

# Memorandum

Date: 27 March 2025

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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.

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