

## Sections 95, 95A-E

## 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

APPLICATION NUMBER(S)	RC246049
APPLICANT	Jo & Paul Campbell
BRIEF DESCRIPTION OF THE APPLICATION	Land use consent for the erection of a residential unit on an undersized rural allotment.
ADDRESS	McDonald Road
LEGAL DESCRIPTION	RES 3537
TITLE REFERENCE	1114901
AREA	2.024 ha
ZONING / OVERLAYS	<b>Operative Selwyn District Plan (2016), Rural Volume</b> Outer Plains Zone ECan Defined Flood Zone <b>Partially Operative Selwyn District Plan (Appeals Version)</b> General Rural Zone Plains Flood Management Overlay Rural Density - SCA-RD2
OVERALL ACTIVITY STATUS	<b>Non-Complying</b>

### The Application

1. This application was formally received by the Selwyn District Council on 16 December 2024. Further information was received on 4 April 2025, and this information now forms part of the application.
2. The application proposes the construction of a residential unit on the subject site. This was originally proposed as a 'black box', however drawings were provided as part of the further information request. This proposed residential unit would consist of the following:
  - Footprint of 72m<sup>2</sup> (6m x 12m)
  - Maximum height of 4.3m to ridge and 5 to the top of the chimney

- Finished in a dark grey/black
- On site provision for stormwater, potable water and wastewater.

## Background

### Discharge Consents

3. The application is supported by a memo from Courtenay Environmental in terms of the necessary regional consents required for the discharge of wastewater. This highlights that as the site is less than 4ha a resource consent would be required for this discharge from the regional council. At section 5.0 this memo notes that consent is usually granted on a non-notified basis for these consents, where a secondary treatment system discharging to a surface or subsurface drip irrigation system is provided. On this basis, I consider that it is reasonable to proceed with the processing of this district land use consent, also noting the limited notification identified by the agent, in their AEE, although noting their view changed in the RFI response, and, at this stage, an unknown outcome in terms of the substantive decision.

### The Existing Environment

4. The application site is a triangular shape which fronts Englishs Road to the west and McDonald Road to the north. It is currently occupied by two sets of sheds, those along the northern boundary are made up of two containers (RC195342), whilst more centrally in the site is a 216m<sup>2</sup> shed which was permitted at the time of its construction under a building consent (BC231329). Along the boundary with Englishs Road is a line of mature vegetation.



*Figure 1: Looking south along Englishs Road from near the intersection*

5. The surrounding sites are a mix of lifestyle blocks and larger pastoral farm blocks, with a relatively flat topography across this wider environment. The site and surrounds are shown in figure 2 below.
6. I visited the site on 10 January 2025.

## Activity Status

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

7. The application site is zoned General Rural. The site is also subject to Plains Flood Management and Rural Density - SCA-RD2 overlays.
8. 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.

### Land use

9. The proposed land use activity does not meet the following rules:

### TRAN - Transport

TRAN-REQ4 SITING OF VEHICLE CROSSINGS		
2. When compliance with any of TRANREQ4.1 is not achieved: RDIS	<b>Restricted Discretionary</b>	The existing vehicle crossing is 40m from the intersection where 60m is required. The vehicle crossing does not comply with the 282m sight distance required, 44m provided, to the nearest intersection.
TRAN-REQ5 VEHICLE CROSSING DESIGN AND CONSTRUCTION		
6. When compliance with any of TRANREQ5.5 is not achieved: RDIS	<b>Restricted Discretionary</b>	The crossing is not formed to the standard in TRAN-DIAGRAM5.

### GRUZ General Rural Zone

GRUZ-R5 RESIDENTIAL UNIT ON AN UNDERSIZED SITE		
7. When compliance with any of GRUZ-R5.5 is not achieved: NC	<b>Non-complying</b>	The subject site is 2ha where 20ha is required and no balance land is proposed.

10. The proposal has a Flood Assessment Certificate (FC250065) for the location of the proposed residential unit. This confirms that the site is outside of any high hazard area, however the site is likely to be inundated in a 1 in 200-year event. As a result, a minimum floor level of +4.10m NZVD2016 has been set which the proposal can easily comply with.
11. Therefore, the land use proposal is a **non-complying** activity under the Partially Operative Plan.

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

12. The application site is zoned Outer Plains. The site is also subject to ECan Defined Flood Zone overlay.
13. 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.
14. All rules that would apply to this proposal are now treated as inoperative and the proposal is a permitted activity under the Operative Plan.



## National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS)

15. The NES-CS manages activities which involve the disturbance of land and change of use 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.
16. The application is supported by a Preliminary Site Investigation by Elliot Sinclair dated 19 February 2025. This concludes that it is more likely than not that HAIL activities (specifically HAIL G3 - Landfill Sites) have occurred on site, and as such the NES-CS is applicable.
17. In this case, as no Detailed Site Investigation is available, the proposal is a **discretionary** activity in terms of the NES-CS.

### Overall Activity Status

18. The proposal is being considered as a **non-complying** activity overall.

### Written Approvals (Sections 95D(e), 95E(3)(a) and 104(3)(a)(ii))

19. The provision of written approvals is relevant to the notification and substantive assessments of the effects of a proposal under sections 95D, 95E(3)(a) and 104(3)(a)(ii). Where written approval has been provided, the consent authority must not have regard to any effect on that person. In addition, that person is not to be considered an affected person for the purposes of limited notification.
20. The applicant has provided written approvals from the owners and occupiers of 94 McDonald Road and of 247-249 Englishs Road, indicated with a red star below on figure 2.

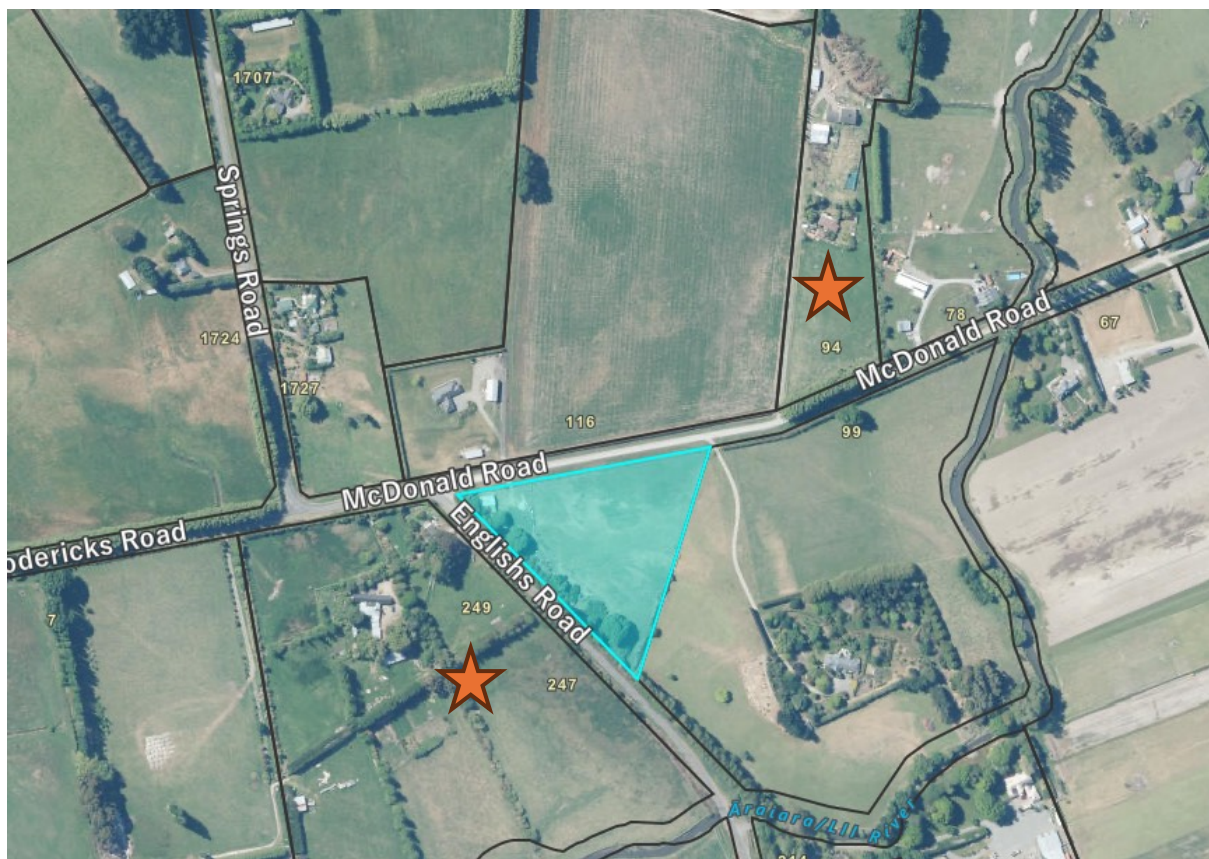


Figure 2: Site & Surrounds (showing written approval)

## Notification Assessment

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

#### Permitted Baseline

21. 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.
22. In this case, the rules in the Operative Plan are no longer operative as the Partially Operative District Plan is now treated as operative. In this regard the Partially Operative Plan permits a range of buildings and structures on the site subject to compliance with the relevant built form standards, I consider this relevant in terms of the proposed built form. Residential activity is permitted on sites that are at least 20ha and given the application site is 2ha, I do not consider that the permitted baseline, in terms of the residential activity, is in anyway helpful.

#### Receiving Environment

23. 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 includes the existing site and the consented sheds, along with the wider receiving environment which is a mix of lifestyle blocks and modest sized pastoral farming. Farming activities are permitted across the zone, however any new residential unit requires resource consent where the site is below 20ha in size. Notably a lot of the surrounding sites are below the 20ha minimum size (see figure 4 in the AEE) such that in terms of the built form and non-rural activities, I consider that there is little change likely to occur without a resource consent.
24. In terms of this surrounding environment and the context this provides, I do consider it relevant that there are a number of sites, as identified at Figure 4 of the AEE, that are between roughly 2ha and 4ha, and a larger portion still that are up to 10ha, all well below the 20ha minimum now anticipated within this part of the General Rural Zone.

#### Restrictions on Matters Considered

25. The status of the activity is **non-complying**. As such, the Council’s discretion is unrestricted, and all adverse effects must be considered.

#### Adverse Effects

26. The adverse effects that might be considered relevant to this proposal are rural character and amenity, transport, contamination, reverse sensitivity and productive land.

#### *Adverse Rural Character and Amenity Effects*

27. In terms of adverse effects on the wider rural character and amenity, the proposed residential unit is modest in size, form and is designed to appear as a typical rural type shed. In terms of the built form, whilst this would introduce a further building on the site, it would meet the relevant built form standards for the zone and in this context, I do not consider that the building in and of itself would have any adverse effects on the rural character and amenity beyond those provided for or anticipated by the District Plan.
28. In terms of the residential activity, for the wider environment (being sites which are not adjacent), the site is screened by existing planting along the boundary with Englishs Road (which the applicant offers to retain through a condition of consent, see RFI Response dated 4 April 2025) which limits inward views of the site here, including from the corner with McDonald Road (noting this is essentially the same road). McDonald Road itself is a gravel road which only serves a limited number of users before it terminates roughly 1km to the east of the site, which limits users of this road. As noted above, the existing environment contains several allotments which are smaller than the 20ha now required by the District Plan, and the additional residential activity would be experienced in the context of this environment for those passing through.

29. I also note that the adjacent sites, particularly 99 and 116 McDonald Road provide large buffers to those further to the east.
30. In the context of the existing environment and the screening provided from McDonald Road, as well as the separation provided by adjacent sites to any other persons, I am of the view that adverse rural character and amenity effects as a result of the increased residential density would be no more than minor on the wider environment.
31. The applicant, in the original AEE, identified that adverse effects on persons at the following adjacent sites would be at least minor, given the increased residential density and activity here, and as such limited notification is required to them.
- 99 McDonald Road
  - 116 McDonald Road
  - 1727 Springs Road
32. The AEE indicates persons at 94 McDonald Road and 249 (includes 247) Englishs Road would also be adversely affected, however as noted above these persons have subsequently provided their written approval.
33. In the further information response, the applicant considers that, upon reflection adverse effects would be less than minor on any adjacent persons. The response notes;
- The proposed use for rural lifestyle is highly appropriate for achieving the purpose of the RMA. The adverse effects are considered less than minor. The proposal is an efficient use of an existing site and there will be no change in reverse sensitive effects greater than already existing from existing land parcels less than 20 ha in area.*
- Consistent with this assessment is permitted baseline in respect of what can occur on the site on a 24 hour basis with no restriction. It is noted that residential activity is permitted on the site and that the establishment of seasonal worker accommodation is also permitted. Given the current rental shortage<sup>1</sup>, and the seasonal work in the area that this is a legitimate and feasible option*
34. In this regard, I consider the first paragraph here relates more to s104 considerations, rather than adverse effects, and reverse sensitivity matters are considered below. In relation to the permitted baseline, residential activity, is in and of itself provided for, however I consider the plan controls the density of this through the residential unit requirements (GRUZ-SCHED2) such that I do not consider there is a baseline here in terms of residential activity. Whilst seasonal workers accommodation is also provided for, I consider this is not comparable to a permanent residential activity noting the definition for seasonal works accommodation is;
- means the use of land and buildings for the sole purpose of accommodating the short-term (i.e. seasonal) labour requirement of a farming activity, rural industry or post-harvest facility*
35. I have no reason to disagree with the original conclusions in the AEE and as such consider that adverse effects, associated with increased residential activity and density here and associated adverse effects on rural character, would be at least minor on the persons identified at paragraph 31 above.
36. For clarity, I consider that given the anticipated outcomes here in terms of minimum residential densities, the introduction of an additional residential unit, on this undersized site, would have at least a minor adverse effect on the anticipated rural character here as experienced by persons identified at paragraph 31.

### **Adverse Transport Effects**

37. The application proposes to utilise the existing vehicle crossing from the site to McDonald Road. This is not dissimilar to other vehicle crossings along this part of McDonald Road, with the road itself unsealed after its intersection with Englishs Road. The proposal has been reviewed by Ms Helen Pullar, Councils Development Engineer who raises no concerns with the vehicle crossing here.
38. The crossing has good visibility in both directions although is limited by the nature of Englishs Road heading south at its intersection with McDonald Road. The introduction of a residential activity here would result in additional vehicle movements, however given the limited vehicle movements along this part of McDonald Road and its unsealed nature, speeds and volumes are likely to be low such that the lack of a crossing which

meets the required formation dimensions, and the shortfall in setbacks from the intersection would not result in any adverse effects on the transport network (in terms of both safety and efficiency) that would be more than minor. I consider that any adverse effects on any persons, notably those at 116 McDonald Roads whose access is opposite site, would be less than minor.

### **Adverse Contamination Effects**

39. The application is supported by a Preliminary Site Investigation (PSI) by Elliot Sinclair dated 19 February 2025. This concludes that it is more likely than not that HAIL activities (specifically HAIL G3 - Landfill Sites) have occurred on site, and as such the NES-CS is applicable. This notes that the main risk to human health results from soil disturbance and that detailed testing will be required should this activity occur. The agent undertook further consultation with the contamination specialists who undertook the PSI and noted that the specialists 'are of the opinion that the opinion that any risk is minimal and that an appropriate accidental discovery protocol condition in respect of contamination is appropriate. The proposed dwelling has a small footprint any earthworks are likely limited and if contamination was discovered it was their opinion it could well be appropriately remediated onsite'.
40. This has been reviewed by Ms Maiya-Rose Sadler - Science Analyst at Environment Canterbury on behalf of the Council. Ms Sadler noted that the PSI had not fully characterised or identified the extent of the landfilling/soil disturbance area and as such the risk is unknown. Ms Sadler notes that in this instance contamination discovery protocols aren't overly useful for contaminants that aren't visible to the unaided eye (e.g. heavy metal contamination) and could be argued that the contamination was not unexpected or accidental as they have already identified the risk of contamination. Ms Sadler recommends that a suite of conditions are appropriate, and I note that the PSI itself recommends that a Detailed Site Investigation is undertaken 'to characterise the underlying soils and to determine contaminant concentrations across the proposed building platform'.
41. Given Ms Sadler's conclusions, a draft set of proposed conditions were shared with the agent, which included the requirement for a full DSI and subsequent remediation and site validation. The agent sought further advice from their SQEP (Philippe Dumont, Environmental Scientist at Elliot Sinclair) who noted that *'I would feel comfortable with some language related to soil management during construction, i.e. temporary stockpiling in safe condition with indicative soil analysis to confirm/infirm contaminants levels are suitable for on-site use. If not suitable (i.e. above residential guideline values) we would propose solutions, for instance a long-term management plan for contaminated soil maintained on site. The accidental discovery is still valid'*
42. Whilst there is no fully agreed set of conditions at this stage to rely on to mitigate any adverse effects on human health from contamination, I do consider that there is an alignment here that can be relied upon, and noting the limited notification recommendation above, can be resolved through the process.
43. Overall, subject to appropriate conditions of consent (of which there is a level of 'offered conditions' at this stage), any adverse effects on human health can be appropriately managed and mitigated such that they would be less than minor on the wider environment and any persons.

### **Adverse Reverse Sensitivity Effects**

44. The application proposes the introduction of a new residential unit within the receiving environment which has the potential to generate complaints about existing lawfully established or permitted activities. From the aerial photography, it appears that only 116 McDonald Road is used for a 'typical' farming activity, with other adjacent sites being lifestyle blocks which may support grazing/pastoral farming.
45. The proposed building platform is located roughly 80m to the south of persons at 116 McDonald Road, whereby the District Plan requires a minimum setback of 30m from an internal boundary for residential units. The proposed location also complies with the setbacks from all other boundaries. Given the proposed setback from any internal boundaries, I consider that reverse sensitivity, in terms of the proximity of the dwelling to any sites which could as of right undertake primary production/farming activities, would be no greater than the District Plan anticipates. Whilst there would be an additional dwelling, I consider that the setbacks rather than density controls seek to manage reverse sensitivity, noting that there are no shape requirements for rural sites, such that multiple residential units could be located adjacent (but setback 30m) to rural activities.
46. I also note that the establishment of any intensive primary production activity would require resource consent in this locality given it requires at least a 300m setback from the notional boundary of an existing sensitive



activity (residential units), of which there are many here. In this context, I am of the view that any adverse reverse sensitivity effects would be less than minor on any persons.

47. In terms of the wider environment, I consider that the adjacent sites, all of which contain residential units, would provide a sufficient buffer, along with large separation distances (200m - 1707 Springs Road, 310m - 1724 Springs Road, 260m - 78 McDonald Road, 294m - 67 McDonald Road, 291m 205 Englishs Road and 345m - 7 Goodericks Road) from this 'wider environment' such that the proposal would not result in any adverse reverse sensitivity effects on the wider environment that would be minor or more than minor.

### **Adverse Productive Land Effects**

48. The NZLRI Land Use Capability maps indicate that the site has Class 1-3 versatile soils as such it meets the PODP definition of 'highly productive soils'. The application is supported by an assessment by The AgriBusiness Group (undated) which provides an assessment against the NPS-HPL. In terms of adverse effects from the erection of a 72m<sup>2</sup> residential unit, I note that the plan permits a building coverage of up to 5% on sites greater than 1ha (1,000m<sup>2</sup> in this case), with site coverage here being conservatively 500m<sup>2</sup> including the proposed dwelling.
49. In this context, I do not consider that the proposal would result in adverse effects in terms of the loss of productive soils that would be greater than anticipated by the District Plan.

### **Conclusion**

50. I conclude that the adverse effects on the wider environment will be no more than minor, however on any person they will be at least minor as identified above such that limited notification to those persons must occur.

### **Public Notification (Section 95A)**

51. 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.

<b>STEP 1: MANDATORY PUBLIC NOTIFICATION IN CERTAIN CIRCUMSTANCES (SECTIONS 95A(2) AND 95A(3))</b>	
Has the applicant requested the application is publicly notified?	No
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)?	No
Has the application has been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?	No

<b>STEP 2: PUBLIC NOTIFICATION PRECLUDED IN CERTAIN CIRCUMSTANCES (SECTIONS 95A(4) AND 95A(5))</b>	
Are all activities in the application subject to one or more rules or national environmental standards that preclude public notification?	No
Is the application for one or more of the following, but no other types of activities: A controlled activity? A boundary activity only (as per the definition of "boundary activity" in s 87AAB of the Act)?	No

<b>STEP 3: PUBLIC NOTIFICATION REQUIRED IN CERTAIN CIRCUMSTANCES (SECTIONS 95A(7) AND 95A(8))</b>	
Is the activity subject to a rule or national environmental standard that requires public notification?	No
Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor?	No

<b>STEP 4: PUBLIC NOTIFICATION IN SPECIAL CIRCUMSTANCES (SECTION 95A(9))</b>	
Do special circumstances exist in relation to the application that warrant public notification?	No



## Conclusion

52. 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)

53. 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.

STEP 1: CERTAIN AFFECTED GROUPS AND AFFECTED PERSONS MUST BE NOTIFIED (SECTIONS 95B(1)-(4))	
Are there any affected protected customary rights groups, as defined in s 95F?	No
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))?	No
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?	No

STEP 2: LIMITED NOTIFICATION PRECLUDED IN CERTAIN CIRCUMSTANCES (SECTIONS 95B(5) AND 95B(6))	
Are all activities in the application subject to one or more rules or national environmental standards that preclude limited notification?	No
Is the application for a controlled activity under the district plan only and not a subdivision of land?	No

STEP 3: CERTAIN OTHER AFFECTED PERSONS MUST BE NOTIFIED (SECTIONS 95B(7)-(9))	
In the case of a "boundary activity", is an owner of an allotment with an infringed boundary an affected person?	No
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)?	Yes

STEP 4: LIMITED NOTIFICATION IN SPECIAL CIRCUMSTANCES	
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)?	No

## Conclusion

54. 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.
55. The owners and occupiers of:
1. 99 McDonald Road (LOT 2 DP 76062 BLK V HALSWELL SD)
  2. 116 McDonald Road (LOT 2 DP 77942 BLK V HALSWELL SD)
  3. 1727 Springs Road (LOT 3 DP 77942 BLK V HALSWELL SD)


## Notification Recommendation

56. I recommend that the application(s) RC246049 be processed on a **Limited Notified** basis in accordance with sections 95A-E of the Resource Management Act 1991.

<b>Report by:</b> Jonathan Gregg Consultant Planner	Date: 11 April 2025
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## Notification Decision

- [1] Overall, I agree with the Mr. Gregg's assessment, except in respect to reverse sensitivity effects. While I agree that setbacks play a role in managing reverse sensitivity effects, I'm not convinced that setback requirements are the sole mechanism through which the District Plan anticipates and mitigates such effects. Rather, I understand that the density provisions in the District Plan also serve to restrict the proliferation of sensitive activities, such as residential units, within the rural zone thereby protecting the viability of existing lawful rural activities. In this instance, although the proposed residential unit would comply with setback requirements, its occupation of an undersized rural allotment would introduce a sensitive activity into a setting where such development is not anticipated.
- [2] That said, I find that any reverse sensitivity effects would be no more than minor and limited to the same adjacent properties identified in paragraphs 31 and 55 above. Similarly, I am satisfied that the written approvals provided remain valid as reverse sensitivity effects are an expected consequence of establishing a residential unit on an undersized allotment. Accordingly, this matter does not materially challenge Mr. Gregg's overall recommendation.
- [3] For these reasons, I find that the land use resource consent application to construct and occupy a residential unit on an undersized rural allotment be limited notified to the owners and occupiers of the sites listed in paragraph 55 above.

 Commissioner O'Connell	Date: 15 April 2025
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