

Before an Independent Commissioner
At Selwyn District

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 Applicant Selwyn District Council Consent authority

Closing legal submissions on behalf of the Applicant

Date: 12/09/2025

Applicant's solicitors:

Jo Appleyard | Tallulah Parker
Anderson Lloyd
Floor 2, The Regent Building, 33 Cathedral Square, Christchurch 8011
PO Box 13831, Christchurch 8141
DX Box WX10009 Christchurch
p + 64 3 379 0037
jo.appleyard@al.nz | tallulah.parker@al.nz

**anderson
lloyd.**

May it please the Commissioner

- 1 These Closing Submissions cover issues that arose at the hearing on 2 September 2025 (*Hearing*).

Seasonal Worker Accommodation - Comparison

- 2 At the Hearing there was a discussion on whether it is legitimate for the Applicants to lean on a comparison with the provisions providing for Seasonal Worker Accommodation as a permitted baseline.
- 3 Having considered the issue further there is a strong argument that during the time the Applicant lives on the Site and operates the Texel Stud that the residential unit is permitted.
- 4 The definition of "Seasonal Worker Accommodation" means for the "*sole purpose of accommodating the short-term (ie seasonal) labour requirement of a farming activity*"
- 5 The definition is unusual as it focuses on the "**purpose**" of the of the construction of the residential unit. This means that in each case where Seasonal Workers Accommodation is proposed there will need to be a factual enquiry into the reasons why a developer is building the proposed accommodation.
- 6 Here the Applicants have articulated in the Application, and through Mrs Campbell's evidence and questioning, that they intend to undertake works to improve the Site to enable the relocation of their Texel Stud from Westerfield eg clearing, pasture renewal, fertiliser application, fencing and planting and they have also explained why they need to live on the same site as the livestock to directly provide the security and labour necessary for an efficient and secure Texel Stud operation.
- 7 The Applicants already operate a Texel Stud so there is no reason to question the genuineness of their explanation as to how the farming activity can be carried out on a 2ha site and why they consider it necessary for them to be accommodated on the same site as their livestock.
- 8 It is not necessary for the labour requirements of a farming or rural activity to be supplied by a third party employee to fall within the definition of Seasonal Worker Accommodation – a supplier of labour can be a self-employed worker (part time or full time) and in rural communities farming work is often carried out by persons who are self-employed and whether they are landowners/lessees or not eg share-milkers.

- 9 The fact that in the context of a Texel Stud the labour requirement is required to be provided by a person(s) who lives on the site all year round for security purposes doesn't change the fact that the "purpose" of the accommodation is for the short-term housing of a person(s) supplying the labour requirement to the operation of the Texel stud. The definition of short-term must be read in the context of the particular farming activity that is being carried out.
- 10 In summary at the present time, and based on the evidence given by Mrs McDonald as to her reasons in wanting to construct a residential unit co-located with a Texel Stud on the Site the activity either falls within the definition of "Seasonal Workers Accommodation" or the comparison with the permitted baseline is so fine so as to be difficult to distinguish.
- 11 Here consent is still required however to cover the possibility that the "purpose" of the accommodation might change if the Texel stud operation (or some alternative farming/rural activity which can be carried out on 2ha) ceased in the future and the owner/tenant of the Site at the time is not employed in providing labour to a farming or rural activity within commuting distance elsewhere in the District.
- 12 It is also noted that the Application also has an analogy with "Visitors Accommodation" which is permitted provided the accommodation is not offered to more than five guests, the owner lives on site, and there is compliance with setbacks.

Consistency with Objectives and Policies

- 13 The s42a Officer continues to maintain that the Application is "contrary" to both GRUZ-P2 and GRUZ-P7. The Applicant disagrees with this characterisation when the Plan is read as a whole and in the factual context. It is however accepted there is some tension with GRUZ-P2 but it is submitted that does not amount to the proposal being "contrary" to the objectives and policies of the Plan.
- 14 For the record the Applicant does not accept that there is any tension with GRUZ-P7 which seeks to "avoid reverse sensitivity effects" on primary production. Unlike the drafting of other parts of the Plan the Policy directs avoidance of a specific type of effect rather than directing the avoidance of a defined activity.
- 15 This exercise of asking first what it is that a policy asks us to avoid is very important. As the Supreme Court told us in *Port Otago Limited vs EDS* at para 66 where it is the effect which is to be avoided the standard is that a decision-maker must either be satisfied there will be "no material harm" or

alternatively be satisfied that conditions can be imposed to mean material harm is avoided, or mitigated so it is no longer material, or remedied in time so it is no longer material.

- 16 Here we are required to avoid the risk of reverse sensitivity effects arising and we are not required to avoid the activity of a constructing a residential unit where there is no increased risk of reverse sensitivity effects occurring.
- 17 "Reverse Sensitivity" is helpfully defined in the Plan and requires us to take steps to assess the risk of this one additional residential unit (which it is noted is itself associated with a farming activity occurring in close proximity to the proposed dwelling and on the Site) leading to the constraining, curtailing or closing down of legitimate farming operations being carried out by neighbours.
- 18 Here no risk of reverse sensitivity effects on the operations of neighbouring properties has even been identified, let alone analysed as to the level of risk arising. There has been no suggestion that there is any increased risk that legitimate rural activities on other properties nearby, and in particular, 116 McDonald Rd, which does carry out typical farming activities, might be constrained and curtailed as a result of the Application being granted.
- 19 One of the mechanisms routinely used to limit the risk of reverse sensitivity effects arising in rural communities is to create buffers or setbacks from existing authorised farming activities. Here the proposed building platform is setback from all boundaries at a distance exceeding the requirements in the rules in the Plan, and there is no evidence to suggest that the setback is not sufficient to avoid all of the effects that are often associated with authorised farming activities occurring on neighbouring properties eg noise/dust/spray drift.
- 20 There is certainly no suggestion that the Applicants or any future residents of the Site will be exposed to adverse effects from neighbours farming activities at such a level such that there is any appreciable risk of curtailment of lawfully authorised activities being carried out.
- 21 In paragraph 89 of the s42A report the Officer agrees that given the setback distance that the proposal will not unduly compromise the ability of the surrounding rural activities to continue operating and concludes that reverse sensitivity effects will be no more than minor.
- 22 It is difficult therefore to reconcile that statement with the statement at paragraph 116 of the s42A report that the proposal is "contrary" to GRUZ -P7 because reverse sensitivity effects can't be avoided.

- 23 By reference back to *Port Otago* it is clear that the policy is met here as there is no risk of "material harm" to lawfully established activities from the addition of one dwelling which is setback a significant distance from neighbours. In that sense the reverse sensitivity effects that the policy is concerned with are avoided in the context of the Application because they do not even arise.
- 24 In relation to GRUZ-P2 the points made previously are repeated that one Policy cannot be read so strictly as if it were a rule, and it can't be read in isolation from the rest of the Plan or divorced from the factual context of the proposal.
- 25 A correct approach to interpretation of the Plan was adopted in another case in the District involving an undersized lot. The decision is attached to Mr McGillan's evidence. (*Harper case*). There the Commissioner concluded *"In terms of rural character and amenity, there is some clear tension with the plan provisions here given the undersized site size. Whilst there is no 'legacy clause' as mentioned in GRUZ-P2, I note the underlying site was laid out in 1882 and the proposal is consistent with the rural character and amenity values in this specific location. It would not result in any reverse sensitivity effects"*.
- 26 The Commissioner was able to conclude that despite "inconsistency" with the policies in respect of productive land and residential densities (including GRUZ-P2) the proposal was consistent in terms of rural character and amenity values and was "generally in keeping with the outcomes sought, but noting the clear direction in terms of densities and productive land such that it would be inconsistent".
- 27 It should be noted that the Applicant does not rely on the Harper case as creating a factual precedent on which the Applicant can rely. It is just an example of how the objectives and policies including the policies on density should be interpreted in the round and to make the point that "inconsistency" with one policy eg in this case GRUZ-P2 because a lot is undersized does not determine the outcome of an Application and the proposal must be considered in its own specific context including its unusual site-specific factors and its specific receiving environment.

The Receiving Environment

- 28 The receiving environment here appears to be agreed between Mr McGillan and the s42A Officer as one which already contains numerous undersized lots with many containing dwellings and that adverse effects on rural character and amenity of the proposed residential dwelling will be no more than minor.

- 29 Mr McGillan has had Mr Peter Wilson prepare a response to the Commissioner's question as to how many of the existing undersized lots already contain a dwelling and that information is also provided. That information helps to explain the receiving environment.
- 30 Mr Wilson explains that within a 2km radius there are 92 existing undersized lots and of those it is estimated that 67 of those already contain a dwelling.

Cumulative and Precedent Effects

- 31 It is important to note the distinction between cumulative effects and precedent effects. Here neither Mr McGillan nor the s42A Officer consider that granting this particular application will give rise to any adverse cumulative effect that is the straw that breaks the camel's back.
- 32 The s42A Officer is however concerned that the grant of this application may result in a precedent effect or an impact on the integrity of the Plan in the sense that like cases should be treated alike.
- 33 As a general observation concerns about precedent effects and impacts on integrity of a Plan are often overstated and overused and are rarely determinative as every non-complying proposal that clears 104D needs to be considered on its own merits. Confidence will only really be affected where a Council ignores its objectives and policies and allows an activity with a major effect which is clearly contrary to those objectives and policies.
- 34 The Applicant points to the fact that the caselaw says that concerns about the plan being implemented in an even-handed way can be dispelled when consent is granted in "sufficiently unusual circumstances" which are outside the generality of cases. It is noted that in the Harper case the Commissioner determined that any precedent effect was limited to existing undeveloped sites in Annat. This means it is not necessary for an Applicant to show that its application is totally unique and could never be replicated anywhere else.
- 35 Here it would be wrong to categorise the proposal as simply being for the construction of a residential unit on an existing undersized lot and making that the sole factor for considering whether there are other sites that could also point to the same factor so as to establish a precedent and that was not the way the Commissioner approached the issue of precedent effects in the context of an existing undersized lot in the Harper case either.
- 36 While Mr Wilson's analysis indicates there are 25 existing undersized lots within 2km we know nothing about the site specific factors which make those sites comparable with the Application, or not, so the information is of very limited use in terms of assessing potential precedent effects.

- 37 Here the combination of factors which make the Application sufficiently unusual start with the fact that the Site has historically been identified as a reserve (since approx. 1800) and the proposal does not involve any application for subdivision. This immediately shrinks the pool of relevant factors that other applicants could rely on.
- 38 The Applicant has given evidence showing that they intend to, and can, carry out a farming activity of operating a Texel stud on only 2ha at this Site. This is a factor missing from almost all other cases involving undersized sites in rural zones as most rural activities are unable to be carried out on a site so small. At least while the Applicants intend to operate their Texel Stud and to live on the Site to provide labour to that operation the Application is no doubt unique. A Texel stud is a very uncommon activity as is any farming activity on 2ha.
- 39 Another factor is that the size of the dwelling is so modest that it will not result in any loss of highly productive land when compared to permitted activities and in fact the counterfactual if consent is not granted is that the land will have limited, if any use, in relation to its productive capacity.
- 40 This Site is of a size and shape such that a setback that significantly exceeds the setbacks in the Plan is able to be accommodated so no risk of reverse sensitivity effects arise. That might be difficult to achieve on other existing undersized sites.
- 41 A highly unusual factor is the shape of the Site and the number of road frontages it has which means it is structurally isolated. It also means that the number of boundaries the Site shares with neighbours including those who might be carrying out authorised farming activities is very limited.
- 42 There is also heavy vegetation on the English Rd frontage which effectively screens the existing building which will be retained. Other sites may not be able to replicate that existing feature.

Dated this 12 day of September 2025



Jo Appleyard
Counsel for the Applicant