

Sections 95A-E, 104, 104A-D, 108 Resource Management Act 1991



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 the consent

Decision pursuant section 113 of the Resource Management Act 1991

Author: Richard Bigsby

Position: Resource Management Planner

Resource Consent Number: RC195342

APPLICANT:	Bruce Jessep
PROPOSAL:	To retain an accessory building with a non-complying road boundary setback
LOCATION:	McDonald Road, Lincoln
LEGAL DESCRIPTION:	GAZ 01-940 RES 3537 being 2.0234ha in area more or less, no Record of Title is issued.
ZONING:	The property is zoned Outer Plains under the provisions of the Operative District Plan (Rural) Volume
STATUS:	This application has been assessed as a land use consent for a Discretionary activity under the District Plan. As such the relevant provisions of the District Plan (Rural) Volume and the Resource Management Act 1991 have been taken into account
This application was formally received by the Selwyn District Council on 25 June 2019. Assessment and approval took place on 3 July 2019 under a delegation given by the Council.	

Introduction

1. The applicant seeks retrospective resource consent to retain a building in a non-complying position relative to the required setbacks from McDonald Road and Englishs Road. The building is constructed from two 'shipping containers' set apart by a covered roof area. The building would be sited approximately 8.0 metres from Englishs Road and approximately 6.0 metres from McDonald Road.

Background

2. The application site is not subject to any prior resource consent applications. A Notice to Fix (NF0622) was issued by the Council's Building Department on the 7th December 2018 in relation to the building subject to the current resource consent application. A Certificate of Acceptance (COA180748) was processed by Council and a decision to issue was made on the 7th December 2018 (pending payment).

Description of the Existing Environment

3. The application site is legally described as GAZ 01-940 RES 3537 being 2.0234ha in area more or less, no Record of Title is issued. The site has no formal physical address allocated, although the vehicle access to the site is obtained immediately opposite the property located at 116 McDonald Road, Lincoln. The site is located on the corner of McDonald Road and Englishs Road. McDonald road is a formed and metalled road, and Englishs Road is a formed and sealed road. Both roads are classified as Local Roads under the District Plan (Rural Volume). The site has a formed and metalled vehicle crossing located on the McDonald Road frontage.
4. The application site is triangular in shape and contains extensive mature planting along the south-western boundary. There is some planting the southern half of the eastern site boundary. The existing building subject to the current consent application is located in the north-west corner of the site and has a small curtilage area.
5. The site is located within the identified Lower Plains Flood Area. The wider environment is comprised of a number of undersized rural farms containing established residential dwellings. The Township of Lincoln is located approximately 3 kilometres to the north of the site.
6. I visited the site on Friday, 28 June 2019.

Operative Selwyn District Plan

7. The Selwyn District Plan ('the District Plan') was made operative on 03 May 2016. Under the District Plan the application site is zoned Outer Plains. The site is also subject to the Lower Plains Flood Area.

Land Use

8. Erecting an accessory building is a permitted activity in the Outer Plains Zone where the following relevant criteria are met:

RULE	TOPIC	COMPLIANCE
3.1	Buildings and natural hazards	Complies
3.11	Buildings and site coverage	Complies
3.12	Buildings and building height	Complies
3.13	Buildings and building position	Does not comply

Table 2 – District Plan compliance, land use rules

9. Rule 3.13.1.1 requires that any building complies with the relevant setbacks contained in Table C3.2. A 10 metre setback is required from the boundary of both McDonald and Englishs Roads. The accessory building is only sited approximately 8.0 metres from the boundary of Englishs Road and 6.0 metres from the boundary of McDonald Road. The proposal would not be a permitted activity and Rule 3.13.6 does not exclude garages and accessory buildings. In the absence of an activity status specified in the plan, the proposal shall be assessed as a **discretionary** activity in accordance with Section 87B of the Resource Management Act (1991).
10. The land use proposal is therefore a Discretionary activity under the District Plan.

National Environmental Standards

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health

11. Although the proposal is a change of use of the site, the PLG1 form submitted with the application states that the site is not currently being used, has not been used in the past, or is unlikely to have been used for an activity described on the HAIL. Therefore the NES for Assessing and Managing Contaminants in Soil to Protect Human Health does not apply.

Notification

12. Sections 95A-E set out the process for determining whether an application should be processed on a notified, limited notified or non-notified basis. The following assessment considers whether public or limited notification is required or precluded.

Public Notification

13. The proposal is not subject to mandatory public notification because:
- The applicant has not requested public notification
 - Public notification is not required under section 95C RMA (following a request for further information)
 - The application has not been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act
14. Public notification is not precluded because:
- The proposal is not subject to one or more rules or national environmental standards that preclude public notification; or
 - The application is not for one or more of the following, but not other, types of activities
 - A controlled activity
 - A restricted discretionary or discretionary activity that is a “residential activity” (as defined in section 95A of the RMA) or a subdivision of land
 - A restricted discretionary, discretionary or non-complying activity that is a boundary activity
 - An activity prescribed in regulations made under section 360H(1)(a)(i) of the RMA (if any) precluding public notification
15. Public notification is not required because:
- The proposal is not subject to any rules or national environmental standards that require public notification
 - For the reasons discussed in section the Assessment of Environmental Effects below, the activity is unlikely to have adverse effects on the wider environment at that are more than minor.
16. There are no special circumstances that would warrant public notification.
17. In summary, public notification is not required for this application.

Limited Notification

18. There are no affected protected customary rights groups or affected customary marine title groups in relation to this proposal and the proposal is not on or adjacent to that is subject to a statutory acknowledgement made in accordance with the Ngai Tahu Claims Settlement Act 1998.
19. Limited notification is not precluded because
 - The proposal is not subject to one or more rules or national environmental standards that preclude limited notification;
 - The application is not for either or both of the following activities, but no other activities:
 - A controlled activity, that requires consent under a district plan (other than a subdivision)
 - An activity prescribed in regulations made under section 360H(1)(a)(ii) of the RMA (if any) precluding limited notification
20. As discussed further in the Assessment of Environmental Effects below, the proposal is considered to have less than minor adverse effects on any party.
21. There are no special circumstances that would warrant the limited notification of any other persons not already deemed to be affected parties.
22. In summary, limited notification is not required for this application.

Matters to be Considered

23. Section 104(1) of the Resource Management Act 1991 sets out the matters which must be considered by Selwyn District Council in considering an application for resource consent. In this case the relevant matters are:
 - Any actual and potential effects of allowing the activity (s104(1)(a));
 - The Canterbury Regional Policy Statement (s104(1)(b)); and
 - Any Plan or Proposed Plan (s104(1)(b))
 - The permitted baseline (section 104(2))
24. All matters listed in s104(1) are subject to Part 2 of the Act which contains its purposes and principles.
25. In addition, the following section(s) apply to the consideration of this consent.

Section 104B – Determination of applications for discretionary or non-complying activities

26. After consideration of an application for a discretionary or non-complying activity, a consent authority may grant or refuse the application and if granted, may impose conditions under section 108.

Section 104D – Particular restrictions for non-complying activities

27. In addition to section 104B, in respect to non-complying activities, the consent authority must only grant consent if the adverse effects of the activity on the environment will be minor or the application is for an activity that will not be contrary to the objectives and policies of the District Plan.

Assessment of Environmental Effects

Relevant Assessment Matters

28. As a discretionary activity, the Council's assessment is unrestricted and all actual and potential effects of this proposal must be considered. Relevant guidance is contained in the reasons for the rules breached and the relevant assessment matters as to the effects that require consideration.
29. With regard the applicant's proposal, I consider that the actual and potential effects of the proposal on the environment relate to the matters listed and discussed below.

Permitted Baseline

30. Section 104(2) of the RMA directs that the decision maker may disregard an adverse effect on the environment of an activity if a rule in the District Plan permits an activity with that effect, a concept known as the permitted baseline. The application of the permitted baseline is discretionary and case law has established that the permitted baseline test relates to the effects of non-fanciful hypothetical activities which could be carried out as of right under the District Plan, as well as any existing lawfully established activity on the site or any activity for which resource consent has been granted.
31. The District Plan permits accessory buildings to be located up to 10 metres from the road boundary, which forms a relevant permitted baseline against which to assess the proposed activity.

Rural character and amenity

32. Buildings that are sited less than the minimum distances required by the District Plan (Rural Volume) have the potential to appear out of character for the zone and would not strictly be anticipated under the Current Plan, although it is acknowledged that there are a number of existing buildings (old wool sheds, stock buildings etc) through the Rural environment which have existing use rights and therefore, it is not a completely uncommon occurrence. The building is currently located approximately 8.0 metres from the boundary of Englishs Road and 6.0 metres from the boundary of McDonald Road.
33. The 2.0 metre setback differential from Englishs Road relative to the permitted baseline is likely to be imperceptible to a majority given the likely speeds that vehicles would be travelling on this road and the generous width of the existing legal road reserve. In addition, there is significant mature planting along this boundary of the site and the building is unable to be viewed from Englishs Road due to its limited height.
34. While the building setback infringement has the potential to be more noticeable from McDonald Road, this road has no 'through' access and only services a limited number of local residents that would be subject to potential effects. While the neighbouring property owner/occupier directly adjoining to the north has undertaken amenity planting along his southern boundary which effectively screens the application site from their property, this could not be conditioned to be retained to mitigate potential future effects. The applicant has undertaken some limited native amenity planting along McDonald Road boundary, although this has yet to achieve a height that would effectively screen the building when viewed from McDonald Road and is spread intermittently. It is considered appropriate to require that this planting be replaced or supplemented as necessary and be subject to a condition of consent requiring it to be retained/maintained in perpetuity at a sufficient height to ensure any on-going rural character and amenity effects would be less than minor.

Noise

35. The building has not been constructed in a manner or to a standard which would support human occupation and the building consent also reflects this. It is therefore considered that any effects from traffic noise on the occupants of the building would be negligible.

Safety/visibility of pedestrians, cyclists & motorists

36. While the building is located within the required setback from the relevant road boundaries and relative to an intersection, it is not considered that the building would have any adverse effects on the Safety/visibility of pedestrians, cyclists & motorists. The existing landscaping along Englishs Road already requires turning vehicles to responsibly slow down when approaching McDonald Road and it is

not considered that there would be any additional effects. The alignment road of McDonald Road is straight and the positioning of the building would not obstruct visibility of vehicles approaching from McDonald Road before it turns into Englishs Road at the 'corner'. This intersection provides painted 'give way' lines sufficiently set forward of the existing landscaping to safely see vehicles approaching from any direction.

Positive Effects

37. The proposal would allow the applicant to make efficient use of their property supporting their existing rural activities.

Summary – Assessment of Environmental Effects

38. Overall, I consider that the environmental effects of this proposal will be less than minor.

District Plan Objectives and Policies

39. The objectives and policies that I consider relevant are:

Objective B2.1.1

An integrated approach to land use and transport planning to ensure the safe and efficient operation of the District's roads, pathways, railway lines and airfields is not compromised by adverse effects from activities on surrounding land or by residential growth.

Policy B2.1.9

Ensure buildings are set back a sufficient distance from road boundaries to maintain good visibility for pedestrians and motorists, to allow safe access and egress.

40. As previously discussed in the assessment of environmental effects, the proposal is considered to have less than minor effects due to the alignment of the existing intersection and the location of the painted 'give way' lines relative to any existing visual obstruction and the location. The proposal would also not cause any additional effects beyond what is currently experienced due to the lawfully established landscaping.

Objective B3.4.1

The District's rural area is a pleasant place to live and work in.

Policy B3.4.18

Ensure buildings are setback a sufficient distance from property boundaries to:

- (a) Enable boundary trees and hedges to be maintained;*
- (b) Maintain privacy and outlook for houses on small allotments; and*
- (c) Encourage a sense of distance between buildings and between buildings and road boundaries where practical.*

41. It is considered that the 6.0 metre setback would still afford a sense of distance on McDonald Road between the building and the road due to the actual distance between the building and the carriageway of the road. Sufficient distance to maintain planting is shown in the photos provided with the application. A conditions of consent would require amenity planting to be maintained along the full length of the building parallel to McDonald Road to effectively screen the building. It is considered that the proposal is in accordance with the above objectives and policies.

Summary – District Plan Objectives and Policies

42. Overall, I consider the proposal to be consistent with the objectives and policies of the District Plan (Rural Volume).

Canterbury Regional Policy Statement

43. This proposal is not considered to be of a nature or scale that challenges the provisions of the Regional Policy Statement.

Greater Christchurch Regeneration Act 2016 and the Land Use Recovery Plan

44. The Greater Christchurch Regeneration Act (GCR Act) came into force on 19 April 2016 and replaces the Canterbury Earthquake Recovery Act 2011, which was repealed on the same date.
45. The application site is within Greater Christchurch, as defined by the Act (within Selwyn, Springs and Selwyn Central Wards). As such, the GCR Act needs to be considered in relation to this application.
46. The Land Use Recovery Plan (LURP) applies to the Greater Christchurch area. It was approved by the Minister for Canterbury Earthquake Recovery and gazetted on 6 December 2013. Although prepared under the Canterbury Earthquake Recovery Act 2011, the LURP is a Recovery Plan under s4 of the GCR Act and so needs to be considered in relation to this application.
47. The LURP considers the impacts of the earthquakes on residential and business land use, and provides a pathway for the transition from rebuild to longer term planning. The LURP sets a policy and planning framework necessary to:
- Rebuild existing communities
 - Develop new communities
 - Meet the land use needs of businesses
 - Rebuild and develop the infrastructure needed to support these activities
 - Take account of natural hazards and environmental constraints that may affect rebuilding and recovery.
48. The LURP identifies what needs to be done in the short and medium term to co-ordinate land use decision-making, identifies who is responsible and sets timelines for carrying out actions. It directs amendments to be made to Environment Canterbury's Regional Policy Statement, the Christchurch City Plan, the Selwyn District Plan and the Waimakariri District Plan.
49. When considering an application for a resource consent for a restricted discretionary, discretionary or non-complying activity, any person exercising powers or performing functions must not make a decision or recommendation that is inconsistent with the LURP (s60 of the GCR Act).
50. The required amendments to the Regional Policy Statement and the District Plan have been made, and so any application that is not inconsistent with these documents is also not inconsistent with the GCR Act and the LURP.
51. As outlined in earlier in this report, I consider that the application is consistent with the objectives and policies of both the District Plan and the Regional Policy Statement. As such, the application is consistent with the Greater Christchurch Regeneration Act 2016 and the Land Use Recovery Plan and may be considered for approval.

Part 2 Resource Management Act 1991

52. The purpose of the Resource Management Act 1991 is to promote the sustainable management of natural and physical resources. In summary enabling people and communities to provide for their well-being, while sustaining resources and addressing any adverse effects.
53. Based on the assessment in this report, it is my opinion that the proposal is in accordance with the purpose and principles of the Resource Management Act 1991.

Development Contributions

54. Development contributions will not be required.

Summary

55. This application is to retain an accessory building with a non-complying road boundary setback.
56. The application is considered to be in accordance with the objectives and policies of the District Plan. Effects on the environment are considered to be less than minor.
57. In summary, it is recommended that the application is in order for approval subject to certain conditions to mitigate potential effects on the environment.

Recommendations

- A. Resource consent 195342 be processed on a **non-notified** basis in accordance with sections 95A-F of the Resource Management Act 1991; and
- B. Resource consent 195342 be granted pursuant to sections 104 and 104B of the Resource Management Act 1991 subject to the following conditions imposed under section 108 of the Act:
1. The development shall proceed in accordance with the information submitted with the application on 25 June 2019 and the approved plan (now marked RC195342), except where another condition of this consent must be complied with.
 2. The building shall be located no closer than 6.0 metres from the boundary of McDonald Road and 8.0 metres from the boundary of Englishs Road.
 3. That the existing planting located in the fenced strip between the building and McDonald Road shall be supplemented or replaced with evergreen planting which shall be retained/maintained in perpetuity in a manner to effectively screen the building when viewed from McDonald Road. If the planting is damaged or diseased it shall be replaced with the same or equivalent species in the next practicable growing season.

Attachments

1. 195342 Approved Plan

Notes to the Consent Holder

Lapse Period (Land Use Consents)

- a) Pursuant to section 125 of the Resource Management Act 1991, if not given effect to, this resource consent shall lapse five years after the date of this decision unless a longer period is specified by the Council upon application under section 125 of the Act.

Monitoring

- b) In accordance with section 36 of the Resource Management Act 1991, the Council's basic monitoring fee has been charged.
- c) Where the conditions of this consent require any reports or information to be submitted to the Council, please forward to the Council's Compliance and Monitoring Team, compliance@selwyn.govt.nz
- d) Any resource consent that requires additional monitoring due to non-compliance with the conditions of the resource consent will be charged additional monitoring fees on a time and cost basis.

Vehicle Crossings

- e) Any new or upgraded vehicle crossing requires a vehicle crossing application from Council's Assets Department prior to installation. For any questions regarding this process please contact

transportation@selwyn.govt.nz. You can use the following link for a vehicle crossing information pack and to apply online: <https://www.selwyn.govt.nz/services/roads-And-transport/application-to-form-a-vehicle-crossing-entranceway>

Building Act


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

Regional Consents

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


Impact on Council Assets

- h) Any damage to fixtures or features within the Council road reserve that is caused as a result of construction or demolition on the site shall be repaired or reinstated and the expense of the consent holder.

Reported and recommended by  Richard Bigsby Resource Management Planner	Date: 28 June 2019
---	---------------------------

Decision

That the above recommendations be adopted under delegated authority.

 Rosie Flynn, Team Leader Resource Consents	Date: 3 July 2019
--	--------------------------