

UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF an application by
JO, AJ & LV Clarkson & Joynt Andrews
Trustee (No. 18) Limited to undertake
a three-lot subdivision and retain two
existing dwellings on undersize lots, at
1701 Coaltrack Road, Greendale

Council File: RC225776 & RC225777

Hearing Date: 14 November 2023

RESOURCE CONSENT APPLICATION RC225776 & RC225777

1701 Coaltrack Road, Greendale

DECISION OF HEARINGS PANEL: COMMISSIONER LANGSBURY AND COMMISSIONER O'CONNELL

RESOURCE MANAGEMENT ACT 1991

DECISION OF THE SELWYN DISTRICT COUNCIL ON A RESOURCE CONSENT APPLICATION

APPLICATION REFERENCE: RC225776 & RC225777

APPLICANT: JO, AJ & LV Clarkson & Joynt Andrews Trustee (No. 18) Limited

SITE ADDRESS: 1701 Coaltrack Road, Greendale

PROPOSAL: To undertake a three-lot subdivision and retain two existing dwellings on undersize rural lots.

DISTRICT PLAN ZONING: Operative District Plan: Outer Plains
Partially Operative District Plan: General Rural

ACTIVITY STATUS: Restricted Discretionary

DATE OF HEARING: 14 November 2023

APPEARANCES: Applicant
Mr Fowler (Agent - Surveyor)
Ms Jayne Clarkson (Applicant)
Mr Rob Clarkson (Applicant)
Council Officer
Ms Jane Anderson (Consultant Planner)

HEARINGS PANEL: Commissioner Langsbury and Commissioner O'Connell

SUMMARY OF DECISION: That the application be **granted**, subject to conditions.

DATE OF DECISION: 23 February 2024

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1.0 INTRODUCTION

- 1.1 A Hearings Panel consisting of Commissioner Langsbury and Commissioner O’Connell has been appointed by the Selwyn District Council (Council) to hear and make a decision on the land use and subdivision resource consent applications by JO, AJ & LV Clarkson & Joynt Andrews Trustee (No. 18) Limited to undertake a three-lot subdivision and retain two existing residential dwellings on undersize rural lots, at 1701 Coaltrack Road, Greendale.
- 1.2 We are satisfied that we do not have any conflicts of interest and are able to objectively and fairly reach a view on the merits of the proposal and treat all parties evenly.
- 1.3 No problematic procedural or administrative issues were received or raised by either the Council or the Applicant at the hearing.

2.0 THE APPLICATION

- 2.1 The report prepared by Ms Jane Anderson (for Council) pursuant to s.104 of the Act describes the proposal and this description aligns with the description contained in the application. However, since the application was lodged, the Applicant has relocated a residential dwelling onto the subject site and this additional dwelling now forms part of the application. The following is a summary of the key aspects of the proposal as applied for, to which this decision relates:

- To undertake a three-lot fee simple subdivision.
 - Proposed Lot 1 will be 28.32ha and contain an existing residential dwelling.
 - Proposed Lot 2 will be 80.93ha and created as a vacant lot.
 - Proposed Lot 3 will be 9.91ha and contain an existing residential dwelling and accessory buildings.
- A ‘no build’ consent notice is proposed over a 10.09ha area of proposed Lot 2 which will advise that the 10.09ha area is not to be utilised for the erection of a dwelling and that the area is not to be considered in any future calculation of a rural/residential density of the property, or for any future boundary adjustment.
- Land-use consent is sought to retain two existing dwellings on undersize rural lots (i.e., proposed Lot 1 and proposed Lot 3).
- Extensive native planting will be undertaken along one bank of the water race that runs parallel to Waterford Road and then traverses through proposed Lot 2 until it terminates at the existing pond. Additional planting is also proposed around the pond.

3.0 WRITTEN APPROVALS

- 3.1 The provision of written approvals is relevant to the substantive assessments of effects under section 104(3)(a)(ii). Where written approval has been provided, the consent authority must not have regard to any effect on that person.
- 3.2 The Applicant obtained affected party approval from the owners of:
- 74 Waterford Road, Greendale - Andrew Jack Mahika and Lucy Anne Mahuika

4.0 THE HEARING

4.1 The hearing commenced at 10:00am on Friday 14 November 2023 in the Karumata/Leeston Room, at the Selwyn District Council, Norman Kirk Drive, Rolleston.

4.2 Those that attended the hearing are as follows:

Applicant

Mr Fowler (Agent)

Jayne Clarkson (Applicant)

Rob Clarkson (Applicant)

Council

Ms Anderson (Consultant Planner)

4.3 Prior to the hearing, the Panel were provided with electronic copies of the application and supporting documents; the s.95 notification report prepared by Ms Robinson-Kelly; the s.104 report prepared by Ms Anderson; and the pre-circulated evidence prepared by Mr Flower for the Applicant. We were also provided with copies of the submissions received from Heritage New Zealand Pouhere Taonga and Te Taumutu Rūnanga.

4.4 We are satisfied that we have been provided with all necessary information to make an informed decision.

4.5 During the hearing the Panel ask each person who spoke questions relating to their evidence. None of the responses raised any concerns with their respective evidence nor did the questions result in any of the speakers changing or altering their evidence; the questions merely clarified matters for the Panel. Within this context, the following is a record of the key points presented at the hearing:

The Applicant

4.6 Firstly, Mr Fowler spoke to his pre-circulated Statement of Evidence (which was taken as read) and answered questions.

4.7 In brief, Mr Fowler gave evidence that the proposed subdivision was sought to assist in achieving farm succession by enabling the existing dwellings to be retained on smaller lots. He reiterated the evidence from his Statement of Evidence in respect to the delays and frustrations that his clients have experienced and commented on the increase financial burden that the delays have caused.

4.8 Mr Fowler then briefly outlined the history of the water races and emphasised that they are of little relevance to the current farming operation, and that the Applicant had constructed a pond at the end of the races which the majority of mud fish are confined too.

4.9 Next, Ms Clarkson spoke to a written statement which she presented at the hearing. In brief, Ms Clarkson detailed her experience working for the Ministry for Primary Industries and emphasised the need to take a common-sense approach when applying legislation, noting that what might be suitable for a large company is not going to be practical for a small family-owned business. She then discussed the purpose of the application, to enable successful succession planning, and noted that the Clarkson's had been in Greendale for around 100

years, and she touched on the process that her and Rob had taken in ‘recycling’ a home rather than building new and their commitment to being ‘off-grid’.

- 4.10 Ms Clarkson explained the frustration and ‘utter despair’ (her words) at the length of time and subsequent additional costs and uncertainty they have been subject to during this process, along with the feeling of limited or no engagement. She reiterated that the proposed conditions were not reasonable or practical; that the mudfish are present because of their farming practices; and they have already established planting around the pond. Ms Clarkson finished by asking that a practical and feasible solution be agreed.
- 4.11 Mr Clarkson then spoke. He explained that the main concern with the proposed conditions in respect to the extent of planting around the water races was the practical implications, such as having to move and reconfigure the irrigator (at a cost of approximately \$45,000); the cost and difficulty of on-going maintenance; and loss of productive land. Mr Clarkson continued by discussing the existing Environmental Management Plans for the farm which are a requirement of Central Plains Water, and the existing environment ‘up-stream’ where he submits that horses are able to freely enter and access the water races. He also reiterated the frustration that he and Ms Clarkson have experienced during this process.

The Council

- 4.12 Ms Anderson spoke to her pre-circulated evidence with a focus on the key points raised by the Applicant during the hearing. Ms Anderson’s written evidence was taken as read.
- 4.13 Firstly, Ms Anderson confirmed two points relating to the planning framework; that when the application was lodged it was subject to the provisions of both the Operative and Proposed District Plans, and that Subdivision Rule SUB-R21.3¹ of the (now) Partially Operative District Plan had immediate legal effect at the time of lodgement.
- 4.14 Secondly, Ms Anderson provided evidence in respect to the status of the activity, noting that while it would be a non-complying activity under the Partially Operative District Plan, the status derived from the Operative District Plan is applied pursuant to s.88 of the Resource Management Act (the Act).
- 4.15 Ms Anderson then addressed the consent conditions relating to planting along the water races. She explained that she was relying on the cultural advice provided by Te Taumutu Rūnanga but also noted that Ms Denise Ford (Council’s Senior Biodiversity Specialists) supported the recommended planting. She noted her reluctance to alter the conditions recommended by Te Taumutu Rūnanga, but had suggested the Implementation Plan as a framework to achieve the outcomes sought.
- 4.16 Upon questioning, Ms Anderson agreed that a balance is needed between achieving an appropriate outcome which protects the Mudfish and its habitat, while taking into account the cost and practicality of the methods. She opined that there is a need and an opportunity to find a compromise, however, she acknowledged that achieving this was somewhat difficult not having the input from the Runanga at the hearing. She acknowledged the work already undertaken by the Applicant in respect to the planting around the pond.

Applicant’s Right of Reply

- 4.17 In the Right of Reply, Mr Fowler explained that Mr and Ms Clarkson accept their responsibility to protect and enhance the habitat of the Mudfish, and reiterated that they were already

¹ SUB-R21.3 – Subdivision within the Mudfish Habitat Overlay

doing this by planting and protecting the habitat around the pond. He opined that imposing the conditions as recommended was highly problematic and likely unachievable.

- 4.18 Mr Fowler closed by emphasising the main matter in contention was the method by which to protect the Mudfish, and the problematic nature of the recommended conditions relating to planting along the water races. He noted that in all other aspects the Applicant and Council agreed the subdivision was acceptable.

Hearing adjourned

- 4.19 After hearing from the Applicant and Council, the hearing was adjourned at 12:30pm so the Panel could undertake a site visit.
- 4.20 The site visit commenced at approximately 2:00pm, with the Applicant showing the Panel around the farm. During the site visit the Applicant showed us where they intend to undertake planting and additional fencing along one of the water races and the pond; they asked that this mitigation be taken into account during the Panel's deliberations. We agreed, and issued a Minute on 20 November 2023 directing the Applicant provide a planting plan showing the area where planting and additional fencing are proposed. The Minute specified that the Plan must include the approximate total area to be planted; an indicative list of native species that will be planted; cross-section/s; details of the maintenance program; and a staging/timing schedule.
- 4.21 The Applicant provided a response to the Minute on 5 December 2023. The response is considered to form part of the application and is therefore taken into account in the following decision.

5.0 PLANNING FRAMEWORK

- 5.1 Both the Council and Applicant agree on the planning framework as detailed by Ms Anderson in the s.104 report. In addition, Ms Anderson provided further context to the planning framework during the hearing, this is summarised above. The Panel accepts the planning framework detailed in the s.104 report prepared by Ms Anderson.

Activity Status

- 5.2 As detailed earlier in this decision, the application is a non-complying activity under the Partially Operative District Plan, however, pursuant to s.88A of the Act, the application is to be considered and decided under the activity status at the time of lodgement, i.e., a restricted discretionary activity.
- 5.3 Accordingly, the application is a **restricted discretionary** activity.

6.0 STATUTORY CONSIDERATIONS

- 6.1 In brief, the notification decision is made by following the Steps of s.95A, with reference to sections 95B-E. For the substantive decision, subject to Part 2 of the Act, the Panel must have regard to any effects of allowing the activity, the relevant standards and provisions of relevant documents and any other matters that are relevant and reasonably necessary to determine the application.
- 6.2 As a restricted discretionary activity, the proposal is to be considered in terms of s.104 of the Act. Section 104C of the Act stipulates that only those matters specified in the plan or

proposed plan to which it has restricted the exercise of its discretion can be considered when deciding to grant or refuse the application. Conditions of consent are subject to s.108 and s.108A of the Act.

- 6.3 Section 104 of the Act is subject to Part 2 of the Act, although whether or not an application requires formal consideration directly against Part 2 is a case-by-case matter. The Panel will address Part 2 of the Act later in this decision.

7.0 EFFECTS ON THE ENVIRONMENT

- 7.1 As is frequently the case, the evidence from the Applicant and Council are largely in agreement. The Panel is therefore satisfied that effects from the existing access and vehicle crossing arrangements are accepted for the intended use, and that the proposal can proceed in a manner which would not result in exposure to natural hazards, i.e., flooding. Similarly, based on the evidence before us, the Panel considers the proposal can be adequately serviced via the existing infrastructure with respect to water supply, firefighting capacity, and effluent and stormwater disposal. No further consideration is given to these matters.
- 7.2 The matters in contention are cultural effects and specifically the recommendation to fence off a riparian margin of at least 5 metres either side of the water races, and plant this margin with indigenous plants, to ensure livestock is excluded and that the Mudfish and their habitat are protected and enhance; dwelling density is the second matter of contention.
- 7.3 First, in respect to dwelling density. As per the Council's evidence, the maximum dwelling density under the Operative District Plan (ODP) is 1 dwelling per 20 hectares whereas under the Partially Operative District Plan (PODP) the dwelling density is 1 dwelling per 40 hectares. Based solely on the net site area of the subject site plus the 10.38 hectare 'no build' area, the dwelling density equates to a maximum of *five* dwellings under the ODP but only *two* under the PODP. Both Mr Fowler and Ms Anderson² submit the proposed density is acceptable in terms of the ODP given to the scope provided in *matter of discretion* 3.10.4.1. The Panel agrees.
- 7.4 Turning to the PODP. Having consider this matter carefully, the Panel finds that there is scope to consider the density provisions of the PODP under s.88A(2)³ of the Act. In this regard, Ms Anderson considers a third dwelling on the site would be inconsistent with the rural character anticipated by the PODP; noting that while the Applicant is not seeking to increase the dwelling density under this current proposal, the subdivision layout would enable the increase in density.
- 7.5 The Panel records that the PODP is clearly seeking to materially change the sense of openness, spaciousness, and low residential occupation associated with the rural environment via the new dwelling density standards. And accordingly, we are of the view that it is appropriate to consider 'density' in the context of the PODP.

² Paragraph's 125, 126 and 127 of the s.104 report prepared by Ms Anderson

³ **88 A Description of type of activity to remain the same**

(2) Notwithstanding subsection (1), any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b)

- 7.6 Based on the evidence before us, we note that the net site area of the subject site could almost accommodate a third dwelling⁴ without the need for resource consent. As such, we are satisfied that should a third dwelling be established on Lot 2 in the future, then the rural character associated with the subject site would not be unduly compromised, or even noticeably different than what is anticipated by the POPD. Further, if a third dwelling was established in the future there would be no visual ques or physical connectivity such as shared accesses, curtilage areas, etc between the three dwellings; and the dwellings would not appear in a cluster. Lastly, the Panel agrees with Ms Andersons that any reverse sensitivity effects will not be significant.
- 7.7 For these reasons, the Panel finds that additional density controls in the form of consent conditions/notices are **not** necessary in this instance to protect the rural character sought by the POPD.
- 7.8 Turning next to cultural values and interests.
- 7.9 A Cultural Landscapes approach was undertaken by Mahaanui Kurataiao Ltd on behalf of Te Taumata Rūnanga. Enabling a holistic identification and assessment of sites of significance, and other values of importance such as waterways, wetlands, waipuna and other eco-cultural values.
- 7.10 Importantly, the proposal does not impact directly on any Statutory Acknowledgment areas although there is the potential for indirect effects to arise from stormwater and sediment runoff. The downstream area to which this statutory acknowledgement applies is Te Tai o Mahaanui (Selwyn – Banks Peninsula Coastal Marine Area), the Coastal Marine Area of the Selwyn – Banks Peninsula constituency of the Canterbury region, as shown on SO Plan 19407, Canterbury Land District as shown on Allocation Plan NT 505 (SO 19901) of the Ngai Tahu Claim Settlement Act 1998 Schedule 101.
- 7.11 The submission to Selwyn District Council on the 11th of July 2023 by Mahaanui Kurataiao referred to Te Mana o Te Wai in regard to the mauri of the wai must come before any other consideration.
- 7.12 The submission noted that there should be riparian buffer zones along all waterways including manmade drains and water races utilising indigenous plantings, thereby increasing the indigenous biodiversity within their takiwā.
- 7.13 Te Taumutu Rūnanga acknowledged that District Plan rules may not provide for the protection of all waterways, but the Kaitiaki responsibilities of Te Taumutu Rūnanga require them to protect all water as a taonga for future generations.
- 7.14 The position of Te Taumutu Rūnanga in their submission, was to oppose the subdivision where protection of waterways is not upheld.
- 7.15 Mahaanui Kurataiao did not attend the hearing held on 14th November 2023. At the hearing Ms Anderson was questioned and acknowledged that Mahaanui had not responded to the second minute issued by commissioners seeking to better understand their concerns.
- 7.16 As detailed above, we undertook a site visit following the hearing at which we identified evidence of existing and planned riparian planting that we consider will mitigate the concerns

⁴ The net site area of the subject site is 119 hectares, and 120 hectares is required to achieve three residential units at a density of 1 unit per 40 hectares.

raised on behalf of the Runaka. Following the site visit we requested formal plans from the applicant in relation to the proposed riparian plantings, which have been provided.

- 7.17 The planting plans have provided the Panel with the confidence that the protection of the waterways will be upheld. Thereby addressing the concerns of Te Taumutu Rūnanga.

Other Effects / Matters

- 7.18 In respect to all other effects not directly commented on above, we record our acceptance of the evidence provided by Ms Anderson and Mr Fowler that no such effects will arise to a level of more than minor or present any concerns insofar as the potential to grant consent.
- 7.19 In respect to positive effects, the proposal will assist with farm succession; maintain and enhance biodiversity outcomes through extensive planting of water races and the existing pond; and it will retain primary production activities on the site.

CONCLUSION IN RESPECT TO EFFECTS

- 7.20 Having carefully considered the two matters of contention in the context of the revised application and volunteered landscape and fencing plan, we find the adverse effects from the proposal to be minor.
- 7.21 In addition, we record that we have considered all of the above effects collectively and are satisfied that there are no likely cumulative effects of concern.

8.0 OBJECTIVES AND POLICIES OF THE SELWYN DISTRICT PLAN

- 8.1 Ms Anderson and Mr Fowler agree the proposal will be consistent with the objectives and policies within the ODP relating to rural density and the quality of the environment, particularly given the imposition of the 'no build' area and subdivision layout. The Panel agrees and accordingly, no further consideration of the ODP is considered necessary.
- 8.2 Conversely, Ms Anderson considers the proposal to be contrary to Objectives SUB-01, SUB-02 and Objective GRUZ-01 and associated Policies GRUZ-P1 and Gruz-P7 within the PODP, whereas Mr Fowler submits the proposal is entirely consistent with these objectives and policies.
- 8.3 As per the preceding assessment, the Panel is satisfied the potential dwelling density in terms of the PODP provisions will not have significant adverse effects; particularly noting the overall net site area and the layout of the subject site. We are of the view that the proposed subdivision will be an efficient use of the land and it will continue to enable primary production activities, although, these will be restricted on Lots 1 and 3 given their size. The Panel also finds there will be a clear contrast with urban density standards, and there is no risk of dwellings being clustered together. Accordingly, the Panel finds the proposal to largely align with the overarching outcomes sought by the PODP in respect to rural character, amenity and productivity.
- 8.4 Similarly, the Panel finds the subdivision design to be practical and logical as the boundaries follow existing roads and fence lines, and each lot will continue to be compatible with the role and function of the rural environment.
- 8.5 Lastly, Ms Anderson considers that, subject to the imposition of the consent conditions recommended by the Runanga, the proposal is consistent with the relevant objectives and policies (Objective ECO-01, ECO-02 and Policy ECO-P6) which seek to manage indigenous

biodiversity and protect threatened or at-risk species (i.e., Mudfish) and their habitat through the exercise of kaitiakitanga and stewardship. However, Mr Fowler expressed considerable concerns with the conditions from a practical and financial perspective.

- 8.6 As per the processing assessment, the Panel finds the planting and fencing plan submitted post-hearing addresses the concerns of Te Taumutu Rūnanga. Accordingly, we find the proposal to be consistent with the outcomes sought by the PODP in respect to the maintenance and enhancement of biodiversity and cultural values.

Plan Weighting

- 8.7 Section 104(1)(b)(vi) requires the consent authority to have regard to an operative plan or proposed plan. Where there is conflict between the provisions of an operative and proposed plan, a weighting assessment is required to determine which plan may be afforded more weight.
- 8.8 Case Law indicates that the extent to which the provisions of the proposed plan are relevant should be considered on a case-by-case basis and might include:
- how far through the plan making process the proposed plan is, and the extent to which it has been tested and undergone independent decision making;
 - any circumstances of injustice if the provisions are given more or less weight;
 - the extent to which a new provision, or the absence of a provision, implements a coherent pattern of objectives and policies;
 - whether the new provisions represent a significant shift in Council policy; and
 - whether the new provision is in accordance with Part 2 of the Act
- 8.9 The Panel find that there is a clear conflict between the rules of the Plans, with the application being a restricted discretionary activity under the ODP and a non-complying activity under the PODP. In this case however, we are satisfied that the proposal is consistent with both the ODP and PODP and therefore no weighting is required; for completeness, we note that given the application was lodged prior to the decisions of the PODP being released, it would be appropriate to afford more weight to the ODP if we were required to undertake a weighting exercise.

9.0 PART 2 OF THE ACT

- 9.1 The purpose of the Act is contained within section 5 and it is to promote the sustainable management of natural and physical resources. *Sustainable management* means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while: sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and avoiding, remedying, or mitigating any adverse effects of activities on the environment.
- 9.2 The other sections of Part 2, sections 6, 7 and 8, address matters of national importance, other matters and Te Tiriti o Waitangi (the Treaty of Waitangi) respectively.
- 9.3 The relevant District Plans have been prepared having regard to Part 2, with a coherent set of policies designed to achieve clear environmental outcomes; therefore, taking into account relevant case law, we consider that assessment under Part 2 is unlikely to be necessary. For the sake of completeness, however, Part 2 is briefly assessed below.

- 9.4 The proposed activity can be undertaken without any impact on the matters of national importance outlined in Section 6. Turning to Section 7 – Other Matters, which include:
- (b) the efficient use and development of natural and physical resources;
 - (c) the maintenance and enhancement of amenity values;
 - (f) the maintenance and enhancement of the quality of the environment:
- 9.5 In this case, we find the proposed activity will not compromise the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations and will have no adverse effects on the life-supporting capacity of air, water, soil and/or ecosystems; it will enhance amenity values and the quality of the environment through extensive planting of a water race and existing pond with native plant species. In addition, the adverse effects of the proposed activity are considered to be appropriately avoided, remedied or mitigated.
- 9.6 Finally, in respect to Section 8, as per the preceding assessment of effects and having regard to the volunteered fencing and planting of the water race, the activity will not undermine the principles of the Treaty of Waitangi.

10.0 SECTION 106 DETERMINATION

- 10.1 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.
- 10.2 Ms Anderson has provided an assessment of the proposal against the provisions of s.106 of the Act. She does not identify any significant natural hazards but does recommend that a consent notice be registered on Lots 2 and 3 notifying future owners that a Flood Assessment Certificate will be required for any future dwellings.
- 10.3 It is considered that appropriate legal and physical access is provided to all three lots.
- 10.4 We agree with Ms Anderson, and accordingly, discretion exists to grant the activity under s.106, subject to conditions.

11.0 SECTION 104 DETERMINATION

- 11.1 The issues of adverse effects, and the district plan planning framework have been considered above. This leaves the Panel with any regional (Regional Policy Statement) policy issues, and any other relevant matters for consideration.
- 11.2 Ms Andreson provides evidence in respect to the National Policy Statement for Highly Productive Land and advises that the Land Use Classification relevant to the subject site is LUC4. She submits that because the subject site is not contained within LUC1 or 3 then the National Policy Statement for Highly Productive Land is not applicable. We agree.
- 11.3 For completeness, no party brought any other (regional) matter to our attention during the hearing or in their evidence.

12.0 CONSIDERATIONS

- 12.1 Having given careful consideration to the proposal, the Panel finds that on balance the proposal is sufficiently aligned to the outcomes sought by the District Plans and the Act that the promotion of sustainable management will be served by the granting of this consent.
- 12.2 Our reasons for this decision are, in overall summary, effects on the environment are minor and the application is consistent with the key objectives and policies of the District Plans which seek to achieve a subdivision which is consistent with the form and function of the rural environment while maintaining and enhancing rural amenity values, biodiversity, and cultural values. Pursuant to s.104C of the Act, we have discretion to grant or refuse consent or grant consent subject to conditions.

13.0 DECISION

- 13.1 Having considered all relevant matters, the Panel concludes that the land use and subdivision resource consent applications by JO, AJ & LV Clarkson & Joynt Andrews Trustee (No. 18) Limited to undertake a three-lot subdivision and retain two existing residential dwellings on undersize rural lots, at 1701 Coaltrack Road, Greendale, **be granted** pursuant to sections 104 and 104C of the Act subject to the following conditions imposed under section 108 of the Act:

Commissioner:

Name: Hoani Langsbury

Signature:



Date: 23 February 2024

Commissioner:

Name: Nathan O'Connell

Signature:



Date: 23 February 2024

Subdivision Consent Conditions

1. The subdivision shall proceed in general accordance with the information submitted with the application on 10 November 2022, the further information provided on 8 May 2023, and the information provided on 5 December 2023, and the attached stamped Approved Plan(s) entitled *1701 Coaltrack Road Subdivision* dated 22 September 2022, except where another condition of this consent must be complied with.
2. That the following conditions of consent shall be met prior to the issue of the Section 224 Completion Certificate, at the expense of the consent holder.
3. That all required easements shall be duly created and granted or reserved.
4. That pursuant to Section 221 of the Resource Management Act 1991 a consent notice shall be registered on the Computer Freehold Register for Lot 1 recording the following:
 - a) The bore servicing Lot 1 is not within the legal boundaries of Lot 1.
 - b) Fencing along the Wainaniwaniwa River shall be maintained in perpetuity.
 - c) All plantings required by the Implementation Plan shall be maintained on an ongoing basis in accordance with the Implementation Plan.
5. That pursuant to Section 221 of the Resource Management Act 1991 a consent notice shall be registered on the Computer Freehold Register for Lot 2 recording the following restrictions in perpetuity:
 - a) That no dwelling or other principal building is permitted within the area identified as “proposed no build area” on the plan titled *1701 Coaltrack Road Subdivision*.
 - b) That the ‘open space covenant’ area of 10.38 hectares may not be utilised for the purpose of contributing to any future calculation of dwelling density and/or lot size calculation and/or any future boundary adjustment under the rules of the District Plan.
 - c) A Flood Assessment Certificate will be required prior to the construction of any future dwellings or extensions to existing dwellings.
 - d) Fencing along the Waikirikiri/Selwyn River and Wainaniwaniwa River shall be maintained in perpetuity.
 - e) All landscaping and fencing required by the landscape plan titled *Waterway Planting, prepared by Landscape Solutions, dated November 2023* must be maintained on an ongoing basis
6. That pursuant to Section 221 of the Resource Management Act 1991 a consent notice shall be registered on the Computer Free hold Register for Lot 3 recording the following:
 - a) Further investigations in accordance with the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health will be required prior to any future earthworks or development of Lot 3.

- b) A Flood Assessment Certificate will be required prior to the construction of any future dwellings or extensions to existing dwellings.
- 7. The landscaping and fencing shall be established in accordance with landscape plan titled *Waterway Planting, prepared by Landscape Solutions*, dated November 2023.
- 8. The landscaping and fencing shall be established in accordance with the Planting Schedule on the landscape plan titled *Waterway Planting, prepared by Landscape Solutions, dated November 2023*.
- 9. All landscaping and fencing required by this consent shall be maintained. Any dead, diseased, or damaged landscaping shall be replaced by the consent holder within the following planting season (extending from 1 April to 30 September), or sooner if possible.
- 10. The consent holder shall implement industry best practicable measures to avoid or mitigate the discharge of sediment laden runoff entering any waterbody including the water races while undertaking the landscaping and fencing required by this consent.
- 11. In the event of any discovery or archaeological material:
 - (a) If any archaeological site is exposed during site works the works within the site and within 5m of the find shall cease immediately. The area shall be immediately secured in a way that any artefacts or remains are untouched. Manawhenua iwi, Heritage New Zealand, the Department of Conservation, the Selwyn District Council and the New Zealand Police (in the case of human remains) shall be notified that an archaeological site has been exposed, so that appropriate action can be taken. This includes such persons being given a reasonable time to record and recover archaeological features discovered before any work may recommence on the site. Reasonable time will provide an opportunity for those parties to visit the site within up to 3 working days of the discovery (if and as they consider it necessary), and such persons shall be given 6 working days of the discovery being made to inspect the find and record and recover archaeological features discovered before any work may recommence on the site.
 - (b) If the find is an archaeological site in accordance with the Heritage New Zealand Pouhere Taonga Act 2014 (which defines an archaeological site as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand), work may only recommence until any necessary Heritage New Zealand Pouhere Taonga authority is obtained.

Land Use Consent Conditions

- 1. The activity shall proceed in general accordance with the information submitted with the application on 10 November 2022, the further information provided on 8 May 2023, and the information provided on 5 December 2023, and the attached stamped Approved Plan(s) entitled *1701 Coaltrack Road Subdivision* dated 22 September 2022, except where another condition of this consent must be complied with.
- 2. The landscaping and fencing shall be established in accordance with landscape plan titled *Waterway Planting, prepared by Landscape Solutions*, dated November 2023.

3. The landscaping and fencing shall be established in accordance with the Planting Schedule on the landscape plan titled *Waterway Planting, prepared by Landscape Solutions*, dated November 2023.
4. All landscaping and fencing required by this consent shall be maintained. Any dead, diseased, or damaged landscaping shall be replaced by the consent holder within the following planting season (extending from 1 April to 30 September), or sooner if possible.
5. The consent holder shall implement industry best practicable measures to avoid or mitigate the discharge of sediment laden runoff entering any waterbody including the water races while undertaking the landscaping and fencing required by this consent.
6. In the event of any discovery or archaeological material:
 - (a) If any archaeological site is exposed during site works the works within the site and within 5m of the find shall cease immediately. The area shall be immediately secured in a way that any artefacts or remains are untouched. Manawhenua iwi, Heritage New Zealand, the Department of Conservation, the Selwyn District Council and the New Zealand Police (in the case of human remains) shall be notified that an archaeological site has been exposed, so that appropriate action can be taken. This includes such persons being given a reasonable time to record and recover archaeological features discovered before any work may recommence on the site. Reasonable time will provide an opportunity for those parties to visit the site within up to 3 working days of the discovery (if and as they consider it necessary), and such persons shall be given 6 working days of the discovery being made to inspect the find and record and recover archaeological features discovered before any work may recommence on the site.
 - (b) If the find is an archaeological site in accordance with the Heritage New Zealand Pouhere Taonga Act 2014 (which defines an archaeological site as a place associated with pre-1900 human activity, where there may be evidence relating to the history of New Zealand), work may only recommence until any necessary Heritage New Zealand Pouhere Taonga authority is obtained.

Attachment

- RC235776 and RC225777 Subdivision and Land Use Approved Plan - 1701 Coaltrack Road Subdivision and dated 22 September 2022

Development Contributions (Subdivision Consent)

Development contributions are not conditions of this resource consent and there is no right of objection or appeal under the Resource Management Act 1991. Objections and applications for reconsideration can be made under the Local Government Act 2002. Any objection or request for reconsideration must be made in writing in accordance with the Development Contribution Policy.

The consent holder is advised that, pursuant to the Local Government Act 2002 and the Council's Development Contribution Policy, the following contributions are to be paid in respect of this subdivision before the Council will issue its certificate pursuant to section 224(c) of the Resource Management Act 1991.

Note: The amounts set out in the attached table are applicable at the time of the granting of this consent. If the time between the date the resource consent is granted and the time which the Council would normally invoice for the development contributions (usually the time an application is made for the issue of Council's section 224(c) certificate for the subdivision) is more than 24 months, the development contributions will be reassessed in accordance with the development contributions policy in force at the time the consent was submitted. To avoid delays, the consent holder should seek the reassessed amounts prior to the application for the section 224(c) Resource Management Act 1991 certificate.

Please contact our Development Contributions Assessor on 03 347 2800 or at:

development.contributions@selwyn.govt.nz.

Activity	Demand Post Development (HUE)	Credits for Existing Demand (HUE)	Additional Demand (HUE)	Development Contribution per HUE (\$)	Development Contribution (\$ Excl. GST)	GST (\$)	Development Contribution (\$ Incl. GST)
Water Supply	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Wastewater	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Stormwater	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Reserves	1.50	0.50	1.00	3,784.00	3,784.00	567.60	4,351.60
Roading	3.00	1.00	2.00	619.02	1,238.04	185.71	1,423.75
Roading ODP	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Contribution					5,022.04	753.31	5,775.35

Selwyn District Council Advice Notes for the Consent Holder

Lapse Period (Subdivision Consent)

- a) Pursuant to section 125 of the Resource Management Act 1991, this subdivision consent lapses five years after the date of issue of the decision, i.e. the date of receipt of the Notice of Decision email, unless:
 - (i) A survey plan is submitted to Council for approval under section 223 of the Act before the consent lapses, and that plan is deposited within three years of the approval date in accordance with section 224 of the Act; or
 - (ii) Before the consent lapses an application is made to the Council to extend the period after which the consent lapses and the Council decides to grant an extension.

Lapse Period (Land Use Consent)

- b) Pursuant to section 125 of the Resource Management Act 1991, if not given effect to, this land use consent shall lapse five years after the date of issue of the decision, i.e. the date of receipt of the Notice of Decision email, unless before the consent lapses an application is

made to the Council to extend the period after which the consent lapses and the Council decides to grant an extension.

Section 224 Certificate Issuing Requirements (Subdivision)

- c) A Section 224 Certificate will not be issued until all Council invoices, including engineering fees and any other related costs associated with the Resource Consent have been paid in full.

Resource Consent Only

- d) This consent is a Selwyn District Council resource consent under the Resource Management Act. It is not an approval under any other Act, Regulation or Bylaw. Separate applications will need to be made for any other approval, such as a water race bylaw approval or vehicle crossing approval.

Building Act

- e) This consent is not an authority to build or to change the use of a building under the Building Act. Building consent will be required before construction begins or the use of the building changes.

Regional Consents

- f) This activity may require resource consent(s) from Environment Canterbury (ECan). It is the consent holder's responsibility to ensure that all necessary resource consents are obtained prior to the commencement of the activity.

Monitoring

- g) In accordance with section 36 of the Resource Management Act 1991, the Council's basic monitoring fee has been charged.
- h) If the conditions of this consent require any reports or information to be submitted to the Council, additional monitoring fees for the review and certification of reports or information will be charged on a time and cost basis. This may include consultant fees if the Council does not employ staff with the expertise to review the reports or information.
- i) Where the conditions of this consent require any reports or information to be submitted to the Council, please forward to the Council's Compliance Team, compliance@selwyn.govt.nz.
- j) Any resource consent that requires additional monitoring due to non-compliance with the conditions of the resource consent will be charged additional monitoring fees at a time and cost basis.

Vehicle Crossings

- k) Any new or upgraded vehicle crossing requires a vehicle crossing application from Council's Infrastructure Department prior to installation. For any questions regarding this process please contact transportation@selwyn.govt.nz. Use the following link for a vehicle crossing information pack and to apply online: [Selwyn District Council - Application to Form a Vehicle Crossing \(Entranceway\)](#)



GENERAL NOTES

Property Address:	1701 Coaltrack Road, Greendale
Registered Owners:	A.J. & J.O. Clarkson, Joynt Andrews Trustee (No.18) Limited & L.V. Clarkson
Comprised in:	RT CB21F/1425
Local Authority:	Selwyn District Council
Total Area:	119.1799ha
Zoning:	Outer Plains



- Existing lot boundaries shown are derived from information sourced from LINZ.
- Horizontal Datum:
NZGD 2000
Mount Pleasant Circuit
- Areas and dimensions are approximate only and subject to Council approval and final survey.
- Aerial image sourced from LINZ data service taken in Summer periods 2018-2019.
- Area A is to be subject to a **"No Build Covenant"**

LEGEND:
No Build Covenant Area A (10.38ha)

AS APPROVED BY
SELWYN DISTRICT COUNCIL
Planning Department

RESOURCE CONSENT
RC225776 & RC225777

23/02/2024 sugrur

A INITIAL ISSUE	GF	22.09.22
Revision		App Date
Surveyed		
Designed	GF	22.09.22
Drawn	JK	22.09.22
Reviewed	GF	22.09.22
Approved	GRAHAM FOWLER	22.09.22

Verify all dimensions on site before commencing work. Prioritise figured dimensions over scaling. Refer all discrepancies to G.H. Fowler. This document and the copyright in this document remain the property of G.H. Fowler. The contents of this document may not be reproduced either in whole or in part by any means whatsoever without the prior written consent of G.H. Fowler.

Client
A.J. & J.O. CLARKSON

Project Title
1701 COALTRACK ROAD
SUBDIVISION

Sheet Title
LOTS 1-3
BEING A SUBDIVISION
OF RS 4291, RS 12348,
RS 12627 & PT RS 12347

GRAHAM FOWLER
CONSULTING

Scale (A3 Original) 1:5000



Project No	Sheet	Revision
GF-073	V60	A