

# Sections 95, 95A-E, 104, 104C, 108, 108AA, 220 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
- Granted or declined, and, if granted, the conditions of consent

**Decision** pursuant to section 113 of the Resource Management Act 1991

|  |  |
|--|--|
| <b>APPLICATION NUMBER:</b>               | <b>RC245737</b>  |
| <b>APPLICANT:</b>                        | Michael McAdam and Bella Wilson  |
| <b>BRIEF DESCRIPTION OF APPLICATION:</b> | Land use consent RC245737 is sought to for an internal boundary setback intrusion.   |
| <b>SITE DESCRIPTION:</b>                 | Address: 35 Petticoat Lane, Doyleston<br>Legal Description: Lot 41 DP 105<br>Title Reference: CB17B/934<br>Area: 2023 m <sup>2</sup>   |
| <b>ZONING / OVERLAYS</b>                 | <b>Operative Selwyn District Plan (2016), Township Volume</b><br>Living 1 Zone<br><b>Partially Operative Selwyn District Plan (Appeals Version)</b><br>Low Density Residential Zone (LRZ)<br>Plains Flood Management Overlay<br>Liquefaction Damage Unlikely Overlay |
| <b>OVERALL ACTIVITY STATUS:</b>          | <b>Restricted Discretionary</b>  |

## The Application

1. This application was formally received by the Selwyn District Council on 27 August 2024. Further information was received on 9 December 2024, and this information now forms part of the application.
2. The application seeks retrospective land use consent for an internal boundary setback intrusion created from an existing garage. The setback is demonstrated in the Site Plan, shown in *Figure 1*.

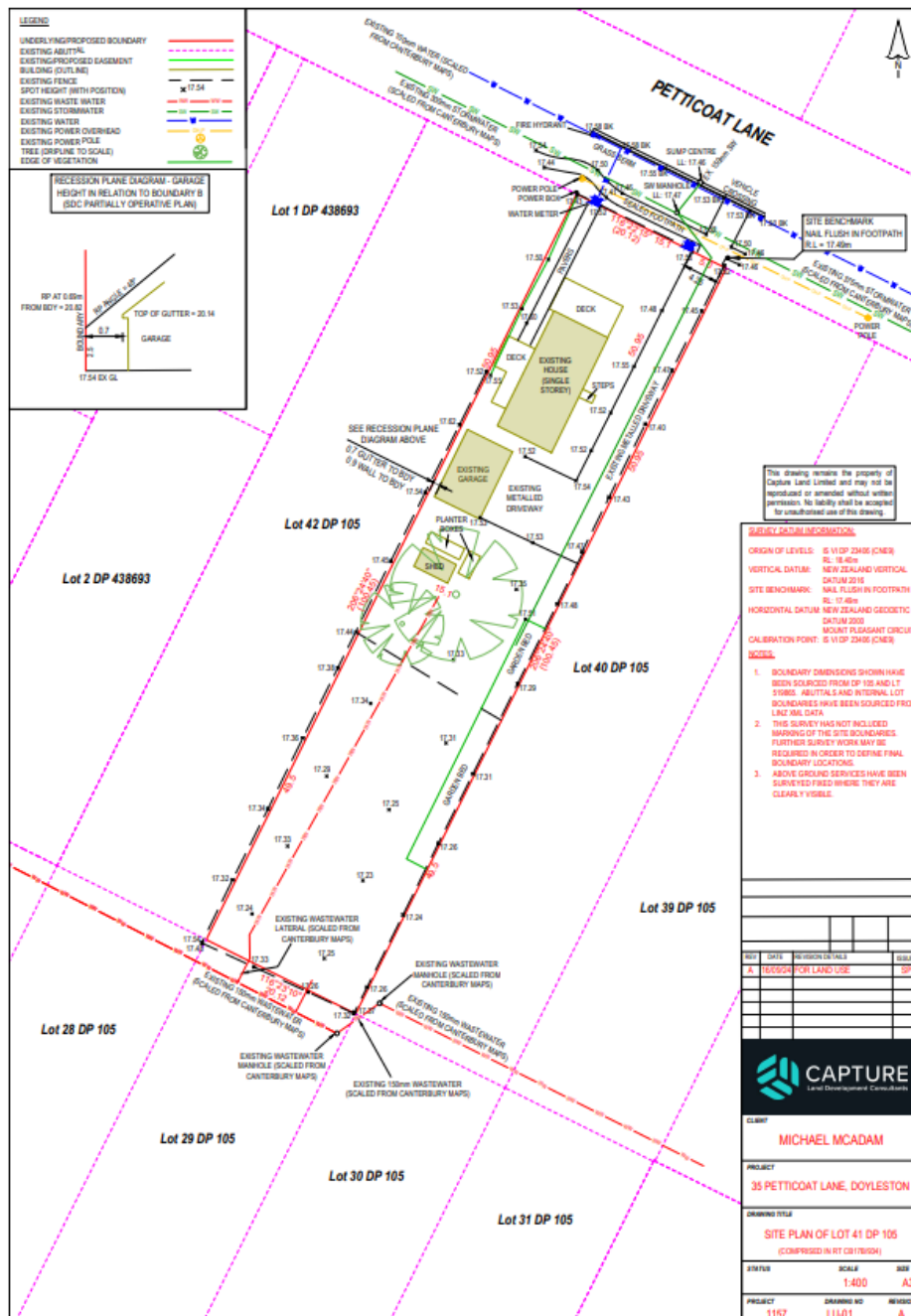


Figure 1: Site Plan.

3. The main aspects of the activity are as follows:

- The existing two-bay garage has a setback intrusion with the western internal boundary, and subsequently requires land use consent.
- This intrusion was not addressed correctly at the time of building consent, and is therefore sought retrospectively.

## Background

- Building consent BC202373 was granted in December 2020 for a three-bedroom domestic dwelling.
- Building consent BC221290 was granted in August 2022 for the construction of an outbuilding (a two-bay standalone garage).
- Subdivision consent RC245296 was granted in December 2024 to create two fee simple residential allotments. It was through this subdivision process that the garage setback intrusion was identified.

7. The approved building plans per BC221290 show a garage setback from the eastern internal boundary to be 1.2m. During the site survey for RC245296, it was identified that the existing fence line and actual boundary do not align, with the difference being 300mm, and the actual boundary being closer to the garage.

## The Existing Environment

8. The application site is located at 35 Petticoat Lane, Doyleston, and is legally described as Lot 41 DP 105. The site is held in Record of Title CB17B/934 and has a total area of 2023m<sup>2</sup>. There are no consent notices, easements or covenants registered against the Record of Title.
9. Located within the site is an existing residential unit, detached garage, and an ancillary shed. The site has an existing formed vehicle crossing via Petticoat Lane, and has a shingled driveway adjacent to the eastern boundary, refer to Figure 2.



Figure 2: Application site (Source: Site visit).

10. The site is surrounded by a residential development of similar size and shaped allotments, zoned Low Density Residential. The sites in the immediate surrounds have a historical wastewater connection that is located across the properties, as shown on the Proposed Subdivision Plan (Figure 1). The allotments directly north of Petticoat Lane are also zoned Low Density Residential, with the sites further north zoned as General Rural. The site and surrounding environment are shown in Figure 3.



Figure 3: Aerial of application site (delineated in yellow) and the surrounding environment (Source: GRIP).

11. A site visit was undertaken on 10 June 2024.
12. Figures 4 and 5 show the elevation and siting of the garage within the site as approved by BC221290.

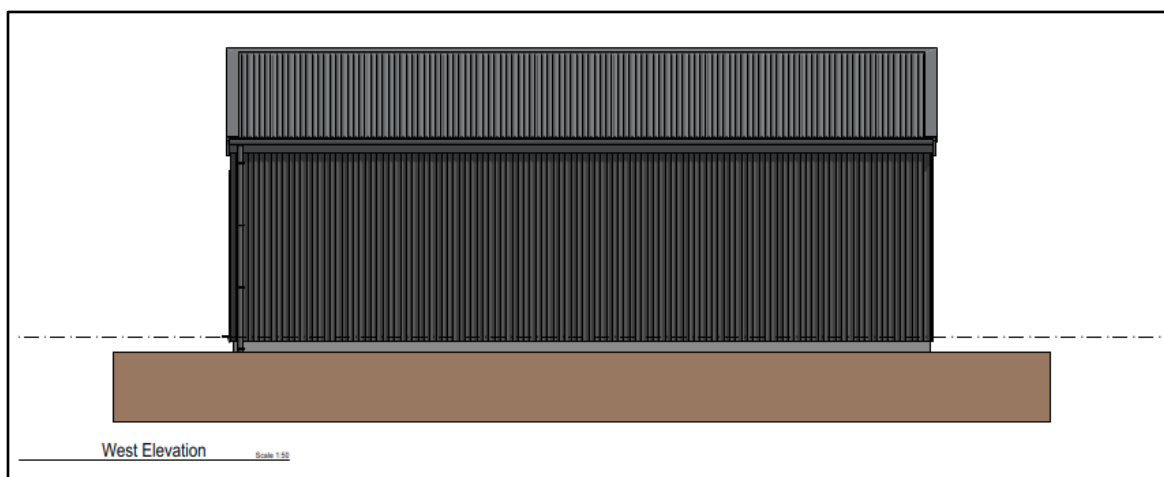


Figure 4: Western Elevation (Source: Extract from BC221290 approved plans).



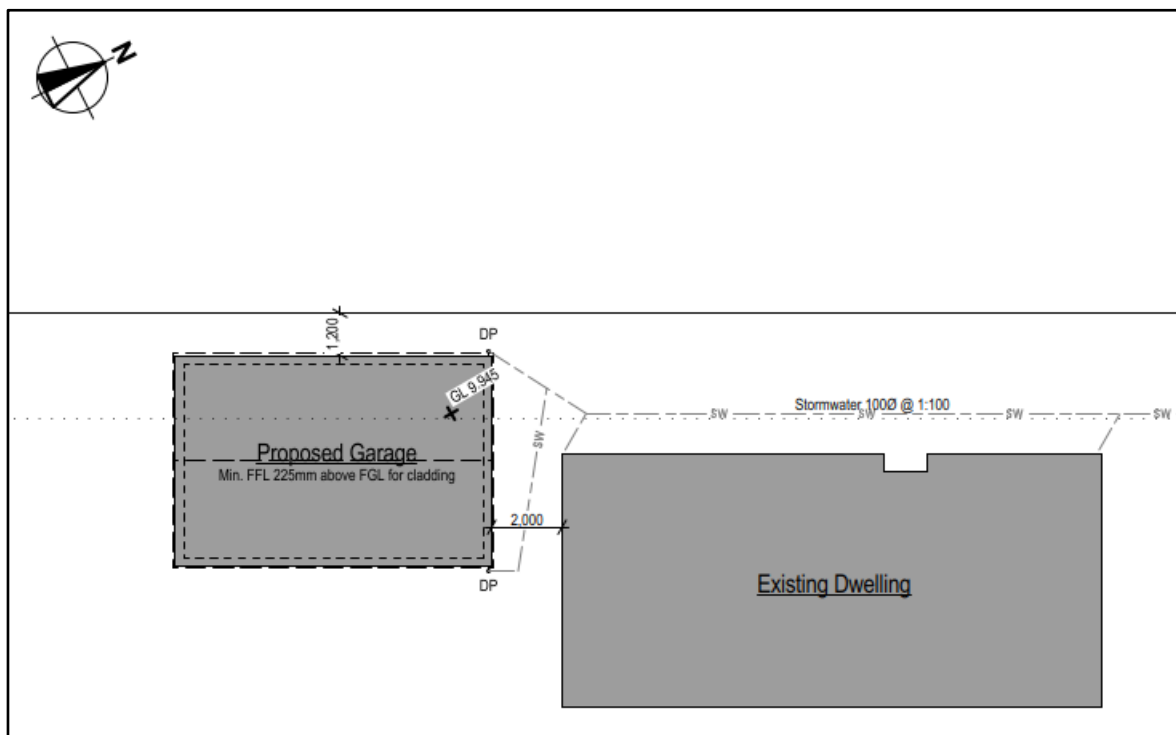


Figure 5: Site Plan (Source: Extract from BC22 1290 approved plans).

## Activity Status

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

13. The application site is zoned Living 1. There are no overlays applicable to the application site.
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. All rules that would apply to this proposal are now treated as inoperative and the proposal is a permitted activity under the Operative Plan.

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

16. The application site is zoned Low Density Residential (LRZ). The site is also subject to the following overlays: Plains Flood Management; Liquefaction Damage Unlikely.
17. 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.
18. The rules of the Partially Operative Plan that this proposal is subject to or does not meet are outlined below.

#### Land Use

19. The proposed land use is subject to the following rules:

#### **Operative/treated as operative:**

| RULE              | TOPIC  | COMPLIANCE   | STATUS                   |
|-------------------|--|--|--------------------------|
| LRZ-R4/REQ7(1)(b) | Setback of Accessory Buildings and/or Structures | (1) Any accessory building shall, where the wall length is greater than 7m, be setback:<br>... (b) 2m from any shared accessway or reserve or internal boundary. | Restricted Discretionary |

20. Therefore, the land use proposal is a **restricted discretionary** 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)

21. The NES-CS manages activities which involve the disturbance of land which may be contaminated. This is determined by whether activities listed in the Hazardous Activities and Industries List (HAIL) have or are likely to have occurred on the site.
22. Although the proposal is for a subdivision, the Preliminary Site Investigation submitted as part RC245296 states that the site is not currently being used, has not been used in the past, or is unlikely to have been used for a HAIL activity. Therefore, no further investigation is considered necessary and the NES-CS does not apply.

## Notification Assessment

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

#### Permitted Baseline

23. 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.
24. In this case, the Partially Operative District Plan requires a garage that faces a shared accessway (where the adjacent wall length to the internal boundary is greater than 7m), to be setback 2m from the internal boundary.

#### Assessment

25. 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 an established residential area where the allotments are large in nature (averaging 2000m<sup>2</sup> in size), that can be developed to a higher residential density given new site area requirement within the Low Density Residential Zone (these being a minimum average of 750m<sup>2</sup>).
26. The status of the activity is restricted discretionary. As such, the assessment is restricted to the relevant matters in Rule LRZ-REQ6, as discussed below.
27. The adverse effects that might be considered relevant to this proposal relate to the western internal boundary setback. An assessment of the potential effects follows.

#### Internal Boundary Setback

28. The garage was constructed as part of building consent BC221290 which was granted in August 2022. The garage wall adjacent the western internal boundary is 9 metres in length and is setback 0.9m. As discussed, the actual boundary and existing fence line do not align, and the actual boundary is located 300mm closer to the garage than the fence. The Partially Operative District Plan requires that where a garage has an adjacent wall greater than 7m in length, the setback from an internal boundary must be 2m. As the garage is only setback 0.9m, this creates a setback intrusion of 1.1m, which was not addressed at the time of building consent.
29. The matters listed in RESZ-MAT6 (Internal Boundary Setback) are as follows and discussed in detail further below:
- (1) *Effects on the amenity of adjoining residential properties with regard to privacy, outlook and shading.*
  - (2) *The extent to which the reduction in the setback provides for the protection of any notable tree (not protected trees) listed in TREE-SCHED2 Notable Trees, heritage item listed in HH-SCHED2 Heritage Buildings, Structures and Items, or sites and areas of significance to Māori listed in SASM-SCHED1 Wāhi Taonga and Wāhi Tapu.*
  - (3) *The extent to which the reduction in the setback provides for the mitigation of the effects of natural hazards.*
  - (4) *Reverse sensitivity effects.*

- (5) Whether a reduced setback from boundaries with the rail corridor will enable the construction and maintenance of buildings, balconies, or decks to be undertaken without requiring access above, on, or over the railway corridor.
- (6) Effects on the accessibility of the space between buildings and the affected boundary for cleaning and maintenance, access for emergency services personnel, storage, and to keep the area free of vermin.

30. Regarding matter (1), the applicant has demonstrated that there is no recession plane intrusion, meaning there are no shading effects. There are no windows along the length of the western façade of the single-storey garage so there is no potential for adverse effects on privacy for the neighbouring site. However, the setback is 45% (0.9m) of the plan requirement (which is 2m) for the 9m long garage. This is even closer than is permitted for a building that is no more than 7m in length (1m setback). As such, it is considered that the neighbouring property located at 37 Petticoat Lane, is potentially adversely affected by the setback intrusion in terms of outlook since a building closer to the boundary can appear more dominant. This is offset somewhat by the recessive colour of the roof and wall of the garage, but the adverse effects are minor in my view. The applicant has advised that through consultation with the owner and occupant of 37 Petticoat Lane, they are not willing to provide affected party approval. Therefore, it is not possible to disregard the adverse effects on that neighbouring owner/occupier.
31. Regarding matter (2), there are no notable trees, heritage listed items, buildings, structures or items, or any site or area of significance to Māori that is applicable to the application site.
32. Regarding matter (3), the garage has been constructed in accordance with building consent BC221290 which sets out minimum floor level requirements (in accordance with Flood Assessment Certificate FC240280).
33. Regarding matters (4) and (5), there are no applicable reverse sensitivity concerns, and the site is not in proximity to a rail corridor.
34. Regarding matter (6), the setback is 0.9m from the boundary to the western façade of the garage, and while the shortfall is noticeable, it is considered that the area between the garage and the boundary still provides sufficient access for most persons so that the building can be appropriately maintained or access for emergency services personnel and for vermin control. Current fencing allows for even greater space for these purposes. However, the area may not be appropriate for storage, as this will limit the accessibility of the space. In addition, as the setback non-compliance had not been addressed at the time of building consent, the western façade is not fire rated. This potentially has an adverse effect towards the neighbouring property (37 Petticoat Lane), for the risk of fire, but the area will still be accessible for the relatively short length to control a fire.
35. **Positive Effects**
36. Positive effects are not relevant to the consideration of notification and will be considered as part of the s104 assessment later in this report.

## Conclusion

37. In my opinion, the adverse effects on any person or the wider environment will be minor, but restricted to the adverse effects on owners/occupiers of the neighbouring property that shares the western internal boundary (this being 37 Petticoat Lane, Doyleston).

## Public Notification (Section 95A)

38. 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"/> | ✓ |
| 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"/> | ✓ |
| 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"/> | ✓ |

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"/> | ✓ |
| 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**.

|   |                          |                                     |
|---|--------------------------|-------------------------------------|
| <b>Step 3: public notification required in certain circumstances (sections 95A(7) and 95A(8))</b>             | 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**.

|   |                          |                                     |
|---|--------------------------|-------------------------------------|
| <b>Step 4: public notification in special circumstances (section 95A(9))</b>                    | 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.

39. 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)

40. 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.

|   |                          |                                     |
|---|--------------------------|-------------------------------------|
| <b>Step 1: certain affected groups and affected persons must be notified (sections 95B(1)-(4))</b>  | 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**.

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

|  |                          |                                     |
|--|--------------------------|-------------------------------------|
| <b>Step 2: limited notification precluded in certain circumstances (sections 95B(5) and 95B(6))</b>  | 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**.

|  |                                     |                                     |
|--|-------------------------------------|-------------------------------------|
| <b>Step 3: certain other affected persons must be notified (sections 95B(7)-(9))</b>   | Y                                   | N                                   |
| In the case of a “boundary activity”, is an owner of an allotment with an infringed boundary an affected person?   | <input checked="" type="checkbox"/> | <input 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 type="checkbox"/>            | <input checked="" 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**.

|  |                          |                                     |
|--|--------------------------|-------------------------------------|
| <b>Step 4 – Limited notification in special circumstances</b>  | 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 checked="" type="checkbox"/> |



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

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

41. 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.
42. The owners and occupiers of:
- 37 Petticoat Lane, Doyleston.

## Notification Recommendation

43. I recommend that the application RC245737 be processed on a **limited notified** basis in accordance with sections 95A-E of the Resource Management Act 1991.

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| <b>Report by:</b><br><br><br><br>Savannah Redmond, Consultant Planner | <b>Date: 19 February 2024</b> |
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## Notification Decision

44. For the reasons set out in the report above, the Notification Recommendation is adopted under delegated authority.
45. For the sake of completeness, I record that the Resource Management Act 1991 (the **Act**) does not provide for retrospective resource consents, except in relation to emergency works as defined under s.330 of the Act. Therefore, the fact that a building already exists does not influence the outcome of the resource consent process, as the application will be considered as if the structure had not yet been built.

|   |                               |
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| <br><br>Commissioner O'Connell | <b>Date: 19 February 2025</b> |
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