

Before an Independent Commissioner  
At Selwyn District

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*under:* the Resource Management Act 1991

*in the matter of:* an application to the Selwyn District Council  
(RC246049) to erect a residential unit on an  
undersized rural allotment at McDonald Road, Lincoln

*between:* **Paul & Jo-Anne Campbell**  
*Applicants*

*and:* **Selwyn District Council**  
*Consent Authority*

Legal submissions on behalf of the Applicants

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Dated: 28 August 2025

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## MAY IT PLEASE THE COMMISSIONER

### INTRODUCTION AND SUMMARY

- 1 These legal submissions are presented on behalf of Jo & Paul Campbell (*Applicant*), who have applied to the Selwyn District Council (*SDC* or Council) for resource consent (RES 3537) to construct a permanent residential dwelling on an undersized allotment at the corner of McDonald's Road and English Road, Greenpark (*Site*) (*Application*).<sup>1</sup>
- 2 Resource consent is required for a non-complying activity in the General Rural zone (*GRUZ*) (SCA-RD2) under the Partially Operative Selwyn District Plan (*POSDP*). The Proposal does not comply with Rule GRUZ-R5 (Residential Unit on an Undersized Site) as the existing site does not meet the minimum 20 ha requirement (*GRUZ-SCHED2*).
- 3 It is acknowledged that the Section 42A Report does not contain a favourable overall recommendation. However, both the Applicant and Section 42A Report Officer agree that the effects of the proposal on the environment would be no more than minor. Issues of disagreement relate to:
  - 3.1 consistency with relevant objectives and policies; and
  - 3.2 precedent effects and plan integrity.

### SCOPE OF LEGAL SUBMISSIONS AND SUMMARY

- 4 These legal submissions will discuss:
  - 4.1 the Application and relevant background;
  - 4.2 the statutory framework;
  - 4.3 adverse effects of the Application;
  - 4.4 consistency with the relevant objectives and policies;
  - 4.5 precedent effects and plan integrity; and
  - 4.6 Part 2 of the RMA and overall judgement.
- 5 The Applicants respectfully submit that the Council has placed undue and overly literal weight on certain objectives and policies of the PODP, without giving appropriate consideration to the wider

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<sup>1</sup> The Applicant is currently seeking a rapid number, and the address is understood to likely be 130 McDonald Road.

policy context, the unique characteristics of the Site, and the actual effects of the proposal.

- 6 For these reasons, the Applicants submit that the Application satisfies the relevant statutory criteria and planning objectives, and that resource consent should therefore be granted. The proposal represents an efficient and appropriate use of an existing allotment, aligns with the sustainable management purpose of the RMA, and will not result in any significant adverse effects or undermine the integrity of the PODP.

### **THE APPLICATION AND RELEVANT BACKGROUND**

- 7 The Site has a total site area of 2.0234 ha, and historically (~1800), it was identified as a reserve (Legal Description Reserve 3537); the Site was issued as a fee simple estate on 10 May 2023 with encumbrances recorded on the title.<sup>2</sup>
- 8 A 216m<sup>2</sup> 2019 consented (RC195342) farm building is currently on the site, and a container shed in the northwestern corner (i.e. no residential dwelling). There is existing heavy vegetation on the English Road frontage, which effectively screens the existing building and will be retained.
- 9 The adjoining properties are a combination of residential dwellings on lifestyle blocks and rural pastoral land further to the west, consistent with the predominant land use in the area. There is an existing level of residential development in the surrounding environment, with land parcels with dwellings varying between 1.59 ha and 10 ha in the immediate vicinity.
- 10 As **Mr McGillan** notes, the Application is consistent with the existing fragmented rural-residential environment, as the Site is already developed and surrounded by similarly sized allotments.<sup>3</sup> Additionally, in alignment with the rural environment, the Applicants intend to operate a boutique Texel stud on the Site, which requires them to live on the property for effective management.
- 11 This is not an application for subdivision creating an undersized allotment as the Site already exists; rather, it is an application for the efficient use of the Site that meets the Applicant's needs, is consistent with the existing environment, and avoids reverse sensitivity issues.

### **THE STATUTORY FRAMEWORK**

- 12 The Applicants recognise and respect the important role of submitters in the RMA consent process, including the participation of Mr and Mrs Stalker. However, it is necessary to address that their

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<sup>2</sup> Appendix G Record of Title.

<sup>3</sup> Statement of Evidence of Bryan McGillan (21 July 2025) at [15].

evidence does not accurately reflect the statutory framework relevant to the assessment of this Application. Their submissions appear to conflate matters of process and compliance with the correct legal tests for determining a non-complying activity under the RMA.

- 13 Accordingly, for the assistance of the Commissioner, we outline below the statutory and legal framework that properly applies to this Application. It is this framework that directs the Commissioner's assessment and decision-making, rather than matters of alleged procedural error or issues that fall outside the scope of the present consent application.
- 14 The Application is for a non-complying activity. The relevant legal tests are set out in sections 104, 104B, and 104D of the RMA.
- 15 Under section 104D ("gateway test"), the consent authority may grant consent if it is satisfied that either:
  - 15.1 the adverse effects on the environment will be minor; or
  - 15.2 the activity will not be contrary to the objectives and policies of the relevant plans.
- 16 If either limb of the threshold is met, the Application is to be assessed under sections 104 and 104B.
- 17 Sections 104 and 104B outline the matters which must be considered, including the effects of the activity, relevant national and regional policy statements and plans, and the implementation of conditions. The Commissioner must make an overall broad judgment as to whether consent should be granted, subject to Part 2 of the Act.
- 18 Concerns regarding procedural unfairness or breaches of natural justice should be addressed by way of judicial review, which examines the fairness and legality of the decision-making process. Such issues are not relevant considerations under sections 104 and 104B of the RMA, which concern the substantive assessment of resource consent applications.

#### **ADVERSE EFFECTS OF THE APPLICATION**

- 19 The Section 42A Report concludes that the Application's adverse effects on the environment will be no more than minor.<sup>4</sup>
- 20 The Applicants concur with this finding. They consider that any actual or potential effects on rural character, amenity, transport, contamination, flooding, reverse sensitivity, and productive land are

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<sup>4</sup> Section 42A Report at [163].

either less than minor or can be effectively managed through the imposition of appropriate consent conditions.

21 In particular:

- 21.1 **Rural character and amenity:** The locality is already characterised by a mix of lifestyle blocks and smaller holdings, and the proposal will not fundamentally alter the established environment.<sup>5</sup>
- 21.2 **Reverse sensitivity:** The Section 42A Report acknowledges that the receiving environment is already mixed, and the separation distances proposed meet plan requirements, further mitigating any risk.<sup>6</sup>
- 21.3 **Contamination and flooding:** Expert advice confirms that risks can be managed by conditions.<sup>7</sup>
- 21.4 **Productive land:** The Site is already fragmented and of limited productive value; the proposal does not result in a significant loss of highly productive land.<sup>8</sup>

22 Submitters have raised concerns regarding contamination and potential effects on their property from the Application. The Applicants acknowledge these concerns and submit that they have been appropriately addressed through expert evidence and recommended consent conditions.

23 As the adverse effects on the environment will be no more than minor, the Application passes the 104D “gateway test”.

### RELEVANT OBJECTIVES AND POLICIES

24 The Section 42A Report concludes that the Application is “inconsistent” with the Canterbury Regional Policy Statement (CRPS) and “contrary” to the objectives and policies of the PODP.

25 This interpretation is unduly narrow and literal and does not reflect the factual context of the Application. The Application sits within an existing environment where the pattern of development is already out of step with the plan’s minimum density. The Section 42A Report itself acknowledges that the addition of one modest residential unit “*does not represent a fundamental or jarring*

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<sup>5</sup> Section 42A Report at [63]-[66]; Statement of Evidence of Bryan McGillan (21 July 2025) at [28]-[29].

<sup>6</sup> Section 42A Report at [87]-[89]; Statement of Evidence of Bryan McGillan (21 July 2025) at [23]-[27].

<sup>7</sup> Section 42A Report at [73]-[75] and [80]; Statement of Evidence of Bryan McGillan (21 July 2025) at [33].

<sup>8</sup> Section 42A Report at [91]-[92], [143]; Statement of Evidence of Bryan McGillan (21 July 2025) at [33].

*change”, and that the “effect on rural character is considered to be no more than minor”.<sup>9</sup>*

- 26 The Applicants submit that the objectives and policies of the PODP must be read as a whole, and in light of the higher-level strategic directions and the sustainable management purpose of the Act. The NPS-HPL, CRPS and the PODP recognise the need for efficient use of land, community well-being, and the reality of existing patterns of development.
- 27 An assessment of GRUZ-P2 and GRUZ-P7 was provided in response to a further information request from the Council (attached in **Appendix One**). In particular, we note:
  - 27.1 Modern statutory interpretation requires a purposive approach and a consideration of the context surrounding a word or phrase.<sup>10</sup> Planning documents must be interpreted in light of their purpose and context, not in isolation. A “top down” approach is required, starting with higher order objectives and policies.<sup>11</sup>
  - 27.2 The Application is consistent with the NPS-HPL and policies and objectives of the CRPS,<sup>12</sup> as the proposal does not result in additional fragmentation or significant loss of rural productive capacity.
    - (a) **Mr McGillan** has further noted that the highest and best land use would be small-scale grazing. Given the small scale of the Site, the Applicants’ proposed use for a boutique Texel stud is appropriate.<sup>13</sup>
  - 27.3 The POSDP strategic directions (SD-DI-O2, SD-UFD-O1) support efficient use of land and rural productivity, both of which are advanced by the Application.
  - 27.4 **GRUZ-P2** (Density Policy) seeks to avoid residential units on undersized sites but must be read in its wider context. The Site is not being subdivided; it is an existing, historical allotment. The core intent of the policy—avoiding further fragmentation and cumulative residential activity—is not engaged.

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<sup>9</sup> Section 42A Report at [63] - [64].

<sup>10</sup> The most fundamental principle of statutory interpretation is contained in section 5(1) of the Interpretation Act 1999: “The meaning of an enactment must be ascertained from its text and in light of its purpose”.

<sup>11</sup> *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

<sup>12</sup> CRPS Objective 5.2.1, Policy 5.3.1 and 5.3.12.

<sup>13</sup> Statement of Evidence of Bryan McGillan (21 July 2025) at [31].

27.5 **GRUZ-P7** (Reverse Sensitivity) addresses reverse sensitivity effects. The proposed dwelling is set back well beyond the minimum requirements, and the surrounding land use is not intensive agriculture. The risk of reverse sensitivity is negligible.

- 28 The Commissioner is pointed to the decision attached to Mr McGillian's evidence which also involved the erection of a dwelling on an undersized lot an where the decisionmaker stated at paragraph 80 that whilst that proposal was inconsistent with policies on rural densities it was "*generally in keeping with the outcomes sought*" and at paragraph 107 when the planning documents were "*taken as a whole and given unique site-specific factors and receiving environment here that consent should be granted*".

### **PRECEDENT EFFECTS AND PLAN INTEGRITY**

- 29 The Section 42A Report raises concerns about precedent and plan integrity.<sup>14</sup> The Applicants submit that each Application must be considered on its merits, and that a grant of consent in this case, on an existing undersized and already fragmented Site, would not undermine the plan's strategy or open the floodgates to inappropriate development district-wide.
- 30 We note that this is only a concern if the commission considers that the Application is inconsistent with the relevant objectives and policies of the POSDP.
- 31 **Mr McGillan** has outlined unique factors related to the Application which mean that the granting of consent would not create a negative precedent because the site's unique characteristics, minor environmental effects, and the significant investment required make similar applications unlikely. Each case must be assessed individually, and the context here is not easily replicated elsewhere in the district.<sup>15</sup>
- 32 **Mr McGillan** has further discussed why the plan's integrity remains uncompromised.<sup>16</sup> The POSDP policies must be interpreted in context: the site is already fragmented, the proposal does not create cumulative effects, and reverse sensitivity risk is negligible due to significant setbacks and neighbouring lifestyle uses. The Application aligns with strategic objectives, promoting rural productivity and efficient land use, and is consistent with higher-order planning documents. Comparable activities are permitted in

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<sup>14</sup> Section 42A Report at [141]-[151].

<sup>15</sup> Statement of Evidence of Bryan McGillan (21 July 2025) at [18] – [19].

<sup>16</sup> Statement of Evidence of Bryan McGillan (21 July 2025) at [20] – [22].

the zone, and other similar applications have previously been approved.<sup>17</sup>

- 33 In *Hutchings v Western Bay of Plenty DC*, the Court concluded that an application for a non-complying residential building which constitutes a true exception may be granted consent, even where the district plan is set strongly against housing within a rural zone. The Court found that the property, which was of an irregular shape and location, would not establish a precedent. As the effects were no more than minor and having established that the proposal was an exception, the Court granted consent.<sup>18</sup>
- 34 Similar to *Hutchings*, the circumstances here are unique, and the proposal is distinguishable as there is no other efficient use for the Site. The risk of precedent effects or plan integrity is overstated and does not justify refusal, particularly when the statutory gateway has been passed.

## **PART 2 OF THE RMA AND OVERALL JUDGEMENT**

- 35 The Applicants submit that the proposal is consistent with the sustainable management purpose of the Act. It enables efficient use of existing land, provides for the Applicants' well-being, and does not result in more than minor adverse effects on the environment or rural character.
- 36 The Supreme Court in *King Salmon*<sup>19</sup> and the Court of Appeal in *RJ Davidson*<sup>20</sup> have confirmed that recourse to Part 2 is available where plan provisions are uncertain or unconfirmed. In this case, the specific plan provisions are not absolute, and a balanced approach is required.
- 37 Furthermore, we note that there may be occasions when an application, although not complying with the rules, has a beneficial or benign effect on its environment. In such a case, the proposal should not be rejected without examining whether it is in conformity with the general purposes of the legislation.<sup>21</sup> The RMA is effects-based, which gives flexibility as to the way any individual property

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<sup>17</sup> In *Clearkin v Auckland Council* [2012] NZEnvC 238; the Court was satisfied that an inconsistency of approach was an "other matter" that was "relevant and reasonably necessary" to determine the applications under s 104(1)(c), and that the proposal met the purpose of the Act.

<sup>18</sup> *Hutchings v Western Bay of Plenty DC* [2012] NZEnvC 100.

<sup>19</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.

<sup>20</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

<sup>21</sup> *Price v Auckland City Council* (1996) 2 ELRNZ 443.



owner uses their property and is not to be arbitrarily curtailed by inflexible adherence to rules.

- 38 When Part 2 is considered alongside the relevant objectives and policies, it is clear that the proposal gives effect to the sustainable management purpose of the RMA. The Application promotes the efficient use of an existing, already fragmented site, enhances rural productivity, and supports the well-being of the Applicants. Importantly, it does so without generating any more than minor adverse effects or compromising the integrity of the District Plan.
- 39 In light of these factors, the Applicants respectfully submit that resource consent should be granted.

Dated: 28 August 2025

A handwritten signature in blue ink, appearing to read 'Jo Appleyard', is written over a light blue rectangular background.

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Jo Appleyard / Tallulah Parker

**Appendix One: Memorandum in assessment of the Application  
against the policies GRUZ-P2 and GRUZ-P7 of the GRUZ under the  
POSDP.**

# Memorandum

Date: 27 March 2025

To: Bryan Mc Gillan

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## **RESOURCE CONSENT APPLICATION / RFI RESPONSE - THE CORNER OF MCDONALDS ROAD AND ENGLISHS ROAD, GREENPARK**

- 1 Jo & Paul Campbell (*Applicant*) have applied to the Selwyn District Council (*SDC* or *Council*) for resource consent (RES 3537) to construct a permanent residential dwelling on an undersized allotment at the corner of McDonald's Road and English Road, Greenpark (*Site*) (*Application*).<sup>1</sup>
- 2 Resource consent is required for a non-complying activity in the General Rural zone (*GRUZ*) (SCA-RD2) under the Partially Operative Selwyn District Plan (*POSDP*). The Proposal does not comply with Rule GRUZ-R5 (Residential Unit on an Undersized Site) as the existing site does not meet the minimum 20 ha requirement (GRUZ-SCHED2).
- 3 On 15 January 2025, the Council made a further information request (*RFI Request*) on the Application under section 92 of the Resource Management Act 1991 (*RMA*). The RFI Request under an "**Other Matters**" heading states:<sup>2</sup>  
  
*"You may wish, at this stage to provide a more thorough objectives and policies assessment, noting GRUZ-P2 seeks to avoid residential units on undersized sites. GRUZ-P7 is also not limited to just intensive outdoor primary production, but covers all primary production activities"*
- 4 The purpose of this memorandum is to make an assessment of the Application against policies GRUZ-P2 and GRUZ-P7 of the GRUZ under the POSDP.

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<sup>1</sup> The Applicant is currently seeking a rapid number, and the address is understood to likely be 130 McDonald Road.



### **Relevant Background**

- 5 The Site has a total site area of 2.0234 ha, and historically (~1800), it was identified as a reserve (Legal Description Reserve 3537); the Site was issued as a fee simple estate on 10 May 2023 with encumbrances recorded on the title.<sup>3</sup>
- 6 A 216m<sup>2</sup> 2019 consented (RC195342) farm building is currently on the site, and a container shed in the northwestern corner (i.e. no residential dwelling). There is existing heavy vegetation on the English Road frontage, which effectively screens the existing building and will be retained.
- 7 The adjoining properties are a combination of residential dwellings on lifestyle blocks and rural pastoral land further to the west, consistent with the predominant land use in the area. There is an existing level of residential development in the surrounding environment with land parcels with dwellings varying between 1.59 ha and 10 ha in the immediate vicinity.
- 8 The assessment of effects concludes that the Application's adverse effects are considered at worst to be no more than minor and are consistent with the established existing environment. We note:
  - 8.1 The dwelling does not alter the rural lifestyle or detract from traditional farming practices. It is considered that the Application Site will be of similar size to other undersized lots in the area and will be keeping with the surrounding pattern of development in the neighbouring environment.
  - 8.2 Considering the strategic location of the Application and the nature of surrounding agricultural operations, the potential for reverse sensitivity effects is significantly minimised, ensuring compatibility between future residents and existing farming activities.
  - 8.3 The Application is consistent with the National Policy Statement of Highly Productive Land 2022 (*NPS-HPL*). The Agribusiness Group has provided an assessment of the Application against the NPS-HPL and concluded that the Application meets the exemption provided under clause 3.10 and is unable to be considered economically viable (in terms of the utilisation of HPL) both now and in 30 years' time.
- 9 This is not an application for subdivision creating an undersized allotment as the Site already exists; rather, it is an application for the efficient use of the Site that meets the Applicant's need and avoids reverse sensitivity issues.

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<sup>3</sup> Appendix G Record of Title.



### **Principles of statutory interpretation**

- 10 Modern statutory interpretation requires a purposive approach and a consideration of the context surrounding a word or phrase.<sup>4</sup>
- 11 When interpreting rules in planning documents, *Powell v Dunedin City Council* established that (in summary):<sup>5</sup>
  - 11.1 a 'top down' rather than a 'bottom up' approach is required to be implemented.
  - 11.2 the words of the document are to be given their ordinary meaning unless it is clearly contrary to the statutory purpose or social policy behind the plan or otherwise creates an injustice or anomaly;
  - 11.3 the language must be given its plain and ordinary meaning, the test being "what would an ordinary reasonable member of the public examining the plan have taken from" the planning document;
  - 11.4 the interpretation should not prevent the plan from achieving its purpose; and
  - 11.5 if there is an element of doubt, the matter is to be looked at in context and it is appropriate to examine the composite planning document.
- 12 Reading the words of a planning document with reference to its plain and ordinary meaning is therefore the starting point to any interpretation exercise. Where that meaning, however, creates an anomaly, inconsistency, or absurdity (such as is the case here where there is possible conflict between two pieces of legislation with one saying "avoid" and the other seeks to "support, maintain, or enhance") other principles of statutory interpretation must be considered to help shed light on how a planning document should properly be interpreted. We touch on some of those relevant concepts now.
- 13 It is widely accepted that the RMA provides for a three-tiered management system – national, regional and district. This establishes a 'hierarchy' of planning documents:<sup>6</sup>
  - 13.1 first, there are documents which are the responsibility of central government. These include national policy statements. Policy statements of whatever type state objectives and policies, which must be "given effect to" in lower order planning documents.

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<sup>4</sup> The most fundamental principle of statutory interpretation is contained in section 5(1) of the Interpretation Act 1999: "The meaning of an enactment must be ascertained from its text and in light of its purpose".

<sup>5</sup> *Powell v Dunedin City Council* [2004] NZRMA 49 (HC), at [35], affirmed by the Court of Appeal in *Powell v Dunedin City Council* [2005] NZRMA 174 (CA), at [12].

<sup>6</sup> *Environmental Defence Society v New Zealand King Salmon* [2014] NZSC 38 at [10]-[11].



13.2 second, there are documents which are the responsibility of regional councils, namely regional policy statements and regional plans; and

13.3 third, there are documents which are the responsibility of territorial authorities, specifically district plans.

#### **Assessment of GRUZ-P2 and GRUZ-P7**

14 A general assessment of the proposal's compliance with the Objectives and Policies of the POSDP is included in the Application. This assessment intends to provide further assessment in relation to the application of Policies GRUZ-P2 and GRUZ-P7.

15 This assessment relies on the assessment contained within the Application of the proposal's compliance with the Canterbury Regional Policy Statement (CRPS) and the relevant Objectives of the POSDP that sit above GRUZ-P2 and GRUZ-P7, including the Application's alignment with:

15.1 Objective 5.2.1 of the CRPS that seeks to consolidate well-designed development, particularly around existing urban areas, while maintaining rural activities that sustain the rural landscape and character.

15.2 Policy 5.3.12 of the CRPS which reinforces the need to maintain and enhance resources important to Canterbury's rural economy by avoiding fragmentation of land that would limit its potential for primary production.

15.3 The Strategic Directions which set out the overarching direction of the POSDP (SD-DI-01, SD-D02 and SD-DI-05) and promote an attractive and pleasant place to live, taking into account the anticipated character of individual communities and efficient use of land (including HPL), resources, and infrastructure.

15.4 The single Objective of the GRUZ is GRUZ-01, to support, maintain or enhance the function and form, character, and amenity value of rural areas.

*(Supporting Policies and Objectives)*

#### **GRUZ-P2**

16 GRUZ-P2 is a density policy within the POSDP rural chapter. The GRUZ-P2 is to:

*Avoid the development of residential units on sites that are smaller than the required minimum site size, except where:*

- (a) *the development has been provided for through a legacy clause; or*
- (b) *the minimum residential density requirement is achieved through balance land that adjoins the proposed undersized site in a coherent form to maintain a predominance of open space immediately surrounding the undersized site or*
- (c) *the development is for a temporary activity or temporary accommodation.*



- (d) *in SCA-RD7 – High Country/ Kā Tiritiri o Te Moana, the development is within a building node, is necessary for the operation and maintenance of a rural production activity, and it can be demonstrated that no balance land is available; and*
  - (e) *in all cases, the development of the residential unit(s) is outside both the Airport 50dB Noise Control Contour and the Port 45dB Noise Control Overlay.*
- 17 Read in a vacuum, the policy provides that decision makers avoid development except where it fits into one of the criteria outlined in (a)-(d) and also (e).
- 18 However, adopting this interpretation of GRUZ-P2 and reading it in isolation does not reconcile with the Supporting Policies and Objectives and would lead to the type of problems identified by the Court in *Powell* as these higher-order Policies and Objectives would be undermined. Namely, the interpretation would be contrary to the Supporting Policies and Objectives and would interpret the word “avoid” outside the proper legislative context for reading GRUZ-P2.
- 19 GRUZ-P2 looks to prevent residential development, including minor residential units, on sites that do not meet the minimum density requirements except where development is provided through a legacy clause or balance land is utilised to maintain the predominance of open space. The purpose of this Policy is to maintain rural amenity and character in a way that preserves the efficient utilisation of HPL and ensures the continued operation of primary production activities.
- 20 In terms of the rural character and amenity, there is some evident tension between the Application and the planning provisions given the undersized Site size – however, the rules of the POSDP still enable resource consent to be granted as a non-complying activity for development which does not fit into the strict criteria outlined from (a)-(d) of GRUZ-P2 and as stated above the Application is in keeping with the surrounding pattern of development in the neighbouring environment.
- 21 Whilst the Application does not meet the criteria of the ‘legacy clause’ under GRUZ-R4 as mentioned in exemption (a) of GRUZ-P2, we note the underlying Site was laid out in ~1800 and is not considered economically viable for primary production. It seems illogical and inconsistent with the purpose and principles of the RMA and those Supporting Policies and Objectives outlined above to disallow development when the Application aligns with the rural character and amenity values in this specific location (i.e. the purpose of GRUZ-P2).
- 22 In light of the above, it appears appropriate in circumstances such as the Application to ‘read down’ or ‘soften’ the interpretation of ‘avoid’ in the specific context of interpreting GRUZ-P2 to give effect to the Supporting Policies and Objectives by grafting a further limited exception on the Policy but only in those limited circumstances where there is an existing under sized lot and where a development would align with the Supporting Policies and Objectives and is enabled through an assessment under Rule GRUZ-R5.



- 23 For completeness, we note that the Site complies with GRUZ-P2(e) and is outside both the Airport 50dB Noise Control Contour and the Port 45dB Noise Control Overlay.

**GRUZ-P7**

- 24 GRUZ-P7 is a reverse sensitivity policy in the POSDP. GRUZ-P7 intends to:

*Avoid reverse sensitivity effects on:*

- (a) *lawfully authorised or established primary production activities;*
- (b) *activities that have a direct relationship with, or are dependent, on primary production; and*
- (c) *important infrastructure.*

- 25 In terms of GRUZ-P7, as summarised within the Application, the impact on existing established primary production activity in the surrounding environment is considered less than minor. Communication with the Selwyn District Council Duty Planner confirms that the Council are not aware of any intensive outdoor primary production in the vicinity of the Applicant's Site. The Agribusiness consultants who are based at Lincoln University have also confirmed they are unaware of any intensive outdoor primary production in the area of the Applicant's site.
- 26 The Application aligns with the high level of development that currently exists in the surrounding environment, with parcels with dwellings varying between 1.59 ha and 10 ha in the immediate vicinity of the Site, with a number of other Sites in the vicinity between 10 and 20 ha, also undersized for the zone. Although primary production is lawfully authorised as a permitted activity within the GRUZ, the existing agricultural landscape in the area has been characterised by small-scale farming and rural-lifestyle properties, which typically operate at lower intensities.
- 27 The overall reverse sensitivity effects of the Application are expected to be less than minor, ensuring compatibility between future residents and existing farming activities and is compliant with Policy GRUZ-P7.

Jo Appleyard / Tallulah Parker

Partner / Senior Solicitor