

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

Resource Management Act 1991

Application reference	SC24042 and LU24043
Applicant	Gregory Caughey
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to: Undertake a two lot subdivision and land use consent for a recession plane breach Land use consent for the removal of a significant tree – T54/ TREE-45.
Location	82 Ruia Street, Gore
Legal Description	Lot 3 DP 604846
Activity Status under the ODP	Discretionary
Activity status under the PDP	Controlled
Decision Date	16 December 2024
Re-Issue Date	18 December 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 Werner Murray, on 16 December 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 and 220 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 Werner Murray, under delegated authority pursuant to Section 34A of the RMA.
3. Pursuant to section 133A of the RMA this consent is being re-issued due to a typo error in Condition 4. This is considered a minor mistake or defect and therefore the consent can be re-issued pursuant to section 133A of the RMA.

1. THE PROPOSAL

Subdivision consent is sought to undertake a two lot subdivision as follows:

- Lot 1 being 1156m² in area. The site contains an existing dwelling with an existing vehicle crossing to Ruia Street. Access is proposed to be via a right of way over Lot 2, as shown on the scheme plan.
- Lot 2 being 2231m² in area. The site consists of vacant land. Access to the lot is proposed via a right of way in favour of Lot 1, as shown on the scheme plan. The shed identified in the ROW has since been removed.

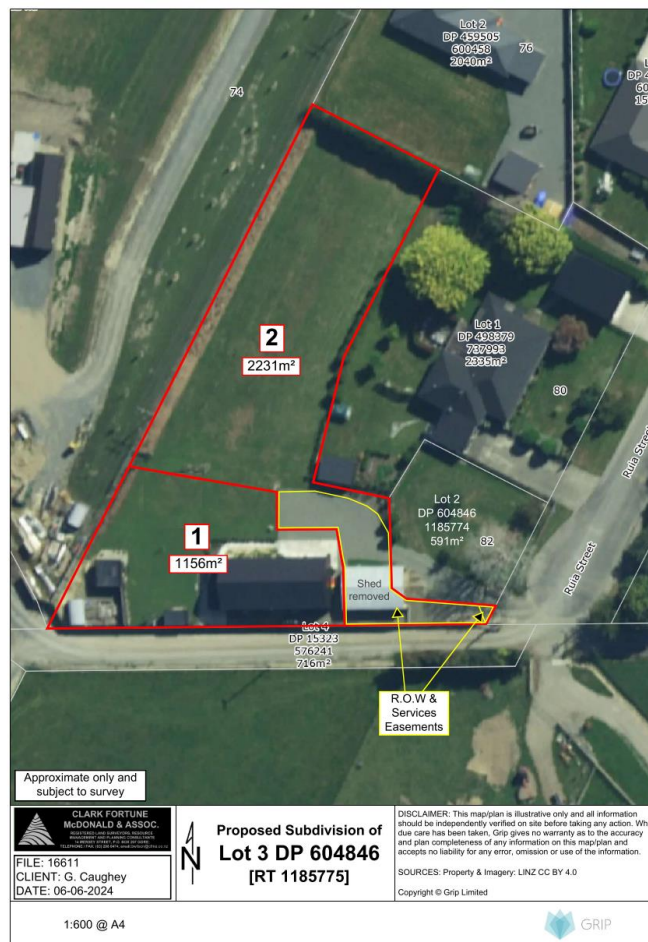


Figure 1: Proposed Scheme Plan

Both lots are connected to council reticulated services.

Individual connections have been installed to service the two lots in respect to potable water and wastewater as identified by 'As-Laid Drainage Plan, drawn by Blair Sheddin, dated 15 - 06 -21' (reference BC 210007 - 3 Amendment – Drainage System – 82 Ruia Street). These services are proposed to be retained and will be located within the right of way.

The services have been connected to the Council reticulated services located in Ruia Street and are protected by an existing easement (Area A) over the neighbouring lot, Lot 2 DP 604846 held in Record of Title 1185774.

Lot 1 is to retain the stormwater connection to the reticulated services in Ruia Street. Lot 2 has proposed onsite stormwater management for the future residential building on Lot 2.

The applicant has demonstrated that there are power and telecommunication connections available to both sites.

It is proposed to utilise an existing vehicle crossing from Ruia Street, constructed under SC 2015/190/3. The access has not been completed in accordance with the Subdivision and Land Development Bylaw 2019 - Standard R09-1 as it has not been sealed. There is a bond held in place for the sealing of this access as part of the previous subdivision (reference SC 2015/190/3 – s223/224 – 80 Ruia Street email correspondence for bond for access) which created the site. This has not been completed.

Land Use Consent

Land use consent is sought for the daylight admission breach created by the residential building on Lot 1 protruding through the eastern recession plane. This breach is a result of the boundary created between Lot 1 and Lot 2. The apex of the gable will protrude into the east recession plane by approximately 0.9m.

There is also a separate free-standing wall fence, adjacent to the east elevation of the building that is 1.8m setback from the building and is 3.4m high. This is more or less on the new proposed boundary between Lot 1 and Lot 2 resulting in the apex of this to also protrude into the east recession plane by approximately 0.8m. See Figure 2.



Figure 2: View of dwelling and free standing wall fence

Land use consent is sought for the removal of the tree listed as T54 under the Operative District Plan (ODP) and TREE-45 under the Proposed District Plan (PDP), at 82 Ruia Street. The Applicant states the tree had died and was removed without obtaining a resource consent from Council.

2. SITE DESCRIPTION

The subject site 82 Ruia Street, legally known as Lot 3 DP 604846 held in Record of Title 1185775 is located in the Residential A Zone. The property has legal frontage to Ruia Street, an urban collector road that is chip sealed with an operating speed of 50 kph.

The 3,387m² site currently contains a residential dwelling along the south boundary but is otherwise vacant flat land.

The site is located at the end of a dead-end street and is situated adjacent to the Rural Zone along the south and western boundaries. The immediate surrounding environment is predominately residential in character and use, apart from the south and west of the subject site and Ruia Street which contains rural lifestyle blocks with residential dwellings in the Rural Zone.

The Council's mapping system does not identify that the site is prone to an inundation hazard. The liquefaction risk across the site is 'negligible'. The site is not identified as being on the Selected Land Use Register as an actual or potentially contaminated site.

Along the western boundary runs a sub transmission powerline for 33KV and 11 KV (TPG-372 – GORE 372 – NORTH GORE). The existing residential dwelling on Lot 1 is setback in accordance with Appendix 3: NZCEP of the Operative District Plan.

The site is listed as having a significant tree under the ODP and notable tree under the PDP along the eastern boundary of the site adjacent to Ruia Street. At the site visit it was confirmed that this tree, being a Juglan Regia (walnut tree) has been removed and is no longer present.



Figure 3: Subject site outlined in blue and the surrounding environment.

Site History

The subject site has recently been created via subdivision SC2015/190. SC2015/190 has further been varied to enable... and to allow the consent to be staged.

- SC 2015/190/2 - This approved subdivision consent permitted a three lot subdivision of the parent site at the time, being 80 Ruia Street (Lot 9 Deposited Plan 459505 containing 6,313 square metres more or less).
- SC 2015/190/3 - This decision has since had a variation (SC 2015/190/3) which included a condition to allow for staging of this consent.

Certification for SC 2015/190/2 has recently been completed and new titles have been issued in September 2024 to create the three allotments being Lot 1 DP 498379, Lot 2 DP 604846 and Lot 3 DP 604846 (the subject site). This has now resulted in three new separate owners for each allotment.

The site previously contained two significant trees identified in the district plan as T55 and T54. The subdivision consent acknowledged that the proposed driveway to be located at the south eastern edge of the property is “likely to involve required work within the drip line of Significant Tree T54”. The decision further outlined that the rules of the ODP and that consultation with the Council’s Roading Manager and Parks and Recreation Manager was recommended.

District Plan Rule 4.12.2 provides as a permitted activity minor trimming and maintenance of significant trees by hand-operated pruning shears or secateurs in accordance with accepted arboricultural practice. Minor pruning of this tree will reduce the extent of the drip line and expected to facilitate upgrade of the driveway access without the need for a further resource consent. However, to ensure no damage occurs to the tree, the access upgrade is required to be undertaken in consultation with the Council’s Roading Manager and Parks and Recreation Manager.

A land use consent (LU 2016/208) was issued for the removal of significant tree T55 on 7 April 2016. The applicant sought consent for the removal of significant tree Juglas Regia T55 after a large branch fell and damaged the fence and created a large spilt in the tree. The removal of a significant tree was not permitted under Rule 4.13.3 in the District Plan however consent was sought after the fact based on the safety risk posed.

3. ACTIVITY STATUS

3.1 Gore District Plan

The site is zoned Residential A in the Operative Gore District Plan, and the proposed activity requires resource consent under the District Plan for the following reason/s:

Operative District Plan

- A **restricted discretionary** activity pursuant to Rule 8.10(4)(d) to undertake a two lot subdivision of the site. Council’s discretion is restricted to the following:
 - (i) suitability of the allotments for activities permitted within the zone in which they are located.
 - (ii) suitability of the land for subdivision, including presence of any natural or other hazards, including contaminated land;

- (iii) ability to provide services (water, sewage, storm water, power and telecommunications);*
- (iv) impacts on the council and other infrastructure services;*
- (v) future use of the land and the need to consider any associated resource consents;*
- (vi) within residential and rural areas lot size, dimensions and potential for future subdivision of the land;*
- (vii) within residential and rural areas the desirability of providing building platforms; and provision of easements*
- (ix) impacts on any heritage or archaeological values*
- (x) impacts on natural features and landscapes, ecological or cultural values*
- (xi) impacts water quality, including groundwater*
- (xii) provision of all transport modes, including the movement of pedestrians and cyclists*

- A **restricted discretionary** activity pursuant to Rule 4.7.1(2) as the proposal breaches standard 4.7.1(1)(b) in regard to:
 - an existing building extending beyond the east recession plane.
 - a free standing wall extending beyond the east recession plane.

Council’s discretion is restricted to this matter.

- A **discretionary** activity pursuant to Rule 4.12.3 for the removal of significant Tree T54, which did not meet the permitted parameters provided under 4.12.2.

Proposed District Plan

The PDP provisions relating to notable trees have legal effect and therefore the proposal also requires resource consent for a breach of the following PDP rule:

- A **controlled** activity pursuant to Rule TREE-R2.2, for the removal of any notable tree in TREE-SCHED as there is a high quantifiable risk to people, property, buildings or infrastructure. The notable tree, TREE – 45 was removed in April 2024 due to the tree being dead and becoming a risk to people, property, buildings or infrastructure.

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

Based on the applicants 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 **discretionary** activity overall, under the Operative and Proposed 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, under the ODP, 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.

Public notification, under the PDP, is precluded as follows:

- The application is:
 - a controlled activity

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 all subdivisions require resource consent, there is no permitted baseline.

Residential activity on a site greater than 400m² is permitted provided it meets the bulk and location rules of the Residential A Zone. In this instance, Lot 1 contains an existing dwelling where the gable of the roof will protrude into the eastern recession plane by 0.9m and a free-standing wall protruding 0.8m.

There is no permitted baseline in relation to the removal of a listed tree as this requires consent.

Operative District Plan Land Use

Recession plane

The residential unit and free standing wall on Lot 1 is existing and prior to subdivision is compliant with the ODP standards. The boundary of Lot 1 following the subdivision will be the internal boundary of the right of way, given a boundary is defined as any boundary of the nett area of a site. Any adverse effects from the recession planes non-compliance have been discussed in the subsequent s95 – Effects on persons assessment.

Removal of Significant Tree

Land use consent is sought for the removal of the tree listed as T54 in the ODP at 82 Ruia Street. The Applicant has advised that the tree died and therefore has been removed. This application is therefore sought post the removal of the tree.

The Applicant has advised that:

- The tree in question died in 2023 of natural causes.
- The applicant notified the GDC Parks & Reserves Manager when he became aware of the tree’s condition, as it did not show any sign of new spring growth after the winter.
- The GDC Parks & Reserves Manager inspected the tree in September 2023 and confirmed that it was dead.
- The applicant asked the GDC Parks & Reserves Manager for confirmation/advice regarding the approval process to cut down the dead tree, but never received any further response to enquiries.
- After some months waiting to ensure the tree was truly dead, the applicant believed that the dead tree had become too hazardous to delay any longer (due to the danger of branches falling

onto his yard or onto the road) and cut it down for safety reasons (the applicant's recollection is that it was cut down in April 2024).

- The applicant was not aware that resource consent was required for removal of the dead tree.

Land use consent is required to remove the tree.

T54 is recorded as a *Juglans Regia* – common walnut tree located on the site at 82 Ruia Street.

A significant tree is not permitted to be removed under the ODP, if not provided for by Rule 4.12.2. No minor trimming and maintenance of the tree was required, nor were emergency works required to be undertaken to safeguard life or property.

The Applicant consulted with the Parks and Recreation Manager – Keith McRobie in September 2023 to advise that the tree was suspected to be dead after not flowering for spring. Mr McRobie has confirmed this conversation and agreed that the tree needed to be removed.

The Applicant considered that it was necessary to remove the dead tree for safety, as there was a significant risk from potential branches breaking and falling off the tree, either landing on the applicant's property or on the adjacent road reserve and footpath. The removal of the tree was undertaken in order to avoid adverse effects on the safety on the wider environment from the dead tree. The Applicant relied upon the verbal conversation from the Council, confirming that the tree was dead and proceeded to remove the tree. If the tree had stayed, there would have been an associated risk from the tree on the wider environment.

The adverse effects of removing the tree compared to the adverse risks associated with a dead tree causing safety concerns is considered to be no more than minor.

Subdivision

Suitability of the allotments and future land use

The subdivision layout proposes two allotments in the Residential A Zone. Lot 1 and 2 meet the minimum 400m² gross area specified in the Gore District Plan and will be utilised for residential purposes. Lot 1 will have an area of 1156m² and contains an existing residential dwelling. Lot 2 will have a gross area of 2231m² and a nett area of roughly 1,924m² to support future residential development. Any future development on proposed Lot 2 is expected to comply with the Performance Standards in the District Plan for the Residential A Zone, including the yards, daylight admission and height standards. Any future development will also be subject to the requirements of the Gore District Council Subdivision and Land Development Bylaw 2019. These will both be assessed at the building consent stage.

The existing dwelling and free standing wall on Lot 1 breaches daylight admission extending into the eastern boundary. As assessed above in the land use assessment, the extent of the non-compliance is small-scale and an existing situation on site. The presence of the building in its current location will not impede the use of the right of way access by either property.

The proposed lots are considered to be consistent with anticipated development within the Residential A Zone for residential living. The scheme plan shows the size, shape, and configuration of the proposed allotments are appropriate for residential purposes. A rear dwelling utilising a leg-in is consistent with the infill subdivision pattern of the immediate residential area.

Overall, adverse effects on the wider environment will be no more than minor.

Suitability of land for subdivision – Natural Hazards and other Hazards

The subject 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 site's liquefaction risk as negligible and the site is not subject to inundation.

Any adverse effects, with respect to natural hazards and other hazards on the wider environment will be less than minor.

Ability to provide services

Both lots will connect to reticulated services.

Council's 3 Waters Engineer- Aaron Green, has reviewed the application and has confirmed the Lots have been feasibly serviced.

Lot 1 will retain existing service connections in respect to water, wastewater and stormwater.

Lot 2 will retain existing service connections in respect to water and wastewater. There is no existing stormwater reticulation in Ruia Street. The applicant has proposed onsite stormwater management for the future residential building on Lot 2 to be by on-site soakage to be designed and addressed at building consent stage. The applicant will also install a 3,000L rainwater tank as required by the Subdivision and Land Development Bylaw 2019 (the Bylaw) to offset any increase in stormwater runoff from residential development.

The applicant has demonstrated that future connections for telecommunications are available within the Ruia Street corridor for wired connections or 5G wireless coverage available for Lot 2. Lot 1 has existing connections and is proposed to retain these.

Electricity to Lot 1 is to be retained. Lot 2 has existing electricity supply from the power pole and transformer at the southeast corner of the site. This has been confirmed by PowerNet (letter from Fraser Neil – Operations (Distribution) Project Manager, dated 03-09-2024) and will be retained.

An easement over the right of way has been proposed for these services over Lot 2, in favour of Lot 1.

The adverse effects on the environment from the proposed servicing of the subdivision will be less than minor.

Impacts on heritage, archaeological values, natural features, landscapes and water quality

As identified above under the land use consent s95A assessment, the notable tree that is listed on the site is no longer present and the impacts on the heritage values has been considered. As the tree has died, it no longer meets the objectives and policies of the ODP and therefore it no longer has amenity values to be protected under the ODP.

Effects on traffic

The Council's Senior Roding Operations Officer, Mr Hasler has reviewed the application. A summary of his assessment is provided below. The access standards contained in the Gore District Council Subdivision and Land Development Bylaw (the Bylaw) apply to this proposal.

The requirements for the access to be constructed in accordance with the Bylaw. The access was determined under SC 2015/190 which required the site be constructed and sealed in accordance with Standard R09-1 to service two or more allotments. The access area being 39.15m² in area has not been sealed as part of the prior subdivision consent condition. There is a bond in place for this to be done within 3 months, from the date the bond requirements went to the applicant on the 26 July 2024. Mr Hasler has confirmed that the sealing of this has not been completed and is therefore required to be sealed. This has been further conditioned to ensure completion of the access.

Due to this access already being constructed to the appropriate standard required for an additional allotment, it is considered that the adverse effects are no more than minor of the environment.

Provision of easements

It is proposed to have an easement over Lot 2, in favour of Lot 1 for the right of way and right to convey services. This is shown on the Scheme Plan. At the time of survey, all necessary easements will be confirmed and registered onto the relevant Record of Titles. Adverse effects on the wider environment are considered to be less than minor.

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.

Neighbouring Properties

Neighbouring properties are all of the owners and occupiers of the properties that share a common boundary with the subject site and those that are located opposite the site as shown in Figure 4 below:

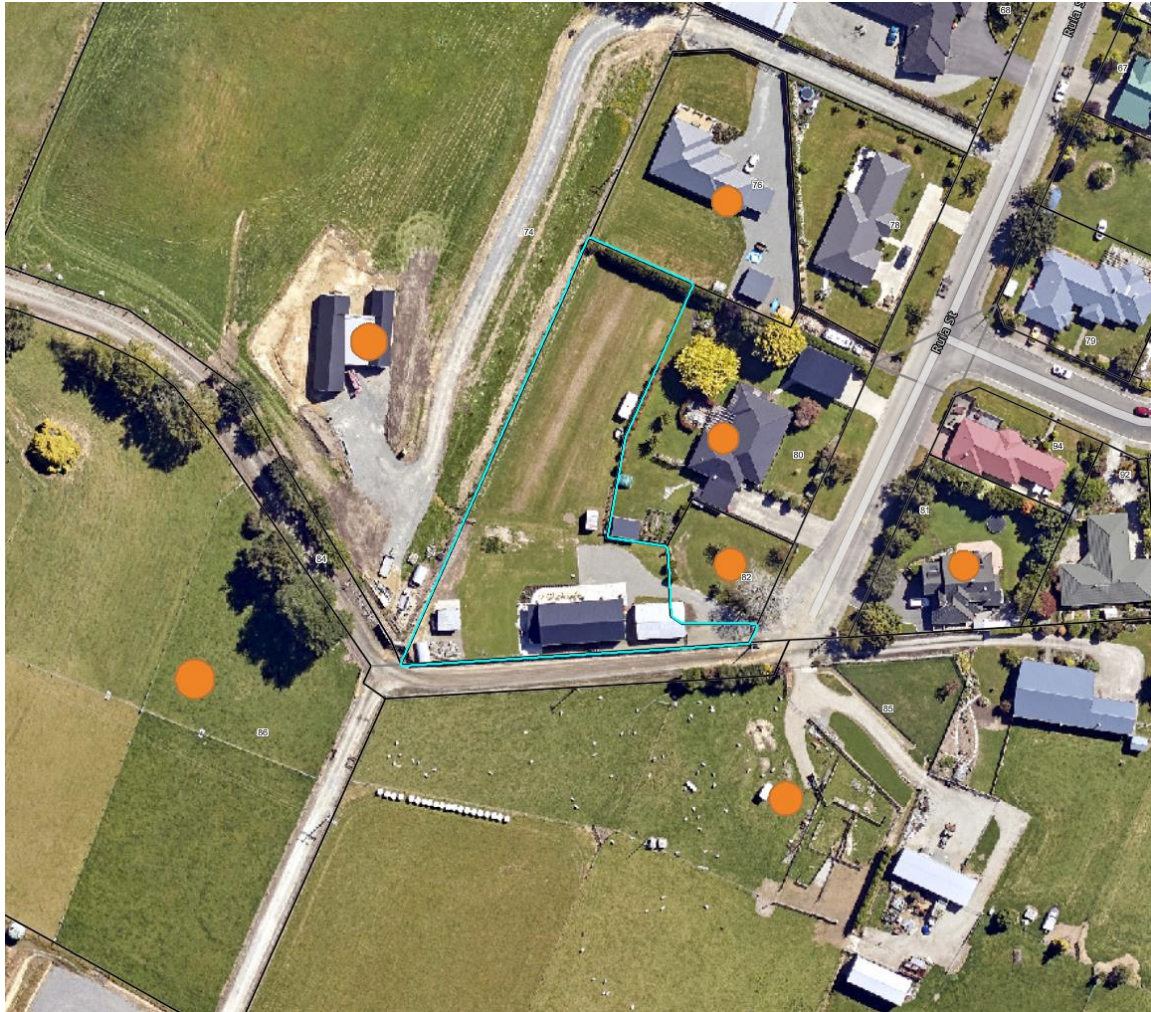


Figure 4: Subject site outlined in blue, with adjacent neighbours identified by orange circles.

Recession Plane Breach

The existing house on Lot 1 gable and the free standing wall encroaches into the eastern recession plane of Lot 1 created by the right of way boundary for Lot 2. Written approval is implied by the application as Lot 1 and Lot 2 are currently held within the same ownership. The boundary breach is also adjacent to the leg in access for Lot 2. The effects of the building in this location and protruding into the recession plane will be negligible on the occupiers and owners of this right of way. The right of way will be utilised by both owners and occupiers of Lot 1 and Lot 2. The width of the right of way is more than 3.5m in width and will not be utilised for buildings or outdoor living space. Therefore, the adverse effects from dominance or shading will be less than minor.

Subdivision

The subdivision meets the standard for minimum lot size in the Residential A Zone. The Operative District Plan has therefore anticipated the adverse effects associated with future development of this density on such lots and deemed it appropriate. The proposed lots are of a size and shape that can each accommodate a future residential unit.

The immediate surrounding neighbouring properties to the north and east of the site consists of residential dwellings on similar lot sizes. While the properties to the south and west are located in the rural zone and are located on large lots, the existing surrounding to the north is residential

zone and therefore has consisted of smaller allotments, similar in shape and size to the proposed subdivision. The addition of the two lots fit into the existing residential and rural environment of Ruia Street.

The proposed allotments will maintain the character and wider amenity of the immediate Residential Zone. Overall, the adverse effects of the proposal will be less than minor on any owner and occupier of these properties

Removal of significant tree

The tree was removed as it posed a safety risk to the users of Ruia Street. As the tree had died, the amenity it provided and values associated with it have unfortunately ceased. It is considered the tree can no longer meet the STEM score required to be considered significant. Given the health of the tree it is considered that the adverse effects of the removal is less than minor on any persons.

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 in relation to the application under the Operative District Plan 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.

Proposed District Plan – Land use

Removal of a Notable Tree

Land use consent is sought for the removal of the tree listed as TREE-45 in the PDP at 82 Ruia Street. The tree has died and was removed by the applicant without obtaining a resource consent from Council.

The STEM report for TREE-45 held that the total score of the tree was 123. This identified that the tree was of excellent vigour and vitality, with the arborist noting that this was “one of the better walnuts in the area”. No heritage values from the tree were noted however as it was identified that the tree was 40+ years old.

The removal of a notable tree is a controlled activity under the PDP if either:

1. There are changes to the tree or group of trees, arising from natural events, which results in the tree(s) no longer meeting the STEM threshold to be classed as notable; or
2. There is a high quantifiable risk to people, property, buildings or infrastructure.

The Applicant has stated that as the tree had died, it posed a risk to people, property and buildings.

The matters of control are assessed as follows:

1. *Arboricultural advice confirms that the tree(s) no longer meets the STEM threshold to be classed as notable.*

The Applicant has provided an updated STEM assessment with changes in red to reflect the trees health at the time of the removal. It is noted that this has not been undertaken by a qualified arborist, and therefore is not accurate to be relied upon.

Nonetheless, the tree was viewed by Mr. McRobie in October 2023 who has confirmed it was in a “very dead state”.

Given the health of the tree, it follows that it would no longer be able to meet the condition (health) evaluation, and therefore the STEM threshold to be classed as a notable tree can no longer be met.

2. *The health, shape, form and ongoing viability of the notable tree.*

Mr. McRobie, after viewing the tree confirmed that the tree was dead, this would indicate that there is no ongoing viability of the tree.

3. *The necessity of what is proposed and alternatives.*

The Applicant removed the tree due to the tree being dead and posing a high quantifiable risk to people, property, buildings or infrastructure. The tree was located adjacent to an accessway and footpath that was utilised by pedestrians and the tree was located adjacent to an accessway utilised by the owners and occupiers of the property. Given the location of the tree, the Applicant knowing the viability of the tree identified that tree branches could fall and pose a risk. Although it is not known if any tree branches fell from the dead tree, it was identified that the tree was dead and there is the associated risk that this could have resulted if the tree was not removed. It is considered this would amount to a high quantifiable risk to people, property, buildings or infrastructure. The tree was confirmed to be dead by the Parks and Recreation Manager in October 2023 and therefore the tree could no longer have been viable and needed to be removed before any risks were increased.

In conclusion, given the health of the tree, it is considered that the actual and potential effects of removing the tree are no more than minor and acceptable.

6.3 Relevant Provisions

Operative District Plan

The relevant operative objectives and policies are contained within Chapter 3 Land Use Activities – A Framework and Chapter 8 Subdivision of Land of the District Plan.

The proposed subdivision is consistent with the objectives and policies in Chapter 8. The size and layout of the allotments are practical and appropriate for the Residential zone. Proposed Lots 2 is of a shape and size that can accommodate a future residential activity, while Lot 1 can retain the existing residential activity. The proposed lots can be serviced appropriately at the time of development onsite via the existing accessway formed from Ruia Street in accordance with the Bylaw. Proposed Lot 1 and Lot 2 have existing services installed and will be protected by the appropriate easements. Given the size of Lot 2, onsite services in respect to stormwater will be addressed at building consent stage, ensuring that any potential impacts that may arise from the future use of land on water quality, including groundwater is considered.

The resource consent to permit the removal of a significant tree has shown that the tree no longer had amenity values to be protected due to the death of the tree. The Applicant is not able to retain the heritage and amenity values associated with the tree as it died and therefore it no longer had amenity values to be protected.

Overall, the proposed subdivision and the removal of the tree is considered to be consistent with the objectives and policies of the Operative District Plan.

Proposed District Plan

The Proposed District Plan was notified for public submissions on 31 August 2023. The submission period closed on 27 November 2023. The further submission period closed on 12 April 2024 and hearings are currently underway. It is noted that no submissions have been received for the site 82 Ruia Street or for TREE – 45.

As the Notable Tree rules have immediate legal effect and are relevant to this proposal, it is necessary to consider the relevant objectives and policies within the Notable Tree of the PDP.

TREE-01 The retention of trees and groups of trees with high botanical, heritage, cultural and/or amenity values.

TREE-P2 Protect the values and setting of notable trees and notable groups of trees.

TREE-P3 Undertake activities, including ground disturbance and subdivision, in a manner that provides protection of the viability, health, structural integrity and setting of notable trees and notable groups of trees.

TREE-P5 Avoid the removal of a notable tree or trees within notable groups of trees unless at least one of the following circumstances apply:

- 1. changes to the tree or group of trees, arising from natural events, which results in the tree no longer meeting the STEM threshold to be classed as notable, or*
- 2. there is a high quantifiable risk to people, property, buildings or infrastructure.*

TREE-P6 Avoid damage to notable tree or trees within notable groups of trees, including tree roots. Provide education and advice to encourage the protection of notable trees and notable groups of trees.

The relevant objectives and policies of PDP seek the retention of trees and groups of trees with high botanical, heritage, cultural and/or amenity values. The retention of a tree with these values cannot be retained if the tree has become dead and begins to deteriorate.

The removal of the notable tree was due to the safety and risk associated with the no longer viable tree. TREE-P5 held that the removal of the tree shall be avoided unless there is either 1) changes to the tree or group of trees, arising from natural events, which results in the tree no longer meeting the STEM threshold to be classed as notable, or 2) there is a high quantifiable risk to people, property, buildings or infrastructure. Due to the tree not having vigour and vitality and unfortunately dying, this posed a risk to people, property, buildings or infrastructure and was removed. Therefore, the tree posed a high quantifiable risk and is not consistent with the objectives and policies of the PDP. The activity of removing the tree, is therefore not considered inconsistent with policy TREE-P5.

Southland Regional Policy Statement 2017

The proposed subdivision is in accordance with the Southland Regional Policy Statement 2017 (RPS). The application will create compliant minimum lot sizes for the residential zone and will maintain sustainable urban development anticipated by the RPS. The additional lots provide positive environmental, social, economic, and cultural outcomes in the Gore District, accommodating for a range of individuals in the district. The overall subdivision is not sporadic and reads in the residential zone as being appropriate for urban growth and development.

7. SECTION 106 REQUIREMENT FOR SUBDIVISION

A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that the land is or is likely to be subject to or is likely to accelerate material damage from natural hazards, or where sufficient provision for legal and physical access to each allotment has not been made.

In this case each allotment has a legal and physical access from Ruia Drive via the accessway and right of way proposed. The site is not subject to any known natural hazards. Overall, the proposal is considered suitable under Section 106 of the RMA.

8. PART 2 OF THE RMA

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

Section 5 – Purpose

The proposed subdivision takes into account Section 5 of the RMA as the proposed lots will ensure the natural and physical resources of the rural land is protected for future generations. As assessed above, the adverse effects of the proposal can be avoided, remedied or mitigated.

Section 6 – Matters of national importance

Attention has been given to matters of national importance. This site does not contain any outstanding natural features or landscapes, nor an area of significant indigenous vegetation. It is considered the future land use is appropriate within this rural landscape.

Section 7 – Other matters

Particular regard has been given to the maintenance and enhancement of amenity values (section 7(c)) and maintenance and enhancement of the quality of the environment (section 7(f)). The amenity of the land and surrounding area will be maintained, and the proposed activity will not have adverse effects on the quality of the environment.

Section 8 – Treaty of Waitangi

This site is not within any known heritage site 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.

9. DECISION ON RESOURCE CONSENT

Decision A - Subdivision

Pursuant to Section 104B of the RMA, consent is **granted** to undertake a two lot residential subdivision resulting in a breach of the daylight admission subject to the following conditions imposed pursuant to Section 108 and Section 220 of the RMA:

Consent Conditions

1. The activity must be undertaken generally in accordance with the application made to the Council on 13 September 2024 and the further information provided on the 18 November 2024 the following plan:
 - Proposed Subdivision of Lot 3 DP 604846, G Caughey, drawn by Clark Fortune McDonald and Assoc., dated 06.06.2024.

This plan is attached in Appendix A

2. Prior to Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, any necessary easements shall be shown in the Memorandum of Easements attached to the Survey Plan and shall be duly granted or reserved.
3. The consent holder shall meet the costs for the preparation, review, and registration of any easement instrument(s) on the relevant Record of Title.
4. Prior to the certification of the subdivision pursuant to section 224 of the Resource Management Act 1991; the right of way access shall be sealed in accordance with Diagram R03 access standard in the Gore District Council Subdivision and Land Development Bylaw 2019.
5. Prior to the Council signing the Survey Plan pursuant to Section 223 of the Resource Management Act 1991, the consent holder must provide to Council a written statement from a Licensed Cadastral Surveyor, accompanied by any necessary evidence, to the effect that all services are confined to their respective lots or provision has been made for suitable easements to be granted and reserved in the Land Transfer Plan where appropriate.
6. Prior to the certification of the subdivision pursuant to section 224 of the Resource Management Act 1991; a consent notice, in accordance with Section 221 of the Resource Management Act 1991, shall be drafted for Lot 2 to record that:
 - a. At the time of lodging a building consent for a dwelling, the lot is to have a specifically researched, designed and verified system for onsite stormwater disposal.
 - b. At the time of lodging a building consent, new residential buildings shall provide a rainwater storage tank with a minimum capacity of 3,000 litres.
 - c. All soakage systems shall be specifically designed to meet the performance criteria required by the New Zealand Building Code Handbook and Approved Documents section E1 - Surface Water and include the design parameters outlined in the Bylaw CI 4.3.7.9.

Note that a geotechnical assessment may be required from an appropriately qualified geo-professional to determine the suitability of soil and groundwater characteristics for any proposed soakage system

Decision B - Land Use

Pursuant to Section 104B of the RMA, consent is **granted** to enable the building and free-standing wall on Lot 1 to encroach the recession plane and to remove a significant tree under the ODP and PDP.

Advice Notes

1. Any future development on Lots 1 and 2 will be subject to the requirements of the Gore District Council Subdivision and Land Development Bylaw 2019 and the Gore District Plan and will be assessed at the building consent stage.
2. Any work carried out on the legal roadway requires the prior approval of the Council and the consent holder must consult with the Council's Roading Department to ensure the appropriate processes are being followed and the work is being carried out to the correct standard. The work itself must be undertaken by a Council approved contractor.
3. Provide all quality assurance and as-built information required for the development in accordance with the Gore District Council's Subdivision, Land Use and Development Bylaw 2019

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

Re-issued by



Bridget Sim
Planner

Decision made by



Werner Murray
Delegate

Re-issued made by



Werner Murray
Delegate

Appendix A: Approved Plan

APPENDIX A – APPROVED PLAN

