. In this regard, I do not consider that there would be any adverse effect on the public at large and, as such, there are no special circumstances that exist in relation to the application in terms of section 95A(9).

3.5 Public Notification Determination

Pursuant to section 95A(5)(b)(i), public notification is not required.

4.0 LIMITED NOTIFICATION

If the application is not publicly notified under section 95A, section 95B(1) of the Act requires a decision whether there are any affected persons (under s95E). The following steps are used to determine whether to give limited notification of an application.

4.1 Step 1 - Certain Affected Groups and Persons Must be Notified s95B(2) and s95B(3)

In this case, limited notification is not required under Step 1 as:

- there are no affected customary rights groups (s95B(2)(a)); and
- there are no affected customary marine title groups (s95B(2)(b)); and
- the activity is not on or adjacent to, and will not affect land that is the subject of a statutory acknowledgment (s95B(3)(a)).

4.2 Step 2 - If not required by Step 1, Limited Notification precluded in certain circumstances s95B(6)

In this case, limited notification is not precluded under Step 2 as:

- the application is not subject to a rule or national environmental standard that precludes limited notification (section 95B(6)(a)); and
- the application is not for a controlled activity.

4.3 Step 3 - If not Precluded by Step 2, Certain Other Affected Persons Must be Notified s95B(7) and (8)

In this case, limited notification is not required under Step 3 as:

- Limited notification is not required under Step 3 as the proposal is not a boundary activity where the owner of an infringed boundary has not provided their approval, and it is not a prescribed activity.

- Limited notification is not required under Step 3 as the proposal falls into the 'any other activity' category. The effects of the proposal on persons are assessed below.

4.3.1 Assessment of Effects on Persons

Section 95E states that a person is 'affected' if the adverse effects of an activity on a person are minor or more than minor (but not less than minor).

In terms of the variation of the consent notice condition, under section 127(4) for the purposes of determining who is adversely affected by the change or cancellation, the consent authority must consider, in particular, every person who:

- Made a submission on the original application: and
- May be affected by the change or cancellation.

In this instance, five written approvals were provided with the original application and 19 submissions in support of the application were received. The effects on those parties were specifically considered and, in particular, the reasonable expectation that the site will be developed in accordance with the consent notice conditions. The consent notice provided for a single storey dwelling with a maximum height of 5 metres. The consent notice enabled a level of development to occur that is consistent with the scale anticipated in Residential 1 Zone on the site prior to subdivision.

The intention of the consent notice was to control the scale of development on the subject site to enable the construction of a small dwelling without compromising the amenity of Lot 2 and adjoining allotments. The controls are intended to ensure that effects of the increased density arising from the approved subdivision are mitigated and that scale of the development was limited to a small scale building commensurate with permitted development which could have occurred on the parent site prior to subdivision.

The proposed development of the site is likely to result in visual and built form dominance and the adverse effects at street level will be over and above what might have been expected if the development was undertaken in accordance with the Consent Notice registered on the Record of Title. The effects of the proposed change are considered to materially affect the landowners listed below as the scale of the development proposed for the site is greater than currently authorised, and the effects are therefore considered to be at least minor on these parties:

- 7 Allan Street
- 9 Allan Street
- 11 Allan Street
- 12 Allan Street
- 14 Allan Street
- 16 Allan Street



The applicant has advised that there is difficulty in obtaining the written approval of those parties due to a number of the adjacent properties being holiday homes. The applicant advises that the application should proceed via a limited notification process².

4.3.2 Summary of Effects on Persons

Based on the above assessment, there are parties considered to be affected by the activity and who have not provided written approval.

4.4 Step 4 - Further notification in special circumstances s95B(10)

As noted above, the recent case law *Ballantyne Barker Holdings v Queenstown Lakes District Council [2019] NZHC 2844* determined that “a consent notice gives a high degree of certainty both to the immediately affected parties at the time subdivision consent is granted...”

To this end, I consider that immediately surrounding neighbours have a reasonable expectation to be able to rely on the consent notice condition as it relates to the development of this site. In this regard, I consider that special circumstances apply due to the proposed departure from the consent notice and notice should be served on those parties identified on section 4.3.1 of this report.

4.5 Limited Notification Determination

Pursuant to section 95B of the Act, limited notification is required.

4.0 NOTIFICATION DETERMINATION

Given the decisions made under section 95A and section 95B, the application is to be processed on a limited notified basis.

² Phone call with the applicant on 4 July 2022

Prepared by,



Kirstyn Lindsay
Consultant Resource Management Planner

Date: 4 July 2022

Approved under Delegated Authority by,



Rachael Willox
Acting Planning Manager

Date: 6 June 2022