

# Gore District Council Decisions



## NOTIFICATION UNDER s95A AND s95B AND DETERMINATION UNDER s104

*Resource Management Act 1991*

<b>Application reference</b>	SC 23065
<b>Applicant</b>	Terry Inder
<b>Proposal</b>	Application under Section 88 of the Resource Management Act 1991 (RMA) to undertake a two-lot rural subdivision.
<b>Location</b>	26 Nicholson Road
<b>Legal Description</b>	Lot 2 DP 12613
<b>Activity Status</b>	<b>Restricted Discretionary</b>
<b>Decision Date</b>	11 October 2023

### 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 11 October 2023 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 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.

## 1. THE PROPOSAL

Consent is sought for a two-lot rural subdivision, as follows:

Lot 1	3.00ha. The site contains an existing residential dwelling and associated accessory buildings. The existing vehicle crossing off Nicholson Road, servicing the buildings will be retained.
Lot 2	2.32ha. The site is vacant rural land. Future access is proposed from Pope Road.

The proposed lots are not located within the Council's reticulated service network. Lot 1 has existing onsite services for wastewater, stormwater, portable water, electricity, and telecommunication. These will be retained. The existing access from Nicholson Road will be retained.

Onsite servicing will be provided for Lot 2 if future rural/residential development occurs with respect to wastewater, stormwater, and potable water. This will be addressed at building consent stage if a future residential unit is built. The application acknowledges consent notices may be included to this effect.

Future access for Lot 2 is proposed via Pope Road. This will be finalised and established at the time of building consent. It is required to be constructed in accordance with the Gore District Council Subdivision and Bylaw 2019.

The Applicant has confirmed that electricity and telecommunications (via wireless connection) to the additional proposed lot is available. Connection to Lot 2 will be established at the time of building consent.



Figure 1: Proposed scheme plan of proposed subdivision for 26 Nicholson Road.

## 2. SITE DESCRIPTION

The subject site is located at 26 Nicholson Road, legally known as Lot 2 DP 12613. The site is located in the rural zone of the Operative Gore District, consisting of 5.33ha. The site is of long rectangle shape and has legal road frontage onto both Nicholson Road and Pope Road. There is one existing access to the site, from Nicholson Road.

Both Nicholson Road and Pope Road are unsealed, rural low volume local access roads, that generally rise gently towards the northwest from Reaby Road. These are no-exit roads with a 100kph speed restriction applied, however the actual operating speed is likely to be approximately much lower (60 km/h) as they are small narrow unsealed roads.

The site is utilised as a rural/rural lifestyle block and is a relatively flat parcel of land. On the site there is an existing residential dwelling and associated accessory buildings, being a large storage shed and a garage located at the southern end of the site, closer to Nicholson Road. The remainder of the site is vacant flat land, with a proportion of established exotic trees, consisting of gum trees in the northwest corner.

The Council's mapping system does not identify the subject site to be subject to inundation. The subject site is identified as being 'negligible' liquefaction.

The site is subject to the Land Use Capability 3 Overlay and therefore is considered to be High Class Soil under the National Policy Statement for Highly Productive Land.

This site is not identified as being on the Selected Land Use Register as an actual or potentially contaminated site.

The site is not identified as being a Significant Indigenous Vegetation and Significant Habitats of Indigenous Fauna (SNA's) under the 2011 Wildlands Report and the Gore GIS Mapping system.



Figure 2: Subject site outlined in red.

### 3. ACTIVITY STATUS

#### 3.1 Gore District Plan

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

- A **restricted discretionary** activity pursuant to Rule 8.10(4)(b) as the proposal is to undertake a two-lot subdivision of the subject site, where each lot will exceed 2 hectares in area.

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*

#### 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.

### 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 not 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, as subdivision requires resource consent, there is no permitted baseline.

### *Suitability of the allotments and future land use*

The proposed lots exceed the minimum 2 hectares requirement for rural zones specified in the Gore District Plan. The subdivision is therefore consistent with what the District Plan enables in the rural zone. Both of the proposed lots are able to be utilised for rural and/ or rural-lifestyle purposes.

The existing dwelling and accessory buildings on Lot 1 will remain. Any future development on Lot 2 is expected to comply with the Performance Standards in the District Plan for the Rural Zone, including yards, daylight admission and height standards. Any future development will also be subject to the requirements of the Gore District Subdivision and Land Development Bylaw 2019. These will both be assessed at the building consent stage.

There are no other resource consents that are needed to be considered with this subdivision.

Overall, the proposed lots are considered to be consistent with the anticipated development within the Rural Zone for rural and/or rural lifestyle living. It is considered that the size, shape and configuration of the proposed allotments are appropriate to be used for rural and/ or rural lifestyle purposes and any adverse effects on the wider environment will be less than minor.

### *Suitability of the 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. The site is not identified as subject to an inundation overlay.

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

### *Ability to provide services*

There are no Council reticulated services located in this rural area. Lot 1 will continue to use the existing onsite services that are for residential purposes with respect to wastewater, stormwater, potable water and electricity on site. No changes are proposed to this existing servicing arrangement, and these will be retained.

Lot 2 will need to be serviced onsite. The Council's Building Control Team have reviewed the application and noted that there is sufficient space to accommodate these services onsite for any future residential unit.

Lot 2 will have onsite disposal of wastewater via onsite septic tanks and stormwater that is proposed to be disposed to the ground via a drainage field. Potable water will be sourced via onsite rainwater collection into rain tanks. The detailed design of these services will be assessed at the time a building consent is lodged with the Council for future development. These services are expected to be fully contained within the proposed boundaries of Lot 2. There is sufficient lot size to allow for this.

As the proposed lots are located in the rural area, and not connected to Council's reticulated services, the Gore District Council Subdivision and Land Development Bylaw 2019 requests that any new dwellings over 200m<sup>2</sup> floor area require a 45,000L firefighting water storage on site. A

reduced volume may be allowed for a smaller footprint. Therefore, FENZ approved documentation will be required to be included with a building consent. This has been volunteered as a consent notice condition for each individual lot by the applicant.

The application outlines that Powernet have confirmed transmission line is available for the proposed Lot 2, additionally telecommunications are able to be connected either via the existing copper line in Pope Road or wireless connection.

Overall, the proposed lots can be feasibly serviced, so that any adverse effects on the wider environment will be no more than minor.

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

There are no known heritage or archaeological features, or values identified on the site. It can be considered that the impacts of the proposed subdivision will be nil with respect to these features and values. The subject site is located outside of any mapped significant natural features and landscapes, or areas shown as having identified ecological or cultural values.

The subject site is not in close proximity to any waterways, nonetheless stormwater and wastewater disposal on each proposed lots will be assessed at the time of building consent. It is considered that any impacts on water quality, including groundwater would be less than minor.

#### *Effects on traffic*

The Council's Senior Roding Operations Manager, Mr Murray Hasler, has reviewed the application. A summary of his assessment is provided below.

Access standards contained in the Gore District Council Subdivision and Land Development Bylaw 2019 (the Bylaw) apply to this situation.

Mr Hasler has stated that the existing access will be retained by Lot 1 from Nicholson Road and is acceptable. As the use of this access is not proposed to change as a result of the subdivision no further upgrades are required.

The proposed Lot 2 access from Pope Road is acceptable. The access shall be formed in accordance with Diagram R09-1 contained in the Bylaw, prior to s224c approval.

On this basis, Mr Hasler recommended that the application be approved from the transportation perspective.

#### *Provisions of easements*

No easements are proposed for this subdivision scheme. Any easements found to be required to secure services and utilities can be included at the time of section 223 certification.

#### *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*

The adjacent persons assessed below are all the owners/occupiers of the properties that share a common boundary with the subject site or are located opposite Nicholson Road and Pope Road.



*Figure 3: Neighbouring Properties indicated by yellow dots; subject site highlighted in blue.*

The subdivision meets the standard for minimum lot size in the Rural Zone. The 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 future residential units and/ or be used for rural purposes.

The surrounding neighbouring properties are all of a rural and/or rural lifestyle nature on smaller allotments. Existing neighbouring properties on both Nicholson and Pope Road consist of rural lifestyle blocks with residential dwellings. Therefore, the addition of two lots being of a size that would support rural lifestyle, as anticipated under the District Plan will not be out of character for the surrounding rural area. The District Plan has anticipated activities of rural nature and/or residential activities on sites equal to or more than 2 hectares. The proposed allotments are of a size that enables these permitted activities and will maintain the character and wider amenity of

the immediate rural zone. Any adverse effects on the rural character and amenity experienced by persons residing on the adjacent properties will be less than minor.

Transport and servicing for the subdivision has been assessed above. Effects in this regard will be less than minor on any person.

#### *Conclusions: Effects on Persons*

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

#### **Step 4 – Special Circumstances for Limited Notification**

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

### **5. DECISION PURSUANT TO S95A AND S95B OF THE RMA**

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

### **6. SECTION 104 ASSESSMENT**

#### **6.1 Matters for consideration**

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

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

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

## 6.2 Effects on the Environment

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

## 6.3 Relevant Provisions

### District Plan

The relevant operative objectives and policies are contained within Chapter 8 of the District Plan.

#### *Chapter 8 - Subdivision of Land*

##### *Objectives*

- (1) To facilitate the orderly subdivision and development of land.*
- (2) To ensure that the size and shape of new allotments created, and the design standards for access and infrastructure, is suitable and appropriate for the location and future use of the land.*
- (3) To ensure that developers pay all reasonable costs associated with the subdivision and subsequent development of land.*
- (5) To ensure land development and servicing is undertaken to Council's standards.*
- (7) To ensure that land subdivision results in allotments that are suitable for activities anticipated by the zone in which they are located.*
- (8) Avoid adverse effects on water quality, including groundwater, from the development of subdivided land.*

##### *Policies*

- (1) Control the subdivision of all land.*
- (2) Avoid the adverse effects of subdivision on the functioning of existing services, infrastructure and roading.*
- (3) Require the works associated with subdivision to be carried out in conformity with Council's standards.*
- (5) Avoid any off-site effects of development of subdivided land.*
- (9) Require land development to be undertaken in compliance with the Gore District Council Subdivision and Land Development Bylaw 2011.*
- (10) Have regard to the potential for the land subject to any subdivision consent, and other land in the locality to be further subdivided in the future.*
- (13) Have regard to the potential impacts arising from the subdivision and future use of land on water quality, including groundwater.*
- (14) Have regard to, and implement, the provisions of the National Environment Standard for Assessing and managing Contaminants in Soil to Protect Human Health where subdivision occurs on any contaminated site.*

The proposed subdivision is consistent with the objectives and policies of Chapter 8. The size and layout of the allotments ensures that they are suitable and appropriate for the rural zone and use of the land. Proposed Lot 2 can accommodate future rural/rural residential activity whilst proposed Lot 1 will continue to accommodate the existing rural/rural residential activity.

The services and connections can be provided adequately for proposed Lot 2 onsite, and it is considered that the subdivision can occur without resulting in adverse effects on the water

quality. All works will be required to be undertaken in accordance with the Gore District Subdivision and Land Development Bylaw 2019.

Overall, it is considered that the subdivision is appropriate and will not lead to adverse effects on the amenity and character of the surrounding area.

### **National Policy Statement – Highly Productive Land 2022**

It is acknowledged that this property is subject to the Land Use Capability 3 Overlay and therefore is considered to be High Class Soil under the National Policy Statement for Highly Productive Land. As the proposal is a restricted discretionary activity and matters of discretion do not extend to highly productive land, no assessment regarding the high-class soils has been undertaken.

### **Southland Regional Policy Statement 2017**

The proposal is consistent with the relevant objectives and policies in the Southland Regional Policy Statement (RPS), specifically contained in Chapter 5 (Rural land/soils). There is sustainable use of Southland's rural land resource through this proposed subdivision scheme as it will allow for the future proposed lots to be used for rural / residential activity. This land development will maintain the rural amenity values and character of the existing rural area.

## **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, Mr Hasler has confirmed that both proposed lots have sufficient access. Lot 1 will retain the existing access, whilst Lot 2 will have an established access in accordance with the Bylaw from Pope Road.

The proposed lots are not identified to be within a flood hazards, the likelihood of material damage to the land is less than minor.

## **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 enable additional residential dwellings to be constructed in the future on the rural/ rural lifestyle lots. These additional lots will enable people and communities to provide for their social, economic and cultural wellbeing, benefiting the community. 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 as shown by the Wildlands (2011) map. It is considered the land use is appropriate within this rural

landscape, as there are a number of existing rural/ rural lifestyle lots in the surrounding area of similar size.

#### *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 subdivision will not have adverse effects on the quality of the environment.

#### *Section 8 – Treaty of Waitangi*

This site is not within any known heritage sites or statutory acknowledgement areas. The proposal is not considered to be inconsistent with the principles of the Treaty of Waitangi.

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

## **9. DECISION ON RESOURCE CONSENT**

Pursuant to Section 104C of the RMA, consent is **granted** to subdivide 26 Nicholson Road into two allotments subject to the following conditions imposed pursuant to Section 220 of the RMA:

### **Consent Conditions**

1. The proposed subdivision must be undertaken generally in accordance with the following plans:
  - ‘Proposed Subdivision of Lot 2 DP 12613 [SL9D/382], drawn by Clark Fortune McDonald & Assoc., 21-03-2023’.
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. Prior to certification under section 224 of the Resource Management Act 1991, the applicant shall:
  - a. The access to proposed Lot 2, must be formed in accordance with Diagram R09-1 of the Subdivision and Land Development bylaw 2019. This is to be completed to the satisfaction of the Council’s Roading Manager.
4. Prior to certification of the subdivision, pursuant to section 224(c) of the Resource Management Act 1991, a consent notice, in accordance with Section 221 of the Resource Management Act, shall be issued and registered against the Record of Title for Lot 2 to record that:
  - a. At the time of lodging a building consent for a residential unit, each application is to include an approved firefighting water supply and site services design by Fire and Emergency New Zealand (FENZ) to comply with SNZ PAS 4509 and the Subdivision and Land Development Bylaw 2019.

- b. At the time of lodging a building consent for a residential unit, each application must demonstrate the development has a rainwater collection system which is verified as being potable, this shall include provision for UV filters or UV treatment or alternative treatment provision and shall be submitted with the building consent application(s).
- c. At the time of lodging a building consent for a residential unit, the lot is to have a specifically researched, designed, and verified system for wastewater and stormwater disposal.
- d. At the time of this subdivision, electricity supply and a fixed-line telecommunication connection was not provided to the lot, and either a fixed-line electricity supply and telecommunication connection or an alternative service (wireless broadband) needs to be installed at a cost to the owner at the time that the connection is applied for.

### 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 require the prior approval of the Council and consent holder must consult with the 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.

## 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  
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Decision made by



Werner Murray  
Delegate

## Appendix A: Approved Plans

## APPENDIX A – APPROVED PLANS

