

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

Resource Management Act 1991

Application reference	LU24020
Applicant	Lynne and Paul Herron
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to build a shed that will breach maximum site coverage on the site
Location	99 Racecourse Road, Gore
Legal Description	Lot 1 DP 14572
Activity Status	Restricted Discretionary
Decision Date	16 August 2024

SUMMARY OF DECISIONS

1. Pursuant to sections 95A-95F of the Resource Management Act 1991 (**RMA**), the application will be processed on a **non-notified** basis given the findings of Section 5 of the Section 95A and 95B report. This decision is made by Penny Weng, on 16 August 2024 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 and Section 104C of the RMA, consent is **GRANTED SUBJECT TO CONDITIONS** outlined in this report of the Section 104 decision imposed pursuant to Section 108 of the RMA. This consent can only be implemented if the conditions in this report are complied with by the consent holder. The decision to grant consent was considered by Penny Weng, under delegated authority pursuant to Section 34A of the RMA.

1. THE PROPOSAL

Consent is sought to establish a new building (a storage shed) on a 1.5ha site that will result in the total building coverage exceeding the permitted 500m² for a site less than 2ha in the Rural Zone.

The proposed building will be a five-bay Kiwispan shed with a maximum height of 5.88m. It will be 24m in length along the south boundary and 15m in width, thus being a total 360m² in area. The shed will be used for general storage purposes associated with the existing residential activity on the site. It is to be set back 6m from the south boundary and 9m from the south-east boundary.



Figure 1: Site Plan of proposed shed

The addition of a 360m² shed will result in a total building coverage of 740m² on the site.

2. SITE DESCRIPTION

The subject site is 99 Racecourse Road, legally known as Lot 1 DP 14572 and held in the Record of Title SL11C/610. It is located within the Rural Zone and is 1.5ha in area, access is from Racecourse Road. The site is relatively flat and is used for rural residential purposes containing an existing dwelling, as well as existing sheds. The existing buildings total approximately 380m² in area on the 1.5ha site.

The site is classified as containing Land Use Capability (LUC) 3 High Class Soils under the National Policy Statement for Highly Productive Land. However, as the proposed shed exceeds site coverage on a rural site that is less than 2ha, it is a restricted discretionary activity under the Gore District Plan and Council's discretion is limited to the adverse environmental effects of the matters with which there is a non-compliance only.

A sub transmission line 'TPG-292 - GORE 292 - SOUTH GORE TIE' runs adjacent to the section of Racecourse Road to the north of the subject site. This is located approximately 62m from the front of the existing dwelling on the site.

The site is not identified in the Selected Land Use Sites Register ('SLUS') as an actual or potentially contaminated site.

The Council's mapping system, which sources information from Environment Southland, identifies the majority of the site as 'negligible' liquefaction risk and the west portion as 'medium' liquefaction risk.

The Council's mapping system identifies the site is within an area 'subject to actual or potential inundation'.

3. ACTIVITY STATUS

3.1 Operative Gore District Plan

The site is zoned Rural in the Gore District Plan and the proposed activity requires resource consent under the District Plan for the following reason:

- A **restricted discretionary** activity pursuant to Rule 4.9.1[2], as the proposal breaches Rule 4.9.1[1][a], in regard to the total structures on a site of 2 ha or less exceeding more than 40% of the site or 500m², whichever is lesser. It is proposed to build a shed that is 360m² in area on the 1.5ha site, where there is an existing residential unit and accessory shed of 380m². The total site coverage will increase on the site to be 740m².

3.2 National Environmental Standard for Assessing Contaminants in Soil to Protect Human Health 2011 ("NES-CS")

Based on the applicant's review of Council records, the piece of land to which this application relates is not a HAIL site, and therefore the NES-CS does not apply.

3.3 Activity Status Summary

Overall, the application is being considered and processed as a **restricted discretionary** activity under the Operative District Plan.

4. NOTIFICATION ASSESSMENT

Sections 95A – 95F (inclusive) of the Resource Management Act 1991 ('RMA') set out the steps the Council is required to take in determining whether or not to publicly notify an application or notify on a limited basis.

4.1 Public notification – Section 95A

In accordance with section 95A, the following steps have been followed to determine whether to publicly notify the resource consent application:

Step 1 – Mandatory public notification

Mandatory public notification, is not required because:

- The applicant has not requested public notification.
- Public notification is not required as a result of a refusal by the applicant to provide further information or refusal of the commissioning of a report under section 92(2)(b) of the RMA.
- The application does not involve exchange to recreational reserve land under section 15AA of the Reserves Act 1977.

Step 2 – Public notification is precluded

Public notification is not precluded as follows:

- There are no rules in a plan or National Environmental Standard that preclude notification.
- The application is not:
 - a controlled activity; or
 - a boundary activity as defined by section 87AAB that is restricted discretionary, discretionary or non-complying.

Step 3 – Public notification is required in certain circumstances

- There are no rules in a plan or National Environmental Standard that require notification.
- A consent authority must publicly notify an application if notification is not precluded by Step 2 and the consent authority decides, in accordance with s95D, that the proposed activity will have or is likely to have adverse effects on the environment that are more than minor. An assessment in this respect is undertaken as follows:

The following effects must be disregarded:

- Effects on the owners or occupiers of land on which the activity will occur and on adjacent land.
- Trade competition and the effects of trade competition.
- Any persons that have provided their written approval and as such adverse effects on these parties have been disregarded.

Written Approval/s

No written approvals have been provided.

The following effects may be disregarded:

- An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect – referred to as the “permitted baseline”. The relevance of a permitted baseline to this application is as follows:

Permitted Baseline

The consent authority **may** disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect. In this case, it is permitted to build structures in the Rural Zone, provided that the maximum site coverage does not exceed 500m² if the site is less than 2ha in size. Therefore, only the additional building coverage of 240m² is assessed below.

The permitted baseline is considered relevant.

Rural Character and Amenity

The presence of the shed being located on the site associated with residential activity will not be out of character for the rural environment. The surrounding environment consists of rural lifestyle blocks that contain a dwelling and multiple accessory buildings utilised for both residential and rural purposes. The addition of another shed on the site will not be out of character for the surrounding environment. Overall, the adverse effects of the shed exceeding site coverage upon the rural character and amenity of the area will be no more than minor.

Visual amenity

The proposed building will be located on the subject site that has existing built form, being a residential dwelling and accessory sheds. It will be positioned behind these buildings on a flat area towards the back of the section of the rural lot. As such, persons in the wider environment on the northern and south-east sides of Racecourse Road will not have a direct view of the proposed building. This is due to the screening provided by the existing built form, as well as the existing vegetation present within the adjacent properties.

The adverse effects of the building exceeding site coverage will be no more than minor on the visual amenity of the existing environment.

Flooding Effects

The site has been identified as being within an area subject to actual or potential inundation on the District Plan maps. Under the Operative District Plan, all consents in this area are to be referred to Environment Southland for comment prior to determining consents.

Gavin Gilder from Environment Southland has provided comment on the application. He identified that the proposed location of the shed is located on the lowest ground of the property and has not shown measures to reduce the flood risk in accordance with the Policy 4A.4(2) of the Operative District Plan.

Policy 4A.4(2) states that sites subject to actual or potential flooding, promote:

- a) identification and use of elevated ground for those activities that could be adversely affected by flooding and;
- b) elevated floor levels within any buildings.

The applicant provided revised plans which indicate that the floor level of the proposed shed will be raised 600mm above the surrounding ground level, in accordance with Policy 4A.4(d). The Council's Building Manager, Russell Paterson, confirmed that this meets the building requirements with respect to natural hazards under the Building Act 2003. Additionally, Mr Gilder confirmed that Environment Southland supports these revised plans.

Overall, the proposal will not exacerbate flooding risks upon the environment.

Conclusion: Effects on The Environment

On the basis of the above assessment, in terms of s95D, it is assessed that the proposed activity will not have adverse effects on the environment that are more than minor.

Step 4 – Public Notification in Special circumstances

- There are no special circumstances that warrant public notification.

4.2 Limited notification – Section 95B

In accordance with section 95B, the following steps have been followed to determine whether to give limited notification of the application:

Step 1 – Certain affected groups or persons must be notified

- There are no protected customary rights groups or customary marine title groups affected by the proposed.
- The proposal is not on or adjacent to, and will not affect, land that is the subject of a statutory acknowledgment.

Step 2 – Limited notification precluded

- The activity is not subject to a rule or National Environmental Standard that precludes limited notification.
- The application is not for a controlled activity (other than for a subdivision of land) under a district plan.

Step 3 – Certain other affected persons must be notified

- Under Step 3, if the proposal is a boundary activity, only the owner/occupier of the infringed boundary can be considered. The activity is not a boundary activity.
- For any other activity, a consent authority must notify an application on any person, if notification is not precluded by Step 2, and the consent authority decides, in accordance with s95E, that the proposed activity will have or is likely to have adverse effects on that person that are minor or more than minor.

An assessment in this respect is therefore undertaken as follows:

Considerations in assessing adverse effects on persons under s95E

- a) The consent authority **may** disregard an adverse effect of the activity on a person if a rule or national environmental standard permits an activity with that effect (a “permitted baseline”). The relevance of the permitted baseline to this application is outlined in the above s95D assessment of environment effects.

- b) The consent authority **must** disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and
- c) The consent authority **must** have regard to every relevant statutory acknowledgement specified in Schedule 11.
- d) The consent authority **must** disregard effects on those parties who have provided written approval.

Assessment: Effects on Persons

Taking into account the exclusions in sections 95E, the following outlines an assessment as to whether the activity will have or is likely to have adverse effects on persons that are minor or more than minor.

The adjacent persons who are assessed below are all the owners of the properties that share a common boundary with the subject site, and from which persons will have a direct view of the proposal. The adjacent persons are shown in Figure 2. An assessment on the effects on these persons has been provided within Section 7.7 of the applicant's AEE. This assessment is adopted and the following added.



Figure 2: The adjacent properties in orange circles.

140 Charlton Road

This property is located north of the subject site and is separated by Racecourse Road. The proposed shed is setback more than 111m from the road boundary of 99 Racecourse Road. This coupled with the separation distance of the road and the existing built form on the subject site provides sufficient

distance and barrier to any view of the proposed shed. Any adverse effects upon the owners and occupiers of this property are considered to be less than minor.

0 and 111 Racecourse Road

These properties to the north-west share a common boundary with the subject site. The proposed shed is to be located on the south boundary, away from the common boundary of these properties. The common boundary is also lined with vegetation, which provides some screening of the subject site and the proposed shed. Built form (accessory buildings) in the immediate area is common and the addition of a building on the site will not be unexpected. Any adverse effects upon the owners and occupiers of these properties are considered to be less than minor.

87 Racecourse Road

The subject site shares its eastern and southern boundaries with 87 Racecourse Road. The proposed building is setback 6 metres from the common boundary, being compliant with the rural setback rule. The breach of the site coverage being 240m² more than what is permitted on the 1.5ha site would not be noticeable to the naked eye of the owners and occupiers of this property. The site still consists of open areas of land around the proposed shed that will be retained for residential lifestyle/agriculture purposes. Any adverse effects upon the owners and occupiers of this property are considered to be less than minor.

Conclusions: Effects on Persons

In terms of section 95E of the RMA, and on the basis of the above assessment, no person is considered to be adversely affected.

Step 4 – Special Circumstances for Limited Notification

- There are no special circumstances that warrant limited notification of the application.

5. DECISION PURSUANT TO S95A AND S95B OF THE RMA

For the reasons set out above, under s95A and s95B of the RMA, the application is to be processed on a non-notified basis.

6. SECTION 104 ASSESSMENT

6.1 Matters for Consideration

This application must be considered in terms of Section 104 of the RMA.

Subject to Part 2 of the RMA, Section 104 sets out those matters to be considered by the consent authority when considering a resource consent application. Considerations of relevance to this application are:

- (a) *any actual and potential effects on the environment of allowing the activity; and*

- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) *any relevant provisions of:*
 - (i) *A national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

6.2 Effects on the Environment

Actual and potential effects on the environment have been outlined in the section 95 report. Conditions of consent can be imposed under s108 of the RMA as required to avoid, remedy or mitigate adverse effects.

6.3 Relevant Provisions

District Plan

The relevant operative objectives and policies are contained within Chapter 3 and Chapter 4A of the District Plan.

Chapter 3

- Objective (1) Maintain and enhance the amenity values of the various localities within the District whilst respecting the different values and characteristics that exist within each area.*
- Objective (2) Ensure that the effects of land use activities do not adversely affect the quality of the environment and are compatible with the characteristics and amenity values of each locality.*
- Policy (1) Establish zones that reflect the characteristics and amenity values of the area.*
- Policy (2) Control the adverse effects of land use activities on the environment.*

The proposed activity resulting in a breach to site coverage will not adversely affect the character or amenity values of the rural area. There are existing farm accessory sheds on the surrounding sites. The rural character of the immediate area includes sheds that are associated with residential activity. Therefore, an addition of a shed on the site will not detract from this. As such, the proposal is considered consistent with the relevant objectives and policies of Chapter 3 of the Operative Gore District Plan.

Chapter 4A

- Objective (1) Ensure the public is aware of the likelihood and consequences of natural and man-made hazards within the District.*
- Objective (2) Minimise the risk to people and property from inundation.*
- Policy (1) Promote public awareness of natural and man-made hazards.*
- Policy (2) On sites subject to actual or potential flooding, promote:*

- (a) identification and use of elevated ground for those activities that could be adversely affected by flooding; and*
- (b) elevated floor levels within any buildings.*
- (d) in respect of areas of the District subject to actual or potential inundation as shown on the District Plan maps, other than those described in (b) and (c) above, require any buildings accommodating people to be built with their floor levels at least 600 mm above the level of past flooding or for sites for which there is no record of past flooding, 600 mm above ground level.*

Although the proposal will be located within an identified inundation area, the applicant has demonstrated that the shed will meet the objectives and policies of Chapter 4A by elevating the floor level of the building to be 600mm above the surrounding ground level. This will ensure that the finished floor level of the building will be 70.6m NZVD 2016 and this is the same level as the existing residential dwelling on the site. This is consistent with the advice from Environment Southland. As such, the proposal is considered consistent with the objectives and policies of Chapter 4A of the Operative Gore District Plan.

National Policy Statement for Highly Productive Land

The site is located on Land Use Capability (LUC) 3 soil and is therefore considered productive. The NPS-HPL came into force on 17 October 2022. The objective of the NPS-HPL is that highly productive land is protected for use in land-based primary production, both now and for future generations. As the proposal is for a restricted discretionary land use activity, the matters of discretion do not provide scope for the consideration of highly productive land. No further assessment of the NPS-HPL is required.

Southland Regional Policy Statement 2017

The proposal is consistent with the relevant objectives and policies in the Southland Regional Policy Statement, specifically the provisions contained in Chapter 5 (Rural land/soils). Objective RURAL.1 seeks to achieve sustainable use of Southland's rural land resource, in respect of a number of matters including (b) subdivision, use and development activities; (d) the use of soil resources; and (f) on-site wastewater systems. Policy RURAL.2 seeks to manage subdivision and land development activities in rural areas of Southland in a way that maintains or enhances rural amenity values and character.

The RPS generally recognises that subdivision and land development activities in rural areas need to be managed in a manner that takes into account the potential for reverse sensitivity issues that could lead to constraints on the ability to access significant rural land resource and undertake reasonable productive uses of land.

The site is currently utilised as a rural lifestyle block and the addition of the shed to be associated with the current use does not detract from the existing nature of the site. There is still sufficient vacant rural land to the west which can continue to be utilised for small-scale rural production.

7. PART 2 OF THE RMA

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

The proposed building takes into account Part 2 of the RMA as the activity will enable the continuation of the existing rural / residential lifestyle activities occurring on the site in the Rural Zone, providing

for social and economic wellbeing of the Applicant. The site does not contain any matters of national importance under s6 and particular regard has been given to s7 in terms of terms of maintaining and enhancing the existing rural environment. This site is not within any known heritage sites or statutory acknowledgement areas. The proposal is not considered to be inconsistent with the principles of the Treaty of Waitangi.

Overall, the proposal is considered to meet the purpose and principles of the RMA.

8. DECISION ON RESOURCE CONSENT

Pursuant to Section 104C of the RMA, consent is **granted** to construct a shed that will breach site coverage at 99 Racecourse Road subject to the following conditions imposed pursuant to Section 108 of the RMA:

Consent Conditions

1. The proposal must be undertaken generally in accordance with the application as submitted to the Council and the following plans:
 - Site Plan, 99 Racecourse Road Gore, 08/07/2024 drawn by Architecture Unlimited.
 - Southland Contours and elevation – 99 Racecourse Road, Gore, dated 26/07/2024
 - Elevations, 99 Racecourse Road, Gore, dated 08/07/2024, drawn by Architecture Unlimited.
 - End Elevations, 99 Racecourse Road, Gore, dated 17/03/2024, drawn by Kiwispan

Advice Notes

1. This resource consent does not constitute a Building Consent under the Building Act 2004. You should consult with the Building Control Manager of the Gore District Council to obtain information on any Building Consents required to undertake development.
2. The Gore District Plan and Gore District Council Subdivision and Development Bylaw 2019 sets out standards and requirements, which are required to be met in constructing any buildings.

Administrative Matters

The costs of processing the application are currently being assessed and you will be advised under separate cover whether further costs have been incurred.

The Council will contact you in due course to arrange the required monitoring. The Monitoring Officers time will be charged to the consent holder. It is suggested that you contact the Council if you intend to delay implementation of this consent or if all conditions have been met.

This resource consent is not a building consent granted under the Building Act 2004. A building consent must be obtained before construction can begin.

This resource consent must be exercised within five years from the date of this decision subject to the provisions of section 125 of the RMA.

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

Prepared by



Bridget Sim
Planner

Decision made by



Penny Weng
Delegate

Appendix A: Approved Plans

APPENDIX A – APPROVED PLANS



99 Racecourse Rd, Gore.

GORE DISTRICT COUNCIL
APPROVED
Building Consent # 211207
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