

Section 95A-E Resource Management Act 1991



Report pursuant to section 42A of the Resource Management Act 1991 recommending whether an application for resource consent should be publicly notified, limited notified or non-notified

Decision pursuant to section 95A-E

Author: Vicki Barker

Position: Consultant Resource Management Planner

Resource Consent Number: 215549/215551

Error! Reference source not found.

APPLICANT:	Broughton Land Holding Limited
LOCATION:	108 Yeomans Road, Darfield
LEGAL DESCRIPTION:	RS 35830 being 3.9937ha in area more or less, as contained in Record of Title CB756/11 Lots 1-2 DP 83202 and Lots 3-4 DP 70245 being 44.9225 ha in area more or less, as contained in Record of Title CB48A/629

Description of the Proposal

Introduction

1. The applicant proposes to carry out a boundary adjustment in relation to RS 35830 to create Lot 1 of approximately 0.77ha, and to amalgamate the balance land of approximately 3.2ha (shown as Lot 2 on the scheme plan but which is not proposed to be a separate lot) with Lot 3 DP 70245, CB48A/629. An open space consent notice area of 19.27ha preventing any building is proposed over the balance land and adjoining Lot 3 (RC215549).
2. The applicant also seeks land use consent to erect a future dwelling within the proposed undersized allotment (RC215551).
3. Proposed Lot 1 contains a farm shed and well shed. The applicant advised in email correspondence dated 26 April 2023 that the farm shed is not being used for residential purposes and has not been used for that purpose in their ownership, nor is it intended to be used for residential purposes in the future.

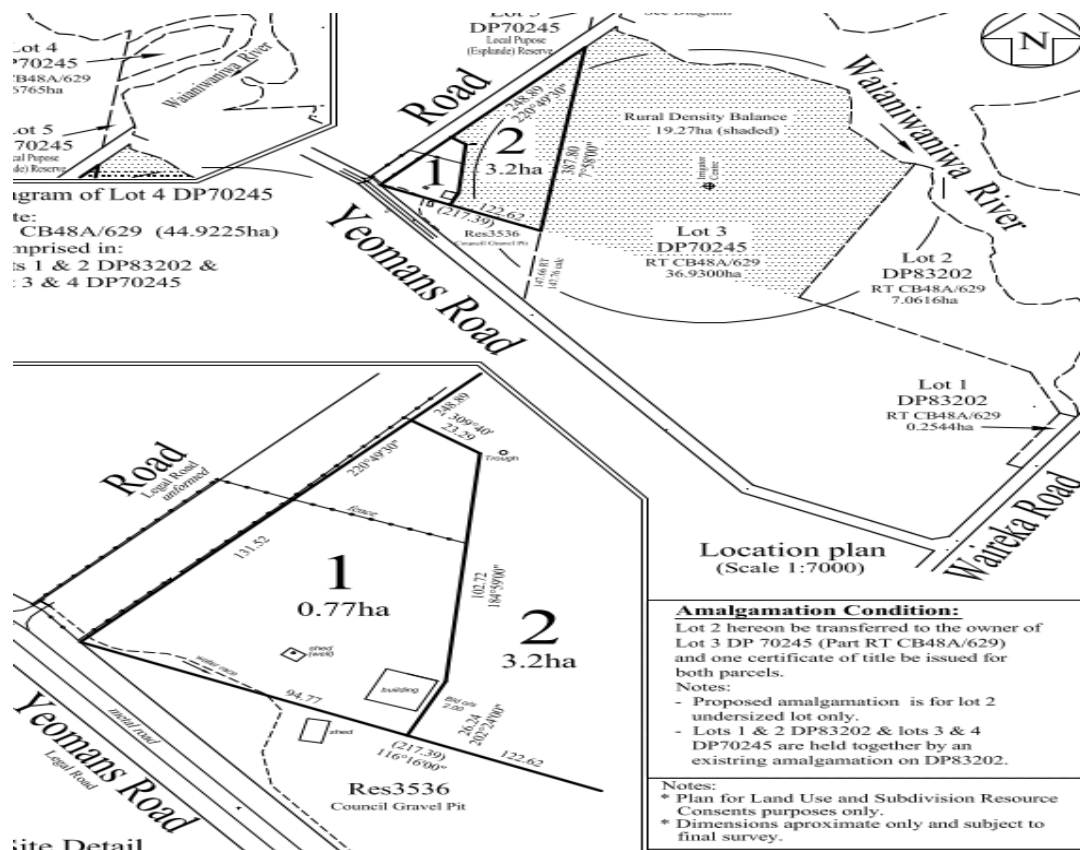


Figure 1 Yeomans Rd subdivision plan (Appendix A to the application).

Background

4. The application submitted in 2021 contained subdivision and land use proposals across multiple lots and Titles. For clarity the application has been split into the following applications:
 - (i) RC215549/215551 - 108 Yeomans Road boundary adjustment and land use consent (current proposal); and
 - (ii) RC215514/215550 - 365 Waireka Road boundary adjustment and land use consent to retain a dwelling on an undersized allotment. RC215550 was granted 13 January 2022.

Description of the Existing Environment

5. The application sites are legally described as RS 35830 being 3.9937ha in area more or less as contained in Record of Title CB756/11, and Lot 1-2 DP 83202 and Lots 3-4 DP 70245 being 44.9225ha in area more or less, as contained in Record of Title CB48A/629.
6. It is of note that proposed Lot 1 (0.77ha) and the balance land (3.2ha) do not equate to 3.9937ha (which is the area recorded on RS 35830, CB756/11). The land will be subject to final survey should consent be granted where the minor discrepancy of 0.2237ha between the proposed scheme plan and the Title can be addressed.
7. The sites are located on the northern side of Yeomans Road and are farmed. There is a centre pivot irrigator within Lot 3 DP70245.
8. The applicant has confirmed that there are no dwellings located on RES 35830 or Lot 3 DP 70245. There is a farm shed on RS 35830 which appears to have been used for residential purposes, but the applicant has confirmed that the shed is not currently being used for residential purposes and no future residential use is proposed.
9. There is a gravel reserve located to the immediate south of Proposed Lot 1 fronting Yeomans Road which is a triangular site owned by Council.

10. The Waianiwaniwa River (Waireka) is located to the north of the site which is a tributary of the Selwyn River. The Central Plain Water Scheme is operational in the area and Lot 3 DP 70245 is subject to an easement for Central Plains Water Limited to convey water, electricity and communications over areas AJ and AK on DP 537561 (12210359.2).

Operative Selwyn District Plan (2016)

11. The Operative Selwyn District Plan ('the Operative District Plan') was made operative on 03 May 2016. Under the Operative District Plan the application site is zoned Outer Plains. The site is not subject to any other overlays or features.

Subdivision

12. Boundary adjustment is a controlled activity in the Outer Plains zone where the following relevant criteria are met:

RULE	TOPIC	COMPLIANCE
10.12.1.1	Subdivision and Boundary Adjustment – Allotments adjoin	Complies
10.12.1.2	Subdivision and Boundary Adjustment - No increase in number of allotments	Complies
10.12.1.3	Subdivision and Boundary Adjustment - No allotment created smaller than the smallest existing allotment	Does not comply
10.12.1.4	Subdivision and Boundary Adjustment - No increase in the potential number of dwellings	Complies
10.12.1.5	Subdivision and Boundary Adjustment - Corner splays	Complies
10.1.1.12	Subdivision General - Allotment Size	Does not comply
10.2	Subdivision in Flood Areas	Complies
10.3	Subdivision in Outstanding Landscapes	Complies
10.4	Subdivision on Special Sites	Complies
10.5	Subdivision - Intensive Livestock Production Activities	Complies
10.6	Subdivision and Road Access	Complies
10.7	Subdivision - Vehicle Accessways and Vehicle Crossings	Complies
10.8	Subdivision and Corner Splays	Complies
10.9	Subdivision and Transmissions Lines	Complies
10.10	Subdivision and Esplanade Reserves or Strips	Complies
10.11	Subdivision of Lots Smaller than the Minimum Size	Complies - Restricted Discretionary

Table 1 – Operative District Plan compliance, subdivision rules

13. Rule 10.12 provides for boundary adjustments as a controlled activity where the standards and terms in 10.12.1.1 are met. The proposal does not comply with 10.12.1.3 as proposed Lot 1 at 0.77ha will be smaller than the smallest allotment (RS 35830) of approximately 4ha existing prior to the boundary

adjustment. In accordance with 10.12.4 any boundary adjustment which does not comply with Rule 10.12.1 shall be a non-complying activity, unless it complies with one of the rules for subdivision under Rules 10.1 to 10.11, in which case the activity shall be assessed under that rule. The subdivision is restricted discretionary subject to Rule 10.11 and therefore complies with one of the rules under 10.1 to 10.11 and is therefore assessed as a Restricted Discretionary activity.

14. The proposal to create Lot 1 of approximately 0.77ha results in an allotment which does not comply with the minimum allotment areas set out in Table C10.1, which is 20ha in the Outer Plains. Rule 10.11 provides for lots smaller than the minimum size as a restricted discretionary activity if the matters in 10.11.1.1 to 10.11.1.4 are met. The proposed subdivision meets these matters and therefore is a Restricted Discretionary Activity where discretion is restricted to those matters in 10.11.2.
15. The subdivision proposal is therefore a Restricted Discretionary activity under the Operative District Plan.

Land Use

16. Establishing a dwelling is a permitted activity in the Outer Plains zone where the following relevant criteria are met:

RULE	TOPIC	COMPLIANCE
1.2	Earthworks and Contaminated Land	Complies
3.1	Buildings and Natural Hazards	Complies
3.2	Buildings and Outstanding Landscape Areas	Complies
3.5	Buildings and Contaminated Land	Complies
3.9	Buildings and Access and Parking	Complies
3.10.3	Buildings and Residential Density	Does not comply
3.11	Permitted Activities - Buildings and Site Coverage	Complies (with respect to existing buildings within proposed Lot 1)
3.13	Permitted Activities - Buildings and Building Position	Does not comply

Table 2 – Operative District Plan compliance, land use rules

17. Rule 3.10 permits erecting any building if a minimum lot size of 20ha is met. The proposal to create Lot 1 of approximately 0.77ha results in an allotment which does not comply with the minimum lot size. Rule 3.10.3 provides for lots smaller than the minimum size as a restricted discretionary activity if 3.10.3.1 to 3.10.3.7 are met. The proposed subdivision meets these matters and therefore is a Restricted Discretionary Activity where discretion is restricted to those matters in 3.10.4.
18. Rule 3.13 requires a 3m setback from the property boundary and a 10m setback from any road with respect to an accessory building. The existing shed is located approximately 2m from the eastern property boundary and 8m from the road boundary within the required setbacks. Rule 3.13.4 states that any building, other than a garage or accessory building which does not comply with 3.13.1.1 shall be a discretionary activity. Furthermore, Rule 3.13.6 states that any building other than a garage or accessory building, which does not comply with Rule 3.13.1.1 shall be a discretionary activity. The rules are overlapping, and there is no rule regarding setback breach of an accessory building, however in any instance the activity is a discretionary activity under s87B of the RMA.

Proposed Selwyn District Plan (Notified 05 October 2020)

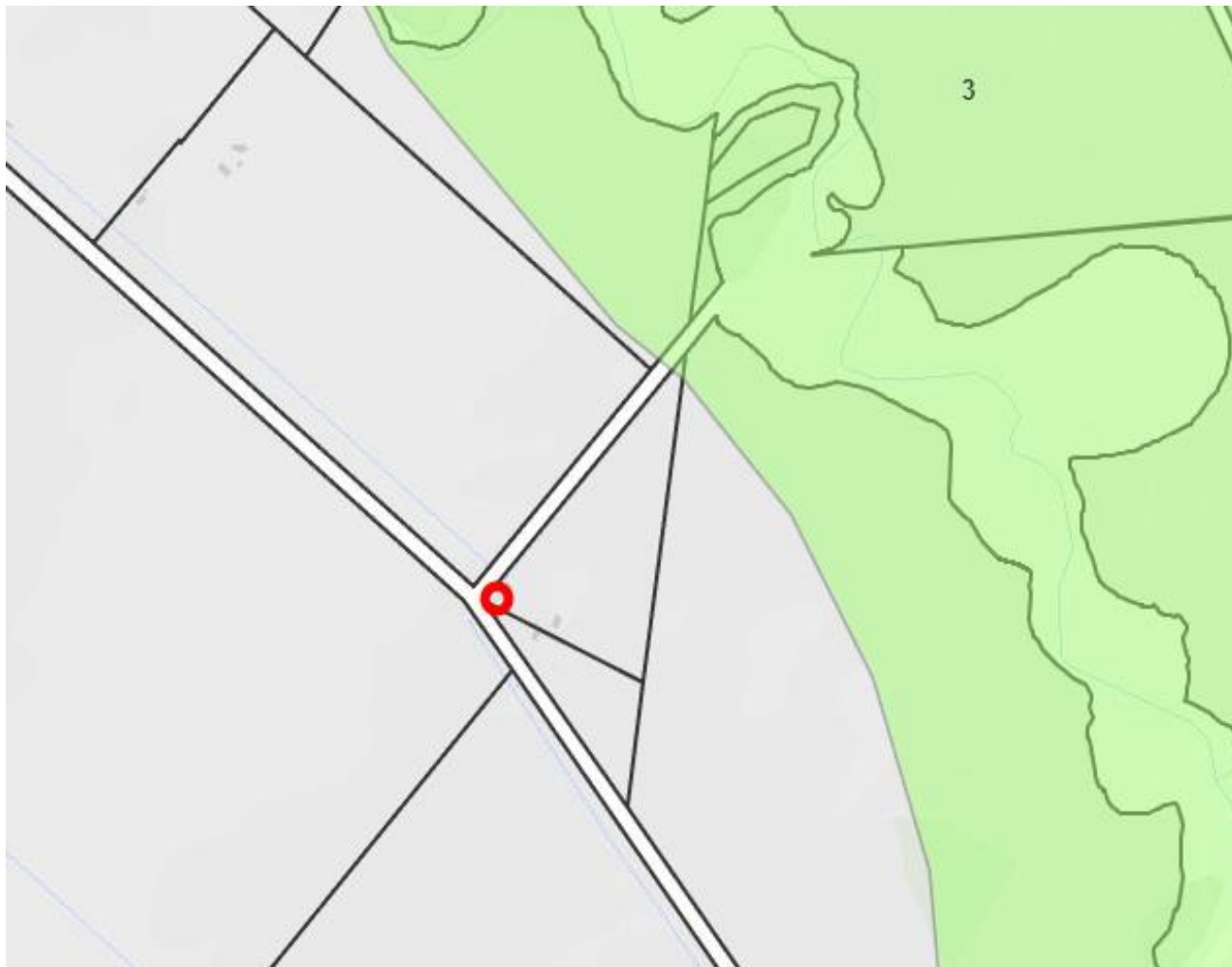
19. Under the Proposed Selwyn District Plan ('the Proposed District Plan') the site is zoned General Rural Zone. The site is subject to the Flood Management, Liquefaction Damage Unlikely and EIB Overlays.
20. No decisions have yet been made on the Proposed Plan.
21. There are no rules with immediate legal effect that apply to this proposal.

Resource Management (Enabling House Supply and Other Matters) Amendment Act 2021

22. A variation (Variation 1) to the Proposed District Plan was notified on 20 August 2022 in response to the Resource Management (Enabling House Supply and Other Matters) Amendment Act 2021, which requires the Council to adopt Medium Density Residential Standards (MDRS) in Rolleston, Lincoln and Prebbleton.
23. This variation introduced the Medium Density Residential Zone in the Proposed District Plan which allows up to three residential units, each up to three storeys high (11 metres) to be built on a site within the Medium Density Residential Zone without a resource consent. The objective, policies and rules of the Medium Density Residential Zone have immediate legal effect from the date of notification (20 August 2022).
24. The application site is not within a Medium Density Residential Zone (MRZ).

National Policy Statement for Highly Productive Soils (NPS-HPL)

25. The NPS-HPL came into legal effect on 17 October 2022 and provides direction to improve the way highly productive land is managed. The NPS-HPL applies to Land Use Capability Class (LUC) 1, 2 or 3 land and seeks to avoid the subdivision of HPL, unless the overall productive capacity is retained over the long term, and avoids or mitigates cumulative loss and reverse sensitivity effects (3.8)
26. A copy of the Environment Canterbury NZ Land Resource Inventory LUC Classes 1-3 map relevant to this subdivision proposal is copied below.



27. 108 Yeomans Road (RS 35830) is not LUC1-3, apart from the very northern tip which is LUC 3. Given this is a very small part of the site which is proposed to be protected from development by way of a 'no build' consent notice, the proposal affecting RS 35830 is considered consistent with the NPS-HPL.
28. 352 Waireka Road to the east (CB48A/629), with which part of 108 Yeomans Road is proposed to be amalgamated is partly LUC3, however as no development is proposed with respect to this land and the land is proposed to be subject to a 'no build' consent notice, the proposal with respect to this site is also considered consistent with the NPS-HPL.

National Environmental Standards

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

29. The NES manages activities which involve the disturbance of land which may be contaminated. This is determined by whether activities have or are likely to have occurred on the site, which are listed in the Hazardous Activities and Industries List (HAIL).
30. A Preliminary Site Investigation (PSI) was undertaken by Malloch Environmental Ltd (now Momentum Environmental Ltd), in February 2021. The PSI identified two risk areas within proposed Lot 1 - a stockpile and fill material from an unknown source, and a potential farm pit. The PSI stated that the stockpile contained stony soils, like the fill material which forms a bank next to the site entrance. There was no apparent demolition debris or waste items within the stockpile or fill material. However, the source of the material is unknown so could potentially be contaminated. The potential farm pit was identified in the 1943 aerial photographs until 2012. It was recommended that further investigation in the form of a Detailed Site Investigation (DSI) be undertaken at the site.

31. A DSI dated 26 November 2021 was prepared by Momentum Environmental. To inform the DSI, soil sampling was undertaken on 02 November 2021. The sampling methodology consisted of digging seven test pits within the stockpile, fill material and potential farm pit. Except for some minor asphalt identified within the stockpile, there was no evidence of anthropogenic material across the test pit locations. The soil sampling results showed heavy metal concentrations below the 'rural residential 25% produce' soil guideline values (SGV) in the stockpile, fill material and potential farm pit. However, contaminant concentrations are consistently above expected background values. Due to the low risk to human health and the environment, there is no recommendation for remediation.
32. An Environment Canterbury contaminated land officer reviewed the DSI and commented as follows: *"I have reviewed the information and agree with the findings of the DSI. Areas of concerns have been sufficiently investigated and soil concentrations are below relevant residential guidelines, but above expected background values. Therefore, the site is suitable for rural residential land use and any activities that trigger the NESCS will require a resource consent as a controlled activity."*
33. This subdivision proposal is considered to be a Controlled activity in terms of the NESCS (clause 9(3)). No public notification is required. Any future land use development can be assessed at that time subject to the NESCS.

Public Notification

Step 1 – Mandatory public notification

34. Does the application meet any of the following criteria?

		Y	N
1.1	The applicant has requested public notification	<input type="checkbox"/>	✓
1.2	Public notification is required under section 95C RMA (no response or refusal to provide information or agree to the commissioning of a report under section of the 92 RMA)	<input type="checkbox"/>	✓
1.3	The application has been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act	<input type="checkbox"/>	✓

If the answer is yes, **public notification is required**

If the answer is no, continue to **Step 2**.

Step 2 – Public notification precluded in certain circumstances

35. Does the application meet either of the following criteria?

		Y	N
2.1	All activities in the application are subject to one or more rules or national environmental standards that preclude public notification	<input type="checkbox"/>	✓
2.2	The application is for one or more of the following, but no other types of activities		
	• A controlled activity	<input type="checkbox"/>	✓
	• A restricted discretionary, discretionary or non-complying activity that is a boundary activity	<input type="checkbox"/>	✓

If the answer is no, continue to **Step 3**

If the answer is yes, continue to **Step 4**

Step 3 – Public notification required in certain circumstances

36. Does the application meet either of the following criteria?

		Y	N
3.1	Any activity in the application is subject to a rule or national environmental standard that requires public notification	<input type="checkbox"/>	✓
3.2	The activity has, or is likely to have, adverse effects on the environment that are more than minor in accordance with section 95D of the RMA (<i>complete section 95D assessment, section 5 to this report</i>)	<input type="checkbox"/>	✓

If the answer is yes, **public notification is required**

If the answer is no, continue to **Step 4**

Step 4 – Public notification in special circumstances

		Y	N
4.1	Do special circumstances exist in relation to the application that warrant public notification?	<input type="checkbox"/>	✓

If the answer is yes, **public notification is required**

If the answer is no, continue to **Step 5**

Limited Notification

Step 1 – Certain affected groups and affected persons must be notified

37. Does the application meet any of the following criteria?

		Y	N
1.1	There are affected protected customary rights groups	<input type="checkbox"/>	✓
1.2	There are affected customary marine title groups (in the case of an application for a resource consent for an accommodated activity)	<input type="checkbox"/>	✓
1.3	The proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement made in accordance with the Act specified in Schedule 11 of the RMA; and the person to whom that statutory acknowledgement is made in accordance with an Act specified in Schedule 11 of the RMA; and the person to whom the statutory acknowledgement is made is affected under s95E of the RMA	<input type="checkbox"/>	✓

If the answer is yes, **notify the application to each affected group/person and continue to Step 2**

If the answer is no, continue to **Step 2**

Step 2 – Limited notification precluded in certain circumstances

38. Does the application meet either of the following criteria?

		Y	N
2.1	The application is for a resource consent of 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes limited notification	<input type="checkbox"/>	✓
2.2	The application is for a controlled activity (but no other activities) that requires a resource consent under a district plan (other than a subdivision of land).	<input type="checkbox"/>	✓

If the answer is yes continue to **Step 3**

If the answer is no continue to **Step 4**

Step 3 – Certain other affected persons must be notified

39. Are any of the following eligible persons affected under section 95E of the RMA?

		Y	N
3.1	In the case of a boundary activity, an owner of an allotment with an infringed boundary	<input type="checkbox"/>	✓
3.2	A person prescribed in regulations made under section 360H (1)(b) of the RMA (if any) in respect to the proposed activity	<input type="checkbox"/>	✓
3.3	For other activities, are there any affected persons in accordance with section 95E of the RMA (<i>complete section 95E assessment, attachment 2 to this report</i>)	✓	<input type="checkbox"/>

40. Written approvals have been requested from two adjoining landowners due to the allotment size being below the required 20ha and the proposal to construct a future dwelling within the undersized allotment, and the potential reverse sensitivity effects. The requested written approvals have not been provided and the applicant has requested to proceed with limited notification.

If the answer is yes, **notify the application to each affected group/person and continue to Step 4**

41. If the answer is no, continue to **Step 4**

Step 4 – Limited notification in special circumstances

		Y	N
4.1	Do special circumstances exist in relation to the application that warrant notification to any persons not already determined to be eligible for limited notification (excludes persons assessed under section 95E of the RMA as not being affected?)	<input type="checkbox"/>	✓

Section 95D Assessment – Environmental Effects

42. Section 95D sets out the relevant considerations for determining whether adverse effects on the environment are likely to be more than minor for the purposes of making a decision on notification.

95D Consent authority decides if adverse effects likely to be more than minor

A consent authority that is deciding, for the purpose of section 95A(8)(b), whether an activity will have or is likely to have adverse effects on the environment that are more than minor—

- (a) must disregard any effects on persons who own or occupy—
 - (i) the land in, on, or over which the activity will occur; or*
 - (ii) any land adjacent to that land; and**
- (b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and*
- (c) in the case of a restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard restricts discretion; and*
- (d) must disregard trade competition and the effects of trade competition; and*
- (e) must disregard any effect on a person who has given written approval to the relevant application.*

Discussion

43. Section 95A(8)(b) states that if the consent authority decides, in accordance with 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor the application will need to be publicly notified.
44. Effects are considered to be no more than minor and limited to the owners/occupiers of the properties adjoining¹ the site. Therefore, under Section 95D(a)(ii) the consent authority is to disregard the effects on these parties when deciding if effects are more than minor with regards to a notification decision under Section 95A(8)(b).

Section 95E Assessment – Affected Person

45. Section 95E sets out the relevant considerations for determining whether a person is an affected person in relation to the application.

95E Consent authority decides if person is affected person

- (1) For the purpose of giving limited notification of an application for a resource consent for an activity to a person under section 95B(4) and (9) (as applicable), a person is an affected person if the consent authority decides that the activity's adverse effects on the person are minor or more than minor (but are not less than minor).*
- (2) The consent authority, in assessing an activity's adverse effects on a person for the purpose of this section,—
 - (a) may disregard an adverse effect of the activity on the person if a rule or a national environmental standard permits an activity with that effect; and**

¹ This includes land physically separated by a road as per the District Plan definition of 'Adjoining'

- (b) *must, if the activity is a controlled activity or a restricted discretionary activity, 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) *must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.*
- (3) *A person is not an affected person in relation to an application for a resource consent for an activity if—*
- (a) *the person has given, and not withdrawn, approval for the proposed activity in a written notice received by the consent authority before the authority has decided whether there are any affected persons; or*
- (b) *the consent authority is satisfied that it is unreasonable in the circumstances for the applicant to seek the person's written approval.*
- (4) *Subsection (3) prevails over subsection (1).*

NAME	ADDRESS/LEGAL DESCRIPTION	REASON	AFFECTED PARTY APPROVAL PROVIDED?
Homebush Holdings Ltd	182 Beattys Road (Lot 2 DP 1796, Lots 1-2 DP 19836, Lot 1 DP 12173 RS33144) and 215 Waireka Road (Lot 2 DP 533998)	Reverse Sensitivity	No
Hughbuilt Ltd - Graeme & Suzanne Hughes	154 Yeomans Road (Lot 2 DP 81496)	Reverse Sensitivity	No


Discussion

46. The application proposes to undertake a boundary adjustment to create an undersized allotment (being 0.77 ha) in the Rural Outer Plains zone which requires a minimum lot size of 20ha with the area being predominantly utilised as rural production land. Land use consent is also sought to establish a future dwelling within the undersized allotment.
47. The adjoining property owners, as identified above, are considered to be affected by the proposal to a minor extent in terms of reverse sensitivity as these adjoining properties are utilised as established working farms which are vulnerable to complaint as a result of a potential future residential development which is a more sensitive land use, particularly where a site is smaller than the permitted size.
48. The owners of the adjoining properties have been approached by the applicant for the provision of written approval to the proposal, however no response has been received. Therefore, the applicant has requested that the application proceed to limited notification.
49. As stated above, the proposal is considered to have no more than minor adverse effects on any party and there are no special circumstances that would warrant the limited notification of any other persons not already deemed to be affected parties.

50. In summary, limited notification is required for this application and it is recommended that the application be processed on a limited notified basis.


Recommendation

51. It is recommended that the application be processed on a limited notified basis.

Reported and recommended by  Vicki Barker Consultant Planner	Date: 1 May 2023
--	-------------------------

Decision

That the above recommendation be adopted under delegated authority.

 Graham Taylor Commissioner	Date: 11 May 2023
---	--------------------------

Commissioners Additional Comments:

I have considered the application and the assessment contained in this s42A report. I agree with and adopt the assessment and recommendations contained in the report of Ms Barker. In considering whether any persons are affected in terms of s95E, I also considered whether there is potential for erection of a dwelling in the same location on the existing allotment RS 35830 being 3.9937ha as a permitted activity, in which case I might exercise discretion to disregard adverse effects under s 95E(2)(a). Erection of a dwelling on the existing allotment would also require resource consent under rule 3.10.3 for contravention of the 20ha minimum site area requirement, therefore I am satisfied that no grounds exist to disregard effects.

Accordingly, I agree that the owners of the adjoining properties identified in this report are affected parties in terms of s95E.



Graham Taylor

11 May 2023