

# Gore District Council Decisions



## NOTICE OF REQUIREMENT NOTIFICATION DETERMINATION AND RECOMMENDATION UNDER s171

*Resource Management Act 1991*

Application reference	OTHR25701
Applicant	Chorus New Zealand Limited
Proposal	Notice of requirement (NoR) under Section 169 of the Resource Management Act 1991 (RMA) to designate land for the purpose of a new exchange
Location	22 Crew Street, Gore
Legal Description	Lot 1 DP 602318
Recommendation Date	17 February 2025

### SUMMARY OF DECISIONS

1. Pursuant to section 169 (1) & (1A) of the Resource Management Act 1991 (**RMA**) which directs Council to decide whether to notify the notice, the notice will be processed on a **non-notified** basis given the findings of Section 4 and 5 of the report. This decision is made by Werner Murray, on 17 February 2025 under delegated authority pursuant to Section 34A of the RMA.
2. Pursuant to Section 171(2) of the RMA, it is recommended to The Power Company Limited that it confirm the requirement subject to recommended conditions. To reach the recommendation the application was considered by Werner Murray under delegated authority pursuant to Section 34A of the RMA.

## **1. THE PROPOSAL**

An NoR has been received to designate land that is legally described as Lot 1 DP 602318 located at 22 Crewe Street, Gore, for Telecommunication, radiocommunication and ancillary purposes. It is noted that the site will likely become 22a Crewe Street due to a recent subdivision. However this has not yet formally occurred.

The applicant has provided a detailed description of the proposal, the site and locality and the relevant site history in sections 1.0 – 2.0 “Notice of Requirements & Assessment of Environmental Effects Report for Chorus New Zealand Limited for a New Designation under s168 of the RMA – Replacement Gore Exchange, 22 Crewe Street, Gore”, prepared by Chris Horne of Incite and submitted as part of the application (hereon referred to as the applicant’s AEE and attached as Appendix 2). This description is considered accurate and is adopted for the purpose of this report.

## **2. SITE DESCRIPTION**

As detailed above, the site is located at 22 Crewe Street, Gore. The site has a legal description of Lot 1 DP 602318 and has a land area of approximately 706m<sup>2</sup>.

The surrounding land area is characterised by general residential land use.

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

The application states at section 5.6 of the AEE that the site is a former residential site and based on the applicant’s due diligence for purchase, no evidence of historical contamination risk was found. Further, the site is not listed on Environment Southland’s GIS database as being potentially contaminated.

It is therefore determined that the NES-CS regulations do not apply to the site.

## **4. NOTIFICATION ASSESSMENT**

Section 169 (1) directs Council to undertake a notification assessment.

### **4.1 Public notification – Section 149ZCB**

In accordance with section 149ZCB, Council must determine whether to notify an application. This requires an assessment in accordance with s149ZCE to determine whether adverse effects are likely to be more than minor.

Section 149ZCE requires that Council must disregard:

- 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.

For the purpose of the below assessment, these have been disregarded.

Consideration is able to be given to the permitted baseline. The applicant's AEE has not considered the permitted baseline specifically, however the assessment of effects throughout section 6.0 notes that the building proposed is well within the general built form and scale expected on a residential site of this nature. The AEE also notes that the District Plan allows for a pole to support antennas as a permitted activity provided any pole exceeding 6m complies with the height in relation to boundary control from adjacent sites.

For completeness, the provisions of the PDP which allows poles up to 13m as a permitted activity cannot be considered as part of the permitted baseline as this rule is still subject to decisions from the Hearing Panel and has no legal weight.

The applicant's AEE at section 6.0 contains a thorough assessment of potential effects. This assessment is comprehensive and is adopted in full for the purpose of this report, with the following additional comments and assessment.

#### *Residential Amenity – Built Form*

The proposed building within the designated area is proposed to have a floor area of 100m<sup>2</sup> and maximum height of 6 metres. This is comfortably akin to a residential dwelling. However, no maximum building footprint or maximum building height was proposed to be conditioned as part of the designation. Without conditions on the designation, the overall building footprint and height could grow over time to a scale not originally anticipated nor appropriately assessed within the AEE.

This matter was discussed with the applicant's agent and the following conditions have been volunteered as part of the application:

- That the total footprint of all buildings on the site shall not exceed 300m<sup>2</sup>.
- Buildings are to be set back at least one (1) metre from all boundaries.
- The maximum building height of any building shall not exceed 7 metres (excluding poles/antenna/generator exhausts)
- The maximum height of any poles, antenna, and/or generator exhausts shall not exceed 13 metres.

The above conditions provide certainty regarding the maximum potential scale of all built form (including structures) on the site. The conditions, as volunteered, will also that in the event of any expansion over and above what the AEE anticipated, will still be appropriate for the residential environment.

Overall, effects on residential amenity as a result of potential built form within the designated site will have less than minor effects on the environment.

#### *Noise*

There will be external air conditioning units that will generate noise, and in the event of a power outage or when there is a maintenance test run, it is proposed that a backup generator will be used. The applicant has volunteered a noise condition that is slightly less stringent than the residential zone standards for nighttime noise levels. It is proposed that a noise standard of 45 dBA Leq applies between 10pm and 7am. However the absolute maximum noise limit of 75 dBA Lmax for nighttime noise limits has been volunteered. It is noted that the applicant has not proposed daytime noise limits. This matter was raised with the applicant who has confirmed that the District Plan daytime noise limit will apply and has accepted that this standard be included as a condition of the Designation. It is noted that the volunteered conditions which specify exact noise limits will not apply to the back up generator.

With specific regard to the 5 dBA Leq breach for night time noise limits, the application includes an acoustic assessment prepared by Marshall Day. Marshall Day have acknowledged the higher night time noise limit sought, and have commented that they consider that noise levels up to 45 dBA Leq “is reasonable and is within the upper guideline for residential noise limits in NZS 9802: 2008 Section 8.6”. Marshall Day have also commented that these limits have been adopted for other Chorus sites in the Gore District.

With regard to the generator, this will be operated approximately one hour once every four weeks during normal working hours. Once a year there will be a three hour maintenance run. It is proposed that the noise generated from this will not need to comply with the volunteered noise conditions. However, there has been a condition that has been volunteered that requires noise be managed from the generator by the best practical approach.

Outside these times, the generator will only be used when there is no power. The applicant’s volunteered condition is therefore accepted that information will be provided to Council demonstrating how the generator will achieve a noise limit that is as reasonably as close to the stipulated noise limit as possible.

It is therefore assessed that the noise limits are acceptable for the surrounding residential environment. It is noted that mitigation measures will need to be put in place (such as effective noise barriers) if the air conditioning units are to be installed within 5 metres of any boundary.

All mitigation measures are feasible and therefore, it is assessed that noise effects will have less than minor effects on the environment.

Overall, noise related effects are assessed to have a less than minor effect on the wider environment.

#### *Fuel Storage*

A diesel service tank for the generator will be located within the building and have a maximum capacity of 1000 litres. The AEE notes that this will meet all relevant regulations for diesel storage and use. This is accepted.

Overall it is assessed that storing fuel on the site will have a less than minor effect on the wider environment.

#### *Conclusion – Public Notification*

It is determined that the notice is not required to be publicly notified for the following reasons:

- The effects on the environment are assessed to be less than minor under s149ZCE.
- The applicant has not requested public notification.
- There is no rule or NES that requires public notification.

#### 4.2 Limited notification – Section 149ZCC

In accordance with section 149ZCC, Council must determine whether to limited notify an application. The following is noted:

- The proposal does not affect any protected customary rights group or customary rights group (s149ZCC(1)(b)).

To determine whether there are any affected persons, s149ZCF applies. The following is noted:

- The permitted baseline is able to be taken into consideration for the purpose of this assessment. The permitted baseline is discussed in section 4.1 above and has been taken into consideration.
- For completeness, the proposal does not impact any statutory acknowledgement area (s149ZCF (2)(c)).

Having regards to the above matters, no persons are considered to be potentially affected by the proposal for the following reasons:

- The proposed built form within the proposed designated area is similar in scale and form to a residential activity.
- Noise levels are deemed to be acceptable under the NZ standard for a residential environment.

#### *Conclusion – Limited Notification*

It is determined that the notice does not have to be limited notified.

The proposal is not required to be limited notified.

#### 4.3 DECISION PURSUANT TO S149ZCB AND S149ZCC OF THE RMA

For the reasons set out above, under s149ZCB and s149ZCC of the RMA, the NoR is to be processed on a non-notified basis.

### 5 SECTION 171 ASSESSMENT

- (1A) *When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.*
- (1) *When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—*
- (a) any relevant provisions of—*
    - (i) a national policy statement:*

- (ii) a New Zealand coastal policy statement;*
- (iii) a regional policy statement or proposed regional policy statement;*
- (iv) a plan or proposed plan; and*

*(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—*

*(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or*

*(ii) it is likely that the work will have a significant adverse effect on the environment; and*

*(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and*

*(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.*

**(1B)** *The effects to be considered under subsection (1) may include any positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from the activity enabled by the designation, as long as those effects result from measures proposed or agreed to by the requiring authority.*

### **Section 171(1)**

The applicant has undertaken a thorough assessment of all relevant planning documents at sections 5.2 and 5.3 of the AEE. This assessment assessed the Southland Regional Policy Statement, the Operative District Plan, and the Proposed District Plan. This assessment is adopted in full for the purpose of this report.

### ***Section 171(1)(b) Alternatives***

Section 8.0 of the AEE covers off alternative locations and methods. A total of 21 sites were considered initially, with this number reducing as further studies were undertaken. The chosen site is at least 1m above predicted flood risk and therefore was deemed to be the most suitable site.

No further elevation of alternatives and required.

### ***Section 171(1)(c) Necessity of Designation***

A new Chorus exchange is required as the old exchange located at 102 Main Street is no longer fit for purpose. It is noted that Gore is located at the junction point of core network fibre cable routes between Dunedin, Invercargill, Alexandra and in the future, from Lumsden. Therefore it is accepted that the designation is necessary to support critical infrastructure.

### ***Other Matters (s171(1)(d))***

There are no other relevant matters.

## 6 RECOMMENDATION ON NOTICE OF REQUIREMENT PURSUANT TO SECTION 171(2) OF THE RMA

For the reasons outlined above, it is recommended that the Requiring Authority confirms the requirement. The conditions proposed by the requiring authority that form part of the Notice of Requirement are outlined below.

### Conditions

#### **Built Form**

1. That the total footprint of all buildings on the site shall not exceed 300m<sup>2</sup>.
2. Buildings are to be set back at least one (1) metre from all boundaries.
3. The maximum building height of any building shall not exceed 7 metres (excluding poles/antenna/generator exhausts).
4. The maximum height of any poles, antenna, and/or generator exhausts shall not exceed 13 metres.

#### **Noise**

5. Noise from activities associated with the designated purpose (other than back-up electricity generation) shall not exceed:
  - a. 45 dBA Leq 10.00pm – 7.00am measured at any other point in any other site or within the boundary of any residence.
  - b. 55 dBA Leq 7.00am – 10.00pm am measured at any other point in any other site or within the boundary of any residence.
  - c. 75 dBA Lmax measured at any other point in any other site within the boundary of any residence.

*Noise shall be measured in accordance with the provisions of NZS 6801:2008 Acoustics Measurement of Environmental Sound and assessed in accordance with the provisions of NZS 6802:2008 Acoustics - Environmental Noise.*

6. Prior to the installation of any electricity generator used for emergency back-up electricity generation and for maintenance test runs, the requiring authority shall demonstrate how the equipment and any mitigation measure is the best practicable option (BPO) to ensure that noise levels do not exceed a reasonable level. Noise from the generator should be as close to the limits set out in condition 5 as practicable.

### Administrative Matters

Chorus NZ Limited as Requiring Authority has the opportunity to accept or reject the recommendation outlined in Section 6, in whole or in part. Pursuant to section 172 of the RMA

please advise in writing, whether this recommendation is accepted or rejected, within 30 working days.

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

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

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



Alex Dunn  
**Consultant Planner**

Decision made by



Werner Murray  
**Delegate**

## **Appendix A: Approved Plan**



## APPENDIX A – APPROVED PLAN

