

Sections 95, 95A-E

Resource Management Act 1991



Decision and Planning Report

Planning Report pursuant to section 42A of the Resource Management Act 1991 recommending whether or not an application for resource consent should be:

- Publicly notified, limited notified or non-notified

APPLICATION NUMBER:	RC245003
APPLICANT:	Alistair Clarke
BRIEF DESCRIPTION OF APPLICATION:	Land use consent RC245003 is sought to establish and operate a storage business on land zoned for business and residential purposes.
SITE DESCRIPTION:	Address: 14A Leeston and Lake Road Legal Description: Lot 1 DP 34054 Title Reference: CB32B/1120 Area: 1897 m ²
ZONING / OVERLAYS	Operative Selwyn District Plan (2016), Township Volume Business 2 Zone Living 1 Zone Partially Operative Selwyn District Plan (Appeals Version) General industrial Zone General Residential Zone Plains Flood Management and Liquefaction Damage Unlikely Overlays
OVERALL ACTIVITY STATUS:	Non-complying

The Application

- This application was formally received by the Selwyn District Council on 24 January 2024. Further information was received on 19 June 2024, 18 July 2024, 26 July 2024 and 11 September 2024, and this information now forms part of the application.
- The application involves the establishment and operation of a storage business. Storage will be provided by 16 shipping containers, which will be affixed to the ground (Figure 1). Additional outdoor storage may be undertaken on a grassed area within the site¹, while the site will be open to customers between 7am to 8pm seven days a week.
- No on-site staff will be present, while no artificial lighting is proposed.

¹ The lodged AEE states that this area will not be used for outdoor storage. However, the 5 June 2024 RFI response states that this area may be used for outdoor storage of vehicles.

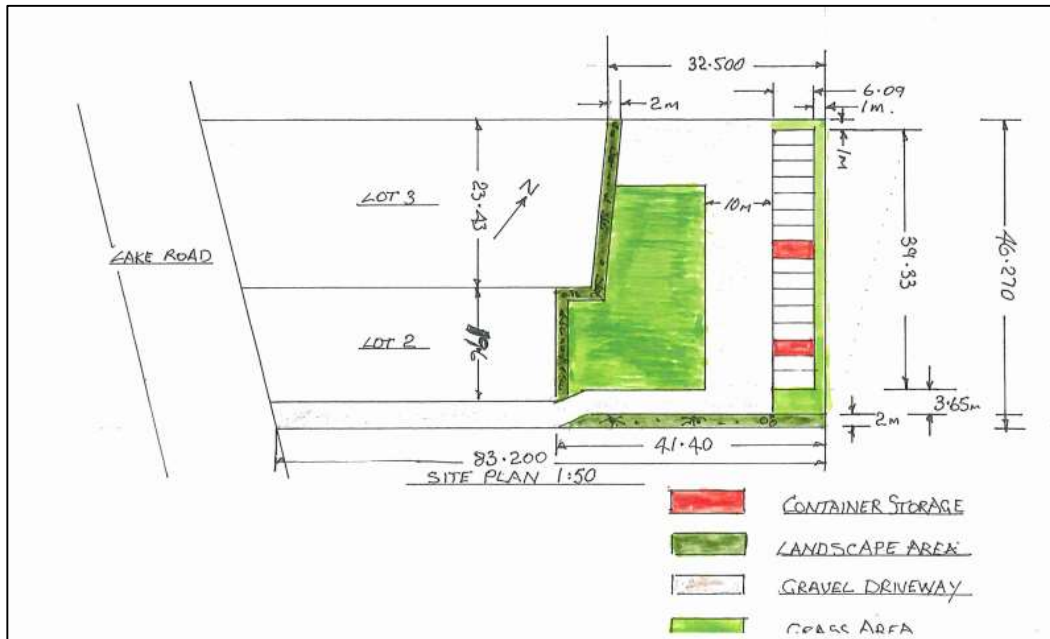


Figure 1 – Site Plan (Source: Applicant)

4. The main aspects of the activity are as follows:
- Operation of a business in a residential zone; and
 - Effects on residential amenity values.

Background

5. A building consent exemption was sought by the Applicant for the placement of containers on-site. The exemption was refused by Selwyn District Council in August 2023.
6. A Flood Assessment Certificate (FC240433) was issued for the proposal by Selwyn District Council in July 2024.

The Existing Environment

7. The application site is currently an undeveloped rear lot within the Leeston township. The site is accessed via an unformed accessway from Leeston and Lake Road. There are no buildings or other structures present, rather the site features overgrown vegetation. The site boundaries are loosely demarcated by boundary fencing, although this fencing is missing along sections of the boundary and is in a mixed state of repair.
8. The site is split into two zones. The majority of the site is located within the General Industrial Zone (shown in purple by Figure 2). The remainder of the site, the accessway, is zoned General Residential Zone (shown in yellow). The accessway and associated vehicle crossing are already established, as well as non-compliant with existing standards.
9. There are no natural features on-site (e.g. naturally occurring inland wetlands). Similarly, there are no designations, scheduled features or sites of significance to mana whenua present. The site is located within the Plains Flood Management Overlay, as well as the Liquefaction Damage Unlikely Overlay.
10. The surrounding area reflects the zoning pattern of the Partially Operative Plan. The sites to the south and southwest are used for residential purposes, with single detached dwellings the primary housing typology present.
11. The sites to the north, north-west and east are zoned General Industrial. Consequently, these sites feature industrial structures that occupy the majority of these sites.



Figure 2 – Zoning (Yellow is GRZ, while Purple is GIZ) (Source: SDC)

12. I visited the site on 5 July 2024.

Activity Status

Operative Selwyn District Plan (2016), Township Volume (“the Operative Plan”)

13. The application site is zoned Business 2 and Living 1. The site is not subject to any overlays.
14. The Council released the Appeals Version of the Partially Operative Selwyn District Plan on 27 November 2023. Many provisions are beyond challenge and are operative/treated as operative (pursuant to cl 103 of Schedule 1 and s 86F of the Act), and the corresponding provisions in the Operative Plan are treated as inoperative.
15. The rule that still applies following appeals and that this proposal does not meet is as follows.

Land Use

16. The proposed land use activity does not meet the following rules:

RULE	TOPIC	NON-COMPLIANCE	STATUS
17.2.1.5	Vehicle Accessways	Appendix 13.2.1 requires accessways have a legal width of 7.0m and a formed width of 5.5m. The current and proposed accessway width is 3.76m.	Discretionary (Rule 17.2.4)

17. Therefore, the land use proposal is a Discretionary activity under the Operative Plan.

Partially Operative Selwyn District Plan (Appeals Version) (“the Partially Operative Plan”)

18. The application site is zoned General Industrial and General Residential. The site is also subject to the Plains Flood Management and Liquefaction Damage Unlikely Overlays.

19. The Council released the Appeals Version of the Partially Operative Plan on 27 November 2023. Many provisions are beyond challenge and are operative/treated as operative (pursuant to cl 103 of Schedule 1 and s 86F of the Act). Those subject to appeal continue to have legal effect pursuant to s 86B.
20. The rules of the Partially Operative Plan that this proposal does not meet are as follows.

Land Use

21. The proposed land use activity does not meet the following rules:

Operative/treated as operative:

RULE	TOPIC	NON-COMPLIANCE	STATUS
GIZ-R23	Any Commercial Activity not otherwise listed in GIZ-Rule List	The proposal involves a commercial (storage) business not otherwise listed in the GIZ-Rule list	Non-complying (GIZ-23.2)
GRZ-R15	Commercial Activities	The proposal involves a commercial (storage) business not otherwise listed in the GRZ-Rule list	Non-complying (GRZ-R15)
NH-R2.3	New Buildings and Structures in Natural Hazard Overlays	The establishment of any principal building where The building finished floor level is equal to or higher than the minimum floor level stated in a Flood Assessment Certificate. A Flood Assessment Certificate has been issued but compliance with the stated minimum FFL has not been provided.	Restricted Discretionary (NH-R2.5)
TRAN-R7 NH-REQ4	Accessway design, formation and use - Natural Hazards and Earthworks	The activity does not exacerbate flooding on any other property by displacing or diverting floodwater on surrounding land. The proposed sealing of the accessway has the potential to displace floodwater onto the adjoining sites.	Restricted Discretionary (NH-REQ4.2)

Has legal effect – subject to appeal:

RULE	TOPIC	NON-COMPLIANCE	STATUS
TRAN-REQ7	Accessway design, formation and use	Accessways for GIZ sites require a legal width of 7.0m and a formed width of 5.5m. The current and proposed accessway width is 3.76m. ²	Restricted Discretionary (TRAN-REQ7.2)

22. The current vehicle crossing associated with this accessway does not comply with Partially Operative Plan standards. However, TRAN-R4 “Vehicle Crossings” applies to the “*establishment of a vehicle crossing*”. The vehicle crossing appears to have been established at least as early as 1989 when the application site’s Record of Title was created and is shared between 14, 14A and 16 Leeston and Lake Road. Given this, I consider that the vehicle crossing is lawful and TRAN-R4 (and its related requirements) do not apply to the proposal.
23. However, TRAN-R5 “Vehicle Accessways” relates to the “*establishment and use of an accessway*”. As the proposed new activity will use the accessway and essentially establish it through making it usable for vehicles, I consider that TRAN-R5 and its related requirements apply to the proposal. As such, resource consent is required under TRAN-REQ7.
24. A FAC has been issued for the placement of the containers on-site given their status as structures under the Partially Operative Plan. The FAC requires a minimum FFL of +19.51m NZVD2016. However, the Applicant has not provided drawings that confirm compliance with the FAC. Consequently, consent under Rule NH-R2 is required.

Appeals

25. TRAN-R5 (Vehicle Accessways) is subject to an appeal by Horticulture New Zealand (Court Reference: ENV-2023-CHC-102). However, the appeal does not detail any appeal points regarding accessways and generally relates to controls associated with horticultural activities. As such, I do not consider that the appeal materially affects the current application.
26. Therefore, the land use proposal is a Non-Complying activity under the Partially Operative Plan.

National Environmental Standards

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

27. Although the proposal is a change of use, the Applicant has provided the Listed Land Register information for the site. The Register does not have any records that the site has been historically used by an activity of the Hazardous Activities and Industries List (HAIL). As such, resource consent is not required under the NES-CS.

Written Approvals (Sections 95D(e), 95E(3)(a) and 104(3)(a)(ii))

28. The provision of written approvals is relevant to the notification and substantive assessments of the effects of a proposal under sections 95D, 95E(3)(a) and 104(3)(a)(ii). Where written approval has been provided, the consent authority must not have regard to any effect on that person. In addition, that person is not to be considered an affected person for the purposes of limited notification.
29. The applicant has provided the following written approvals:
 - 12 Leeston and Lake Road (only one of two owners)³;
 - 16 Leeston and Lake Road;
 - 3 Waiuku Street (one of two owners, as well as tenants).

Notification Assessment

Assessment of Adverse Environmental Effects (Sections 95A, 95B, 95D and 95E)

Permitted Baseline

30. Sections 95D(b) and 95E(2)(a) allow that a consent authority “may disregard an adverse effect” if a rule or a national environmental standard permits an activity with that effect, a concept known as ‘the permitted baseline’. The application of the permitted baseline is discretionary, as denoted by the use of the word “may”. It is understood that its intention is to identify and exclude those adverse effects that would be permitted by the Plan from consideration.
31. In this case, the Operative Plan permits a variety of activities and structures in both zones, including commercial activities. However, the Living 1 zone features more restrictions on commercial activities.
32. The Partially Operative Plan has a similar permitted activity framework to the Operative Plan, noting that the General Residential Zone is more restrictive than the General Industrial Zone.
33. Although the parts of the Partially Operative Plan that are not operative are not strictly applicable in terms of the concept of permitted baseline and the relevant sections of the Act, it is useful to note what would be permitted by the rules of that Plan that have legal effect.
34. In my view, there is limited scope for the use of a permitted baseline for the following assessment. I base this largely on the split zoning of the site and its reliance on road access via residential zoning under both District Plans. Consequently, while the Business 1/General Industrial zoning is highly permissive, the permitted activities in those zones cannot occur without access via residential zoning. Given this arrangement, I have considered all potential and actual effects arising from the proposal.

³ The

Assessment

35. The receiving environment for this proposal includes the existing environment and the future environment as it could be, i.e. as modified by non-fanciful permitted activities and unimplemented resource consents. In this case, the receiving environment is the urban area of Leeston, with both residential and industrial activities occurring within the immediate area.
36. The status of the activity is non-complying. As such, the Council's discretion is unrestricted, and all adverse effects must be considered. The objectives, policies, reasons for rules and assessment matters in the Plans provide useful guidance when considering the adverse effects of the proposal, and these are discussed where relevant below.
37. The adverse effects that might be considered relevant to this proposal relate to amenity, transport, cultural and flooding effects.

Amenity Effects

38. The application proposes to establish a storage business, which is a commercial activity not otherwise provided for by the zoning of both District Plans. The proposal has the potential to generate adverse amenity effects through both its finished appearance and general operation (e.g. transport movements and noise).
39. Firstly, with regard to the proposal's appearance, I note that the completed storage operation will be largely obscured from the nearest view point (from Leeston and Lake Road). The Applicant has advised that any signage for the activity will comply with relevant District Plan restrictions. Consequently, I do not consider that the proposal will impact the amenity of Leeston and Lake Road itself or the properties on its southern side.
40. Turning to the adjoining sites, I do not consider that the proposal will affect the amenity of the adjoining industrial sites. This is due to the presence of a large structure wall on the boundary with 8 Station Street, which obstructs views into site from that property. There is also limited outlook onto the site from 4 and 6 Station Street, both of which are orientated northwards towards Station Street itself.
41. However, I do consider that the site's appearance will impact the visual amenity values of the adjoining residential sites, specifically 3 Waiuku Street, 12 Leeston and Lake Road and 14 Leeston and Lake Road. All three sites have an outlook onto the application site. While the Applicant has proposed landscaping that is consistent with Partially Operative standards, that landscaping will take time to establish and will not obstruct all views into the site. As such, viewers from those sites will see a row of shipping containers with associated hardstand. Similarly, viewers may observe parked boats, caravans and other vehicles should the Applicant proceed with providing outdoor storage also. The proposed built form is also inconsistent with other buildings in the area and will not positively contribute to the adjoining sites' outlooks.
42. With regard to operational effects on amenity values, I note that the storage facility will operate between 7am and 8pm seven days a week. The Applicant estimates that approximately 20 light and 2 heavy vehicles are anticipated to visit the site per day. These vehicles will pass between 14 and 16 Leeston and Lake Road, with subsequent potential disturbance to those sites throughout the proposed opening hours.
43. Further disturbance to those properties, as well as 3 Waiuku Street and 12 Leeston and Lake Road, will be generated by general activity at the application site. This disturbance will arise from vehicle movements within the site, the opening/closing of containers and the lifting/depositing of stored items. This disturbance will occur across the day and into the early evening, consequently impacting the amenity of the abutting residential sites.
44. I do not consider the adjoining industrial sites affected by these operational effects given that they are not used for noise sensitive activities, while there would be sufficient separation distance between the storage activity and residential properties beyond the sites mentioned above.
45. Overall, I consider that the owners and occupiers of 3 Waiuku Street, 12 Leeston and Lake Road and 14 Leeston and Lake Road will experience minor adverse amenity effects.

Transport Effects

46. The application proposes to operate a storage business that will be accessed via a non-compliant accessway. The current accessway from Leeston and Lake Road is less than 4m wide and sits between two adjoining residential sites. The accessway appears to have been legally established at the time the site's current Record of Title was created in 1989. Furthermore, no specific parking, loading or bicycle storage is proposed on-site.
47. The Applicant has stated that activity will:
- No cause any on-street parking effects;
 - The nature of the activity means that it does not require a dedicated loading bay;
 - Site access can accommodate the volume and type of traffic proposed.

48. In my view, the proposed site access is inadequate for the volume of traffic and vehicle types anticipated. In particular, the accessway's 3.76m width does not meet the accessway standards of either District Plan. While it may be possible to manoeuvre a light vehicle (i.e. a car) down the accessway, it seems unlikely that a heavy vehicle or caravan/boat could use the accessway without potentially impacting any boundary fencing. Furthermore, I note that a power/telephone pole is located in close proximity to the vehicle crossing, thereby generating greater difficulty for larger vehicles attempting to use the accessway.
49. Consequently, I consider it likely that storage customers will park heavy vehicles and larger light vehicles within Leeston and Lake Road itself rather than attempt to use the accessway. While this would impact on-street parking, I note that ample on-street parking is available within the immediate area although there is a potential for to park over the adjoining crossings for 14 and 16 Leeston and Lake Road (given their proximity to the application site's access).
50. Based on the above, I consider that the proposal will have minor transport effects on 14 Leeston and Lake Road, as well as Chorus/Orion as the owner/user of the adjoining power/telephone pole being affected.

Cultural Effects

51. The proposal has been reviewed by Mahaanui Kurataiao Limited (**Mahaanui**), who have provided a Cultural Assessment Report (**CAR**) for Te Taumutu Rūnanga. The CAR has been prepared in accordance with the Mahaanui Iwi Management Plan and has identified the following matters as culturally relevant:
- Wai Māori:
 - Changing the way water is valued; and
 - Water quality.
 - Papatūānuku:
 - Contaminated land.
 - Tāne Mahuta:
 - Mahinga kai; and
 - Indigenous biodiversity.
52. The CAR also lists the following conditions and advice notes that Te Taumutu Rūnanga wish applied to the proposal:
- Conditions:
 - Stormwater must be treated by a minimum of first flush treatment prior to discharge into the Selwyn District reticulated network;
 - Indigenous planting is required to enhance the cultural landscape, increase indigenous habitat, filter sediment and sequester carbon; and
 - Uncontrolled stormwater must not be allowed to saturate the ground. Appropriate measures must be included to avoid this issue.
 - Advice Notes:
 - Stormwater treatment for heavy metals is encouraged;
 - An accidental discovery protocol (ADP) should be in place during all earthworks required to give effect to the consent. This is required to deal with archaeological finds and protect the interests of mana whenua; and
 - There should be a stringent erosion and sediment control plan during all earthworks required to give effect to this consent.
53. The Applicant has reviewed the CAR and has advised the following:
- Minimal stormwater will be generated, and no stormwater connections are possible from the container area;
 - Any stormwater discharges from the container area will soak to ground;
 - Indigenous planting will be considered; and
 - The advice notes will be followed.

54. While stormwater discharges are a regional plan matter, I note that the Applicant does propose to store vehicles outdoors. Consequently, there is potential for the accidental discharge of oil and other mechanical fluids to the ground. Similarly, given the site's location within the Plains Flood Management Overlay and uncertainty regarding compliance with the FAC, there is potential for contaminants to be discharged from stored goods during a flood event.
55. Given the above factors and the advice of Mahaanui, I consider that there will be minor adverse effects on cultural values, with Te Taumutu Rūnanga directly affected by these effects.

Flooding Effects

56. As detailed above, the application site is located within the Plains Flood Management Overlay. The Applicant has obtained a FAC for the proposal, although confirmation of the proposed FFL with the FAC has not been provided. Furthermore, the Applicant does not propose any on-site stormwater infrastructure, instead generally relying on soakage. Consequently, there are potential minor flooding effects within the site arising from the inundation of stored materials storm events.
57. In addition, the Applicant has not provided sufficient detail in regard to the management of stormwater arising from the accessway. As such, there is potential for the displacement/diversion of floodwaters on the adjoining sites. In my view, these potential effects would affect 14 Leeston and Lake Road.

Positive Effects

58. Positive effects are not relevant to the consideration of notification and will be considered as part of the s 104 assessment later in this report.

Conclusion

59. Overall I consider that the proposal will have minor effects on 12 Leeston and Lake Road, 14 Leeston and Lake Road, 3 Waiuku Road, Orion New Zealand Limited, Chorus New Zealand Limited and Te Taumutu Rūnanga.

Public Notification (Section 95A)

60. Section 95A states that a consent authority must follow the steps in the order given to determine whether to publicly notify an application for resource consent.

Step 1: mandatory public notification in certain circumstances (sections 95A(2) and 95A(3))	Y	N
Has the applicant requested that the application be publicly notified?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is public notification required under section 95C (no response or refusal to provide information or agree to the commissioning of a report under section 92)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Has the application has been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

*If the answer to any of the above criteria is yes, the application must be **publicly notified**, and no further Steps are necessary.*

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

Step 2: public notification precluded in certain circumstances (sections 95A(4) and 95A(5))	Y	N
Are all activities in the application subject to one or more rules or national environmental standards that preclude public notification?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the application for one or more of the following, but no other types of activities:		
• A controlled activity?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
• A boundary activity only (as per the definition of "boundary activity" in s 87AAB of the Act)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

*If the answer to any of the above criteria is yes, continue to **Step 4**.*

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

Step 3: public notification required in certain circumstances (sections 95A(7) and 95A(8))	Y	N
Is the activity subject to a rule or national environmental standard that requires public notification?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

*If the answer to any of the above criteria is yes, the application must be **publicly notified**, and no further Steps are necessary.*

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

Step 4: public notification in special circumstances (section 95A(9))	Y	N
Do special circumstances exist in relation to the application that warrant public notification?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

*If the answer is yes, the application must be **publicly notified**.*

If the answer is no, do not publicly notify the application, but determine whether to give limited notification of the application.

61. In conclusion, in accordance with the provisions of section 95A, the application must not be publicly notified and a determination on limited notification must be made, as follows.

Limited Notification (Section 95B)

62. Section 95B states that a consent authority must follow the steps in the order given to determine whether to give limited notification of an application for resource consent, if it is not publicly notified under section 95A.

Step 1: certain affected groups and affected persons must be notified (sections 95B(1)-(4))	Y	N
Are there any affected protected customary rights groups, as defined in s 95F?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are there any affected customary marine title groups, as defined in s 95G (in the case of an application for a resource consent for an accommodated activity (as defined in the Act))?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the proposed activity on or adjacent to, or may it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11; and is the person to whom that statutory acknowledgement is made an affected person under s 95E?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

Step 2: limited notification precluded in certain circumstances (sections 95B(5) and 95B(6))	Y	N
Are all activities in the application subject to one or more rules or national environmental standards that preclude limited notification?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the application for a controlled activity only and not a subdivision of land?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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

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

Step 3: certain other affected persons must be notified (sections 95B(7)-(9))	Y	N
In the case of a "boundary activity", is an owner of an allotment with an infringed boundary an affected person?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
For any other activity, are there any affected persons in accordance with section 95E of the Act (as assessed in the Assessment of Adverse Environmental Effects above)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

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

Step 4 – Limited notification in special circumstances	Y	N
Do any special circumstances exist in relation to the application that warrant notification to any other persons not already determined to be eligible for limited notification (excludes persons assessed under section 95E as not being affected)?	<input type="checkbox"/>	<input type="checkbox"/>

*If the answer is yes, **notify the application to those persons**.*

If the answer is no, do not notify anyone else.

63. In conclusion, in accordance with the provisions of section 95B, the application must be limited notified. As concluded above in the Assessment of Adverse Environmental Effects, the following are affected persons; therefore, they must be served notice.

The owners and occupiers of:

- Te Taumutu Rūnanga (via Mahaanui);
- Orion New Zealand Limited
- Chorus New Zealand Limited;
- 3 Waiuku Street;
- 12 Leeston and Lake Road; and

- 14 Leeston and Lake Road.


Notification Recommendation

64. I recommend that the application (RC245003) and is processed on a **limited notified** basis in accordance with sections 95A-E of the Resource Management Act 1991.

Report by: Tim Hegarty, Consultant Planner	 Date: 9 October 2024
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Notification Decision

65. For the reasons set out in the report above, the Notification Recommendation is adopted under delegated authority.

 Commissioner Mary McConnell	Date: 10 October 2024
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