

# Gore District Council Decisions



## NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

*Resource Management Act 1991*

<b>Application reference</b>	SC24033
<b>Applicant</b>	Martin and Paula Knowles
<b>Proposal</b>	Application under Section 88 of the Resource Management Act 1991 (RMA) to undertake a boundary adjustment between two titles.
<b>Location</b>	29 Koa Street and 11 Ballantrae Place, Gore
<b>Legal Descriptions</b>	Lot 11 DP 7696 and Lot 14 DP 8562
<b>Activity Status</b>	Controlled
<b>Decision Date</b>	4 September 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 4 September 2024 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 104 and Section 104A 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 Penny Weng under delegated authority pursuant to Section 34A of the RMA.

## 1. THE PROPOSAL

The applicant seeks to undertake a boundary adjustment at 29 Koa Street and 11 Ballantrae Place between Lot 11 DP 7696 and Lot 14 DP 8562 to remove the existing building encroachment between the two titles. The proposal will result in the existing boundary between the two allotments being shifted west to resolve the existing encroachment of the dwelling over this boundary.

The proposal will result in two separate allotments that are over 400m<sup>2</sup> in area each. No new titles will be created as a result of the subdivision.

Lot 1 will be 508m<sup>2</sup> in area and remain in its own separate title.

Lot 2 will be 1,345m<sup>2</sup> in area and remain in its own separate title.

The proposal will also enable the western allotment to be disposed of by the applicant.

The application does not include any physical building works.



Figure 1: Proposed Boundary Adjustment of Lot 11 DP 7696 and Lot 14 DP 8562

## 2. SITE DESCRIPTION

The subject site consists of two adjoining properties legally known as Lot 11 DP 7696 (RT identifier: SL1A/60) and Lot 14 DP 8562 (RT identifier: SL5A/62) that are owned by the applicant. The site has direct legal frontage to Koa Street on the east boundary and Ballantrae Place on the west boundary.

An existing residential dwelling spans across both of the allotments. There is an existing certificate (087525.1) on both records of title which permitted this under s643(2) of the Local Government Act 1974.

The subject site is located in the Residential A Zone and the surrounding environment consists of residential allotments that each contain one residential dwelling. The existing dwelling is serviced for all utility services, including water supply, sewer, stormwater drainage, telecommunication and electricity.

### 3. ACTIVITY STATUS

#### 3.1 Gore District Plan

The site is zoned Residential A in the Gore District Plan. The Gore District Plan does not provide a definition of 'boundary adjustment'. However, clause 8.2(3) of the District Plan (Issues section in Chapter 8 – Subdivision of Land) provides some guidance and states that, "*Boundary adjustments that do not change the number of allotments in an area generally do not give rise to any effects of concern to Council*".

The proposal does not change the number of allotments involved in the application and is considered to be a boundary adjustment. The proposal requires resource consent under the District Plan for the following reason:

- A **controlled** activity pursuant to Rule 8.10(2) for a boundary adjustment that creates lots that are greater than 400m<sup>2</sup> in the Residential A Zone. Council's control is with respect to the following:
  - a) *The suitability of the allotments for activities permitted within the zone in which they are located.*
  - b) *Granting of easements;*
  - c) *The design, location, construction and alignment of any access or road;*
  - d) *The location, design and construction of infrastructure;*
  - e) *Ensuring that the minimum environmental standards specified in this Plan can be met on any allotment that contains an existing building.*
  - f) *The protection of any heritage or archaeological values on the site.*
  - g) *Any adverse effects on natural features and landscapes, ecological or cultural values.*

#### 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 **controlled** activity under the 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 precluded as follows:

- There are no rules in a plan or National Environmental Standard that preclude notification, public notification is precluded as follows:
- The application is a controlled activity.

##### **Step 3 – Public notification is required in certain circumstances**

As public notification is precluded under step 2, step 3 does not apply.

##### **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*

No persons have given written approval as part of this resource consent application.

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*

The adjacent persons are the owners and occupiers of the properties that adjoin the subject site and those located opposite the site.



**Figure 2: Aerial image of subject site (blue outline) and surrounding neighbouring properties (orange circles)**

The proposed boundary adjustment will not result in an additional allotment being created, rather it will create two allotments around the existing position of the lawfully established dwelling on site. No physical works are proposed, resulting in no change to the current visual, streetscape or local amenity to these neighbouring properties.

The proposed boundary adjustment will create two allotments that are over 400m<sup>2</sup> in size, which meets the permitted density in the Residential A Zone. Any future development on these lots will be required to adhere to the District Plan bulk and location standards, specifically boundary rules which will ensure that any effects on the neighbouring properties are acceptable. Overall, it is considered that the boundary adjustment will not create lots or future uses that are out of character for the residential area or will detract from the existing amenity values.

It is considered feasible for Lot 1 to be provided with new services, in conjunction with a building consent for a new dwelling, as confirmed by Council's 3 Waters Asset Manager. The existing vehicle crossing for Lot 1 to Ballantrae Place will be retained and meets the required standard of the Subdivision and Land Development Bylaw 2019. Any effects related to the provision of services and access are considered to be less than minor on any person.

Lot 2 has existing services that will remain unchanged. The existing vehicle crossing for Lot 2 to Koa Street will be retained. Any effects related to the continued use of the existing services and access are considered to be less than minor on any person.

Overall, any potential effects from the boundary adjustment on the owners and occupiers of the adjacent properties 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 and s220 of the RMA as required to avoid, remedy or mitigate adverse effects.

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 boundary adjustments require consent, and as such there is no permitted baseline.

The Council's assessment is limited to the matters of control being:

- a) *The suitability of the allotments for activities permitted within the zone in which they are located*
- b) *Granting of easements;*
- c) *The design, location, construction and alignment of any access or road;*
- d) *The location, design and construction of infrastructure;*
- e) *Ensuring that the minimum environmental standards specified in this Plan can be met on any allotment that contains an existing building.*
- f) *The protection of any heritage or archaeological values on the site.*
- g) *Any adverse effects on natural features and landscapes, ecological or cultural values.*

The boundary adjustment proposal will result in two allotments that are of a practical layout that meets the minimum lot size requirements for the Residential A Zone. Lot 1 can accommodate a future complying development. Lot 2 will contain an existing dwelling that complies with the bulk and location standards with respect to the new boundary.

Both lots will continue to retain the existing accesses. Lot 1 will have access from Ballantrae Place and Lot 2 will retain access from Koa Street. Both existing accesses comply with the Bylaw and are therefore acceptable. There is no change of land use or development proposed in relation to the subdivision. Lot 1 can be provided with new services at the time of development and Lot 2 has existing services. No easements are required at this stage. A consent condition can be included ensure that any additional easements required to protect legal rights to access and services are included at time of s223, if required.

There are no heritage, archaeology, ecology or cultural values known to be associated with the site, nor any natural feature or landscape.

Overall, it is considered that any adverse effects from the proposed boundary adjustment will be less than minor and acceptable.

### **6.3 Relevant Provisions**

#### **District Plan**

The relevant operative objectives and policies are contained within Chapter 8 – Subdivision of Land of the District Plan. The relevant objectives and policies seek that the size and shape of allotments are appropriate for the location and future land use, and that access and servicing can meet Council's standards. The proposal is considered to meet the relevant objectives and policies of the Gore District Plan.

### **6.4 Other Matters**

Section 104(1)(c) provides that when considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to any other matter the consent authority considers relevant and reasonably necessary to determine that application.

There are no other matters that are relevant to this application that need to be considered.



## 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, the site is not subject to any known natural hazard risk. The proposed lots will retain the existing legal access to Koa Street and Ballantrae Place. Overall, the proposal meets the requirements of s106 RMA.

## 8. PART 2 OF THE RMA

The purpose of the RMA is to promote the sustainable management of natural and physical resources. The proposed subdivision will achieve this in the Residential A Zone by adjusting the boundary between the two allotments to accommodate the existing physical occupation and use of the land, whilst enabling a lot to be used for future residential uses.

For the reasons outlined in this report, it is considered that the proposal meets the relevant sections of Part 2 of the RMA.

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

## 9. DECISION ON RESOURCE CONSENT

Pursuant to Section 104A of the RMA, consent is **granted** to undertake a boundary adjustment between two titles at 29 Koa Street and 11 Ballantrae Place, Gore, subject to the following conditions imposed pursuant to Section 108 and Section 220 of the RMA:

### Consent Conditions

1. The subdivision must be in general accordance with the application made to Council on 14 August 2024, the following information provided 30 August 2024 and the following plan:
  - 'Lots 1 & 2 Being Subdivision of Lot 11 DP 7696 & Lot 14 DP 8562, 11 Ballantrae Pl & 29 Koa St, Gore, Rev 1, 30-08-24, prepared by Southern Horizons'

The plan is attached as 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 as necessary.
3. The consent holder must meet the costs for the preparation, review and registration of the easement instrument of the relevant Record of Title.

## Advice Notes

1. Any future development on Lot 1 and Lot 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.

## 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](mailto:planning@goredc.govt.nz).

Prepared by



Bridget Sim  
**Planner**

Decision made by



Penny Weng  
**Delegate**

## Appendix A: Approved Plan

# APPENDIX A – APPROVED PLAN

