

Gore District Council Decisions



NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

Resource Management Act 1991

Application reference	LU24045
Applicant	Neil and Raelene Burr
Proposal	Application under Section 88 of the Resource Management Act 1991 (RMA) to construct a residential dwelling within the 4.5m front yard setback.
Location	4 McIlwraith Road, Matura
Legal Description	Pt Lot 57 DP 134 held in Record of Title 596470
Activity Status	Restricted Discretionary
Decision Date	14 October 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 14 October 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 construct a residential dwelling that will be located within the 4.5m front yard setback required in the Residential A Zone.

The Applicants are re-building a house on the site at 4 McIlwraith Road and the house is to be setback 2.5 metres from the front boundary, bordering State Highway 1, also referred to as Main Street going through Matura. The proposed dwelling is to be 177.87m² in area, being 16.09m in total length and 17.73m in total width. The new dwelling will replace an older dwelling that is in roughly the same location.

The dwelling will be no less than 600 millimetres above ground level with non-living areas (attached garage and laundry) to be no less than 300 millimetres above ground level. Ground level is derived from height contours in terms of New Zealand Vertical Datum 2016 (NZVD 2016).

This building is proposed to be the second residential dwelling on the site. Under the Operative District Plan, a residential unit means *'an individual, a family unit or a group of unrelated individuals living together in a single household which is self-contained in respect of sleeping, cooking, dining, bathing and toilet facilities'*.

There is an existing sleepout on the site, which contains a kitchenette and therefore is deemed to be a residential dwelling under the Operative District Plan. In the Residential A Zone, more than one and up to six residential units may be erected on a site provided that the site area for each residential unit is no less than 400 square metres. When viewing the site plan, it identifies that each of the residential dwellings have an area of more than 400 square metres on the 2.428 hectare site.

2. SITE DESCRIPTION

The subject site has a physical address of 4 McIlwraith Road, Matura, legally known as Part Lot 57 Deposited Plan 134 held in Record of Title 596470. The site is located in the Residential A Zone and is 2.428 hectares in area. The site has frontage to McIlwraith Road and Main Street, and access is from McIlwraith Road. The site is shown in Figure 1.

The site is relatively flat in nature, particularly toward the area of existing domestication where the new dwelling is proposed to be established. There are a number of other existing buildings on the site. These buildings are accessory in nature. However, one is an existing sleepout which has a kitchenette and is therefore also deemed to be a residential unit.

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 site as having 'negligible' liquefaction risk. The site is also identified as an area 'subject to actual or potential inundation' and an area located within the Waimumu Stream floodplain.

The site is classified as containing Land Use Capability (LUC) 2 High Class Soils under the National Policy Statement for Highly Productive Land.



Figure 1: Subject site outlined in blue

3. ACTIVITY STATUS

3.1 Operative 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:

- A **restricted discretionary** activity pursuant to Rule 4.7A.1(4) as the proposal breaches standard 4.7A.1(3)(a) in regard to a building being setback within the 4.5 metres setback required for the front yard for the Residential A Zone. It is proposed to construct a residential dwelling 2.5 metres from the front boundary, adjacent to State Highway 1. Council's discretion is restricted to this matter.

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 **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 a second residential dwelling on a site located in the Residential A Zone provided that the site area allows for the density and it meets the bulk and location standards in respect to the yard setbacks. In this instance, the proposed building will be setback 2.5 metres from the front boundary. The portion of the building that does not comply with the setback is 2 metres. Therefore, this assessment solely focuses on the portion of the building (16m length) that protrudes into the setback by 2 metres.

The permitted baseline is considered relevant.

The Applicant has provided an assessment of effects on the environment at section 7.3 of the Assessment of Environmental Effects, prepared by Alex Dunn of Southern Planning Group, 30 September 2024. This assessment is adopted for the purpose of this decision with the following additional assessment added for clarity.

Character and Amenity

The proposed dwelling is not out of character for the residential zone. An existing residential dwelling was located in a similar location on the site. The new proposed dwelling will be setback 2.5m from the boundary, breaching the required setback of the Residential A Zone by 2m for a length of 16m. The breach will not be overly noticeable with the surrounding neighbouring properties along Dunns Road having buildings and structures that are located in close proximity within the road setback. This has established a pattern of built form in the vicinity.

The building will continue to read as part of the wider environment and the adverse effects on the character and amenity of the surrounding environment will be no more than minor.

Effects on the State Highway

The proposed setback breach is adjacent to the state highway, managed by New Zealand Transport Agency (NZTA). The site is located in the Residential A Zone of Matura and a residential dwelling located adjacent to the state highway is a common occurrence. The site will not be accessed from the state highway and will continue to access the established access from McIlwraith Road.

There are no requirements under the Operative District Plan for residential dwellings located in close proximity to the highway to have insulation or meet noise requirements. Given the standard of insulation required in new builds and that the site is located close to the 50kph speed limit, the effects upon the state highway of a residential dwelling breaching the 2m setback adjacent to the road will be no more than minor.

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 and be in accordance with the Policy 4A.4(2) of the Operative District Plan.

Gavin Gilder from Environment Southland has provided comment on the application (LU24045 – 4 McIlwraith Road – Appendix D – ES Consultation). Mr Gilder identified that the location of the existing house appears to be the best location on the site for a dwelling from a flood risk perspective. Environment Southland recommends that the proposed dwelling is to have a minimum floor level no less than 600 millimetres above ground level, with non-living areas (attached garage and laundry) to be no less than 300 millimetres above ground level. Ground level is derived from height contours in terms of NZVD 2016. The Applicant has volunteered conditions to this effect and as a result, the proposal will not exacerbate flooding effects on 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 residential dwelling.
- 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.



Figure 2: Surrounding neighbouring properties identified by orange dots in relation to the subject site outlined in blue

Neighbouring Properties

The effects of a residential dwelling being located within the front yard and breaching the setback to the road boundary are considered to be less than minor upon the surrounding residential neighbours.

The road boundary concerned is adjacent to the state highway and not neighbouring boundaries. The width of the road and road reserve provides a sufficient buffer between the site and these neighbouring properties. The proposed building is replacing an existing building on the site that was located in a similar location, therefore the built form of a house in close proximity will not be an uncommon appearance to the owners of the neighbouring properties. In addition there is existing vegetation that provides screening to the road reserve, so neighbouring properties visually will have screening to the proposed house. It is considered that any adverse effects on these surrounding neighbours are 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

Operative District Plan

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

Chapter 3 – Land Use Activities – A Framework

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 will not adversely affect the amenity values of the residential area. The new dwelling is of suitable scale and concept to the existing environment. Although it is to be located within the 4.5m setback to the road boundary, it will not detract from the character or amenity values of the residential area. There are existing residential dwellings and structures located within 4.5m of the front yard boundary in the surrounding environment of Dunns Road. This sets the precedent of the residential character and therefore, an addition of a residential unit will not detract from this.

Noise levels will be managed through the building design, to ensure suitable amenity for residents of the residential unit, and manage reverse sensitivity on users of the State Highway.

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

Chapter 4A – Natural Hazards

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.

Chapter 4A objectives and policies ensures that the public is aware of the likelihood and consequences of natural hazards within the District and to minimise the risk of these hazards such as inundation to people and property. Although the proposal will be located within the Waimumu Stream floodplain, the applicant has volunteered conditions relating to minimum finished floor levels recommended by Environment Southland. As such, the proposal is considered to be consistent with the objectives and policies of Chapter 4A of the Operative Gore District Plan.

As such, the proposal is considered consistent with the objectives and policies of the Operative Gore District Plan.

Proposed District Plan

The Proposed District Plan was notified for public submissions on 31 August 2023. The submission period closed on 26 October 2023. The further submission period closed on 12 April 2024 and hearings are currently underway. As the rules that have immediate legal effect are not relevant to this proposal, it is unnecessary to apply any weighting to the Proposed District Plan at present time.

7. 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 proposal takes into account Section 5 of the RMA as it will ensure the natural and physical resources of the site is protected for future generations. As assessed above, the adverse effects of the proposal can be avoided, remedied or mitigated. The proposal will enable a residential activity to occur on the site, which provides for the social and economic wellbeing of the Applicant.

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 residential 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.

8. DECISION ON RESOURCE CONSENT

Pursuant to Section 104C of the RMA, consent is **granted** to construct a residential dwelling located within the 4.5m front yard setback subject to the following conditions imposed pursuant to Section 108 of the RMA:

Consent Conditions

1. The activity must be undertaken generally in accordance with the application as submitted to the Council on 30/09/2024 and the following plans:
 - Site Plan – Rev # E, prepared by Husk Design, dated 24 September 2024
 - Floor Plan – Rev # E, prepared by Husk Design, dated 24 September 2024
 - Elevation plans – Rev # E, prepared by Husk Design, dated 24 September 2024.

These plans are attached as Appendix A.

2. The minimum floor level of the dwelling shall be 600mm above the ground level for living areas, and 300mm above ground for non-living areas.

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

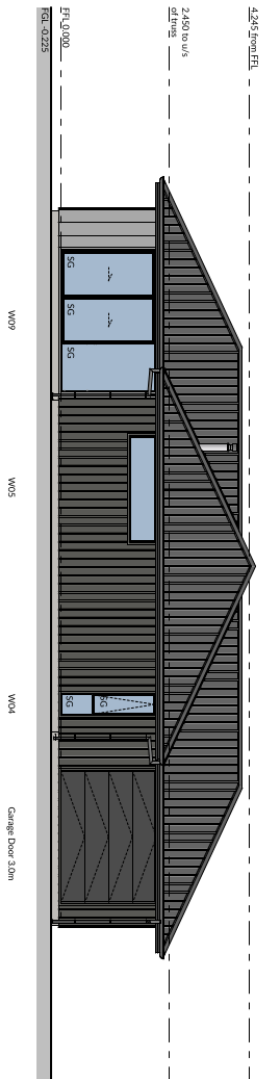
Appendix A: Approved Plans



SOUTH ELEVATION
 Scale: 1:100 @ A3
 SC = Safety Glazing

BUILDING ENVELOPE RISK MATRIX		
South Elevation		
Risk Factor	Risk Severity	Risk Score
Wind zone (per NZS 3804)	High risk	1
Number of storeys	Low risk	0
Roof/wall intersection design	Low risk	0
Eaves width	Medium risk	1
Envelope complexity	Low risk	0
Deck design	Low risk	0
Total Risk Score:		3

BUILDING ENVELOPE RISK MATRIX		
West Elevation		
Risk Factor	Risk Severity	Risk Score
Wind zone (per NZS 3804)	High risk	1
Number of storeys	Low risk	0
Roof/wall intersection design	Low risk	0
Eaves width	Medium risk	1
Envelope complexity	Low risk	0
Deck design	Low risk	0
Total Risk Score:		3



WEST ELEVATION
 Scale: 1:100 @ A3
 SC = Safety Glazing

Project Information
 Job # - 12462
 Date - 20/06/24
 Drawn - BT
 Scale - As Shaded



Notes

Client
 Neil + Roylene Burr
 4 Hillkirk Road
 Mairourua

Project
 New Residence
 Rev F Working Drawings
 24-Sep-2024

Project
 New Residence
 Rev F Working Drawings
 24-Sep-2024



Drawing Name
 Elevations

Sheet #
 A10
 Rev # - E