

Sections 104, 104B, 104D, 108, 108AA

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:

- Granted or declined, and, if granted, the conditions of consent

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	Operative Selwyn District Plan (2016), Rural Volume Outer Plains Zone Lower Plains Flood Area Partially Operative Selwyn District Plan (Appeals Version) General Rural Zone Plains Flood Management Overlay Rural Density - SCA-RD2
OVERALL ACTIVITY STATUS	Non-Complying
HEARING COMMENCES	4 August 2025
RECOMMENDATION	Decline

Preamble

1. This report reviews the application for resource consent and addresses the relevant information and issues raised. The recommendation made in this report is not binding on the Independent Hearings Commissioner, and it should not be assumed that the Commissioner will reach the same conclusion, having considered all the evidence brought before the hearing by the applicant and the submitters.

Report Author

2. My name is Jonathan Gregg, and I have prepared this s 42A report for Selwyn District Council (the Council) with regard to the subject application. I have over eleven years' experience as a planner, including a total of almost five years at the Auckland and Christchurch Councils and now over a year at a private planning

consultancy. Prior to this I worked for Auckland Transport and prior to this for nearly 5 years as a planner in the UK. I am currently engaged by the Council as a Consultant Planner.

3. I hold a Masters in Planning (MPlan) from the University of Sheffield and I am currently an Associate Member of the New Zealand Planning Institute.
4. Whilst this is a Council hearing, I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. My qualifications as an expert are set out above. I confirm that the issues addressed in this report are within my area of expertise and I have relied on the expert advice of others where stated. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Technical Input

5. The processing of the resource consent application and preparation of this report has been undertaken with specialist advice from:
 - Ms Helen Pullar, Development Engineer, Selwyn District Council.
 - Ms Maiya Sadler, Science Analyst, Environment Canterbury
6. Ms Sadler has provided further s42A evidence, following notification, including a review of the submissions and noting the now agreed contamination related conditions, this can be found at **Appendix A**. No submissions raised transport related matters, and as such Ms Pullar's initial expert advice is relied upon.

The Application

7. 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.
8. 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 72m² (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

9. 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.

Plans

10. Whilst the plans submitted as part of the further information response, do contain a different address to this application site, the applicant has confirmed that this would be the design that they wish to construct, should resource consent be granted.

Conditions

11. **Appendix B** contains a set of proposed conditions, should the commissioner be minded to granted resource consent. At this stage, these have been shared with the applicant.

The Existing Environment

12. 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 216m² 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

13. 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.



Figure 2. Aerial image of locality. Source: Toitū Te Whenua (LINZ)

14. I visited the site on 10 January 2025.

Activity Status

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

15. The application site is zoned General Rural. The site is also subject to Plains Flood Management and Rural Density - SCA-RD2 (East Plains/ Te Waihora ki Waimakariri) overlays.
16. 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

17. 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	Restricted Discretionary	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	Restricted Discretionary	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	Non-complying	The subject site is 2ha where 20ha is required and no balance land is proposed.

18. 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”)

19. The application site is zoned Outer Plains. The site is also subject to the Lower Plains Flood Area overlay.
20. 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.
21. 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)

22. 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.
23. 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.
24. In this case, as no Detailed Site Investigation (DSI) is available, the proposal is a **discretionary** activity in terms of the NES-CS.

Overall Activity Status

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

Written Approvals (Section 104(3)(a)(ii))

26. The provision of written approvals is relevant to the notification and substantive assessments of the effects of a proposal under section 104(3)(a)(ii). Where written approval has been provided, the consent authority must not have regard to any effect on that person.
27. 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 3. Following limited notification written approval was also provided by persons at 1727 Springs Road and confirmed via email. These persons are indicated with a yellow star below on Figure 3.



Figure 3: Site & Surrounds (showing written approval)

28. In terms of persons at 1127 Springs Road, the council received only a signed form from these persons following limited notification. I followed up with the owner/occupier via email, who stated 'we have provided written consent multiple times to say we support this application', I also spoke to the owner on the phone, who reiterated this on the phone, where they also verbally indicated they were aware that this meant any adverse effects on them would be disregarded.
29. I am comfortable that, on this basis, these persons are aware of the process and have provided written approval and I have proceeded on that basis. If the commissioner is not satisfied, I consider my conclusions below would be equally applicable to these persons.

The Limited Notification

30. A decision regarding notification pursuant to Sections 95/95A-E has been undertaken separately by a Commissioner on 15th April 2025 acting under delegated authority from the Selwyn District Council. This is attached as **Appendix C**.
31. In summary, it was determined that the application be limited notified, with the following being affected persons for the purposes of notification (identified in **Figure 4** below with a blue star):
- The owners and occupiers of;
- 99 McDonald Road
 - 116 McDonald Road
 - 1727 Springs Road (noting these persons subsequently provided written approval)



Figure 4: Site & Surrounds (showing limited notified parties)

Submissions

32. A total of two submissions were received. Full copies of all submissions are included in **Appendix D**. It is noted that full copies of the submissions have been provided to the Commissioner and that the submissions have also been available on the Council's website since the closure of the submissions period. Submissions were received from both 99 and 116 McDonald Road.
33. I have read each of the submissions, both of which were in opposition to the proposal and covered a range of matters, summarised as follows.
 - a) Rural character and amenity
 - b) Residential amenity (noise/privacy)
 - c) Reverse sensitivity
 - d) Use of highly productive land
 - e) Contamination
 - f) Flooding/Stormwater management
34. One of the submissions also includes a letter from WSP relating to the sale of the land in 2021.
35. The other submission raises a range of procedural matters around notification, consultation and compliance concerns, and matters related to surveillance, property interference and boundary disputes.

Matters out of Scope

Scope/Procedural Matters

36. Firstly, I consider it prudent to deal with the procedural matters around the notification, specifically in regard to the information, specifically around contamination. The NES-CS is limited to contaminated soils and the adverse effects of this on human health, the discharge of contaminants (including from greywater/wastewater) is a matter for regional councils and is outside the scope of this application and of Selwyn District Council as the territorial authority.
37. The NES-CS does not, at any stage require public notification for activities, and provides a specific (discretionary activity) pathway where no DSI has been provided where the land meets the 'piece of land' definition in regulation 5(7) or (8) of the NES-CS.
38. Finally, I note that the contamination was disclosed through the further information process, which provided information to build upon the encumbrance registered on the title which notes that the site '*may be contaminated and may require clean up action*'.
39. In terms of the timeframes for responding to the further information request, the applicant requested additional time to respond, and this is, in my experience, a normal process that does not, noting that there is no requirement to consult under the RMA, affect the natural justice or fair process element here, given it came prior to the formal notification decision. I am not aware of any extension of time being sought by either submitter when it comes to this application.
40. As noted above, under the RMA there is no requirement to consult or engage with any party prior to a notification decision being made, at which point, where limited or public notification occurs, the formal consultation and notification provisions then take place.
41. This resource consent is limited to the RMA and provisions under the District Plans. It does not look at any regional consenting matters or cover any matters that fall within other legislation as raised in one of the submissions.
42. Similarly, the compliance history of the applicant, or the site, are not matters that can be considered by this resource consent.
43. The encumbrance is not an RMA matter and is a separate legal instrument, although, it is limited to noting that the site 'may be contaminated'.
44. Finally matters related to surveillance/property interference and boundary disputes are private matters and sit outside of this RMA process.

Section 104 Assessment

45. Section 104 of the Act sets out the matters the Council must have regard to when considering an application for resource consent.
46. Section 104(1), in particular, states as follows:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2 and section 77M [Effect of incorporation of MDRS in district plan], have regard to—*
 - (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard:*

- (ii) other regulations:
- (iii) a national policy statement:
- (iv) a New Zealand coastal policy statement:
- (v) a regional policy statement or proposed regional policy statement:
- (vi) a plan or proposed plan; and
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

...

47. Section 104(2) states that a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan, i.e. the operative plan, permits an activity with that effect.
48. Section 104B applies to discretionary and non-complying activities. It allows that the consent authority may grant or refuse the application, and, if granted, it may impose conditions under s 108.
49. Section 104D applies an additional, particular restriction to non-complying activities. A consent authority may grant consent for a non-complying activity only if it is satisfied that either the adverse effects on the environment will be minor or the activity will not be contrary to the objectives and policies of the plan and proposed plan.

Assessment of Environmental Effects (Sections 104(1)(a))

Permitted Baseline

50. 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.
51. 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.
52. I also reiterate my s95 recommendation, noting that seasonal workers accommodation is provided for here however, I consider this is not comparable to a permanent residential activity noting the definition for seasonal works accommodation
53. As such, I do not consider, in terms of the establishment of a permanent residential activity, that there is any comparable, relevant or useful permitted baseline.

Receiving Environment

54. 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 here, 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.
55. 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

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

Effects

57. I consider that the effects that might be considered relevant to this proposal are rural character and amenity, transport, contamination, flooding, reverse sensitivity and productive land.

Rural Character and Amenity Effects

58. The assessment of effects on rural character and amenity must consider two aspects: the physical presence and appearance of the proposed building, and the introduction of the residential activity at a density that does not meet the plan's standards. Both submitters have raised concerns regarding these effects
59. The proposed residential unit is of a modest scale, with a footprint of only 72m² and a maximum height of 4.3m to the ridge. The design is intended to appear as a typical rural-type building, and it will be finished in a dark grey/black recessive colour. Importantly, the proposed building will comply with all relevant built form standards of the General Rural Zone, including requirements for height and setbacks.
60. The site benefits from a line of mature vegetation along the Englishs Road boundary, which the applicant has offered to retain via a condition of consent. This vegetation provides effective screening from that road and the intersection. While more visible from McDonald Road, the small scale and recessive design of the residential unit, secondary to the existing 216m² shed on site, means its physical presence will not be visually dominant.
61. For these reasons, I consider that the building will not detract from the character of the surrounding area beyond what is anticipated by the Partially Operative District Plan's built form controls and is therefore acceptable.
62. The core of the issue lies with the introduction of a residential activity on a 2ha site, which is a significant departure from the 20ha minimum density sought by the Partially Operative District Plan. This policy direction seeks to avoid the development of residential units on sites that are smaller than the required minimum site size, with limited exceptions. The purpose of this policy is to maintain the essential components of the General Rural Zone's character, which is described as a landscape dominated by openness and with significant visual separation between neighbouring residential buildings.
63. However, an assessment of the effects on rural character requires consideration of the existing receiving environment. The area surrounding the site is not a uniform landscape of 20ha+ holdings. As identified in the application and my site visit, it is a mix of lifestyle blocks and limited larger farms. Figure 4 of the AEE shows that many of the surrounding lots with residential units are well below the 20ha minimum, with several between 2-4ha and a larger number up to 10ha. While the proposal does not meet the anticipated density of the Partially Operative District Plan, its establishment within this existing pattern of development does not represent a fundamental or jarring change to the established local character.
64. Therefore, while the proposal is out of step with the anticipated character, in the form of the density here, its addition to the established character of the immediate locality is less pronounced. The introduction of one additional, modestly sized residential unit does not fundamentally alter or degrade the mixed-density character that already exists. On this basis, the effect on rural character is considered to be no more than minor.
65. In terms of amenity effects on neighbouring properties, particularly the submitters, the large size of those adjoining lots provides a buffer and visual separation from the proposed residential unit, which is of a modest size. The proposed building platform is setback from all boundaries in accordance with the rules, ensuring privacy is maintained. The noise and general activity associated with a single, small residential unit are consistent with the level of amenity already experienced in the existing environment
66. Having regard to the modest scale and recessive design of the proposed residential unit, its compliance with built form standards, the significant separation from neighbouring residential unit, and the context of the

existing receiving environment which already contains numerous undersized lots, I conclude that the adverse effects on rural character and amenity will be no more than minor.

Transport Effects

67. 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. Ms Pullar's original assessment, for the notification report is at **Appendix E**. I note that neither submission raised transport related concerns.
68. 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.
69. Given this environment and Ms Pullar's advice, I am satisfied that any adverse transport effects, notably in terms of safety, would be minimised by the location of the crossing and that they would be less than minor and acceptable.

Contamination Effects

70. 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.
71. The agent undertook further consultation with the contamination specialists who undertook the PSI and noted that the specialists 'are of the opinion that any risk is minimal and that an appropriate accidental discovery protocol condition in respect of contamination is appropriate. The proposed residential unit 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'.
72. 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, with the PSI itself recommending that a Detailed Site Investigation is undertaken 'to characterise the underlying soils and to determine contaminant concentrations across the proposed building platform'.
73. In terms of the submissions, Ms Sadler considers that the concerns raised are valid, both in terms of human health and the environment, relating to both the soil disturbance and the potential ongoing discharge of stormwater/greywater. Ms Sadler does note that in terms of discharges to ground, that these are outside of the scope of this assessment. In terms of the disturbance of soil, and the use of the site for residential activity, Ms Sadler concludes that subject to the suite of conditions, agreed to by the applicant, that any adverse contamination effects can be appropriately managed and mitigated, including on any adjoining persons/sites.
74. Ms Sadler notes that in this instance, a DSI, prior to any work occurring on site is required, and that this can be appropriately managed through the conditions provided in her evidence (at **Appendix A**) with subsequent remediation action plans and site management plans. 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 applicant has agreed to these conditions, and they form part of the draft condition set at **Appendix B**.
75. Overall, given the expert advice of Ms Sadler, and subject to appropriate conditions of consent any adverse effects on human health can be appropriately managed and would be less than minor on the environment and acceptable.

Adverse Flooding Effects

76. 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 can be managed through a condition of consent.
77. A submission raised the issue of flooding and stormwater management and potential impacts of runoff onto neighbouring sites.
78. The Partially Operative District Plan controls flood risk through the Plains Flood Management Overlay, with buildings requiring a minimum flood area (NH-R2) and earthworks controlled through NH-REQ4, which seeks to ensure no displacement or diversion of flood waters such that it would be exacerbated on other properties.
79. The extent of earthworks proposed here, limited to the foundations for the proposed residential unit, would not in my opinion, result in any displacement or diversion of flood water to other properties. Whilst there may be existing flood/surface water issues during heavy rain events, I do not consider that these will be further exacerbated by this proposal.
80. On this basis, I do not consider the proposal would give rise to flooding effects that would be any greater than anticipated by the Partially Operative District Plan, with a condition of consent ensuring the residential is built to meet the minimum floor level, mitigating flood risk here.

Reverse Sensitivity Effects

81. The General Rural Zone is described by the Partially Operative Plan as “areas predominantly used for primary production activities, including intensive indoor primary production”. The zone may also be used for a range of activities that support primary production activities, including associated rural industry, and other activities that require a rural location”. The potential for reverse sensitivity effects can exist when a new and sensitive activity establishes and then complains about or objects to the effects generated by a lawfully established existing activity or a permitted activity. Reverse sensitivity in the Partially Operative District Plan is defined as;

The potential for an approved (whether by consent or designation), lawfully established existing or permitted activity to be compromised, constrained, or curtailed by the more recent establishment, intensification, or alteration of another activity that may be sensitive to the actual, potential or perceived adverse environmental effects generated by the approved, lawfully established existing or permitted activity.

82. Land-based primary production activities can produce effects such as noise, dust, traffic and odour effects, which may be perceived as potential nuisance effects, particularly where a new activity does not generate those same effects and may be more sensitive to those ‘typical’ primary production effects. In this context, the proposed use of the site will include land-based primary production (i.e. grazing or horticulture), which may decrease the potential risk of reverse sensitivity effects. I also note the planning framework here seeks to ‘avoid reverse sensitivity effects’ (GRUZ-P7).
83. 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. This submission raised this as a concern, notably that complaints have already occurred, and that these submitters do not support the use of no complaints covenants or similar methods to mitigate reverse sensitivity effects. The other submission also raises this as a concern in terms of impacts on farming here.
84. I do agree with the applicant 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 activity). However, I note that reverse sensitivity is not restricted to ‘intensive primary production’.
85. I note the commissioner comment on the s95 decision, and I have reflected on that basis, noting my original assessment in the s95 recommendation, and the submissions provided.

86. In this context, I do consider that the density rules, through minimum lot sizes are a method through which the Partially Operative District Plan seeks to limit the number of sensitive activities within the environment to minimise and manage reverse sensitivity effects. I consider this relates to the potential number of residential units, whilst the setbacks themselves control the distances from adjacent activities.
87. The receiving environment, as discussed previously, includes a density of residential units that is already out of step with the density anticipated here. This is not a pristine rural area devoid of residential activities, or even a rural area with the anticipated residential density. The locality is already characterised by a mix of 'lifestyle blocks'. The potential for reverse sensitivity conflicts is therefore an existing characteristic of this environment. The addition of one more residential unit, while increasing the number of sensitive receptors, would not, in my view, fundamentally alter this dynamic or introduce a new type of conflict. Therefore, I consider that the key method, in such a receiving environment, to control reverse sensitivity effects are the setbacks.
88. The proposed residential unit is located approximately 80m from the northern boundary adjoining 116 McDonald Road and separated by the gravelled McDonald Road. This significantly exceeds the 30m minimum setback for residential units from an internal boundary required by the plan. I consider this substantial separation distance to be, in this instance and given the receiving environment here, the primary mitigating factor, as it will reduce the potential for day-to-day farming activities to cause a nuisance to the occupants of this residential unit to an acceptable level.
89. Given the proposal's compliance with, and exceedance of, the minimum setback distances, and the context of the existing mixed rural-lifestyle environment, I am of the view that the proposal will not unduly compromise the ability of surrounding rural activities to continue operating. I, therefore, conclude that the adverse reverse sensitivity effects will be no more than minor.

Productive Land Effects

90. The NZLRI Land Use Capability maps indicate that the site has Class 1-3 versatile soils as such it meets the Partially Operative District Plan 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.
91. This proposal is for the erection of a 72m² residential unit, I note that the plan permits a building coverage of up to 5% on sites greater than 1ha (1,000m² in this case), with site coverage here being conservatively 500m² including the proposed residential unit.
92. In terms of loss of productive land from this proposal, 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 Partially Operative District Plan.

Positive Effects

93. It is also appropriate to consider the positive effects of the proposal at this section 104 stage. The application outlines a range of anticipated positive effects, as below.
- The proposed activity will result in a reduction of two potential adverse effects that would result from primary production (nutrient loss and the emissions of greenhouse gases).
 - The social impacts from the proposal will remain largely unchanged from the current land use and likely to result in a marginally positive effect.
 - A positive outcome of the proposed dwelling being built could also enhance temporary employment in the area.
 - Providing low impact accommodation for the applicants allowing better management and oversight of the property
94. In regard to these, I do not consider that these are positive effects, noting the plan seeks to provide for primary production in the GRUZ. In terms of construction, given the size of the proposal, this would be limited in both extent and time and whilst the proposal would provide accommodation for the applicant, this does not, in my view, present as a positive effect.

Conclusion

95. Overall, and based on the above, I consider that subject to a range of conditions I conclude that the adverse effects on the wider environment will be no more than minor, however on

Section 104(1)(b) – Relevant Provisions of Statutory Documents District Plans (section 104(1)(b)(vi))

Operative Plan – Objectives and Policies

96. As discussed, the rules that previously applied at the time of the notification decision and that were not complied with are now inoperative. Therefore, the objectives and policies in the Operative Plan are not discussed in any detail, as I give the Partially Operative Plan significantly more weight. This is discussed further below in the weighting section.
97. Due to the permitted status of the proposal under the Operative Plan and the minimal weight to be given to its objectives and policies, I consider the proposal to be consistent with the Operative Plan.

Partially Operative Plan – Objectives and Policies

98. The Partially Operative Plan objectives and policies that I consider are most relevant to the activity and its non-compliance relate to strategic directions, contamination, transport and the general rural zone.
99. The overarching direction for the Plan is expressed through the strategic directions. Due to the formatting and preparation of the Plan, all other objectives and policies in all other chapters of the Plan are to be read and implemented in a manner that gives effect to and is consistent with these Strategic Directions. All strategic objectives have equal standing, and they must be read as a whole. Those objectives and policies that I consider relevant, and reference are included under the relevant heading in **Appendix F**.

Strategic Directions

100. Those provisions relevant to the District Identity and this proposal seek that:
- Selwyn is an attractive and pleasant place to live, work and visit and takes into account the existing and anticipated character of individual communities (SD-DI-O1);
 - The economy and community well-being are supported through efficient use of land, resources, and infrastructure, while ensuring existing activities are protected from incompatible activities and reverse sensitivity effects (SD-DI-O2);
 - Land and water resources are managed in an integrated manner, recognising the relationship of ecosystems and processes and ki uta ki tai (SD-DI-O3);
 - The matters that make an important contribution to the composition of Selwyn's environment, cultural heritage, or are of significance to Ngāi Tahu, are identified, recognised and protected (SD-DI-O4);
 - Outside of defined areas, highly productive land is retained for rural production activities and that rural communities retain their rural character (SD-DI-O6);
 - Selwyn has a well-functioning urban environment that provides for social, economic, and cultural wellbeing, and for their health and safety, now and into the future (SD-UFD-O1); and
 - Urban growth inside Greater Christchurch is limited to existing urban areas, Greenfield Priority Areas, or Future Development Areas identified in the Canterbury Regional Policy Statement (SD-UFD-O2).
101. These provisions set out the high-level general direction for the plan, especially with regard to directing the locations for future development to ensure that the district remains an attractive place to live, work and visit. I note that these seek efficient use of land and resources, whilst protecting existing activities from reverse sensitivity effects and that highly productive land is protected and rural communities retain their rural character.

102. Given this high-level direction, I consider, on their own, that the strategic directions provide no clear direction as to the appropriateness of this individual proposal, with the policies within the relevant chapters providing this clarity.

Contamination

103. Objective CL-O1 seeks to protect human health and the environment from the adverse effects of contaminated land. Policy CL-P1 reinforces this by requiring best practice approaches to remediate the contamination or manage activities on contaminated land to protect people and the environment.
104. Given the expert advice provided, that the risk from the contamination can be appropriately managed and mitigated through the conditions of consent, I consider that the proposal is consistent with these provisions.

Transport

105. TRAN-O1 seeks a transport system that is safe, efficient, and effective for all modes with a view to reducing tendency on private motor vehicles. TRAN-P1 reinforces this whilst TRAN-P11 seeks to Manage vehicle access, vehicle crossings and manoeuvring areas to maintain the safe and efficient operation of land transport corridors.
106. As noted in the above assessment the proposed vehicle crossing would maintain the safe and efficient operation of the transport network here, noting its separation from the intersection and the formation being consistent with the road and other neighbouring vehicle crossings. In this regard, the proposal is entirely consistent with these provisions.

General Rural Zone

107. Objective GRUZ-O1 looks for use and development in rural areas to support, maintain and/or enhance the function, form character and amenity value of rural areas. Primary production should be prioritised over other activities, and these activities should be protected from reverse sensitivity effects. Highly productive land should be protected, with this reinforced by GRUZ-P1A, and rural areas should retain a contrast in character to urban areas.
108. GRUZ-P1 reinforces this objective and seeks a rural character and amenity that consists of a low overall building density, manages the density and location of residential development and retains a clear delineation between the rural and urban areas of the district. It also reinforces the need to enable primary production activities, recognising that these activities can produce noise, dust, odour and traffic effects. Policy GRUZ-P4 look to provide for the economic development potential of the rural area, by enabling a range of activities.
109. GRUZ-P7 reinforces the need to avoid reverse sensitivity on primary production activities (notably any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities, not just intensive primary production) that are lawfully authorised or established.
110. Critically, in my view for this proposal, GRUZ-P2 is a density specific policy, which seeks to avoid the development of residential units on sites that are smaller than the required minimum site size, except where one of the exceptions in 1-4 are met, along with 5.
111. The application, as part of the response to a further information request, provided a legal memorandum ('legal memo') from Chapman Tripp, dated 27 March 2025. This sets out the background to the application and notes that the proposal is not for a subdivision, but for the use of an already undersized allotment. In terms of the objectives and policies, it references both the CPRS (considered below) and the Strategic Directions (considered above).
112. In terms of GRUZ-P2, the legal memo considers that 'read in a vacuum, the policy provides that decision makers avoid development except' where it fits into the exceptions. However, it considers that adopting this interpretation does not reconcile with the higher-level provisions and would be illogical and inconsistent given the history of the site and that the alignment of the proposal with the rural character and amenity values. As such, it considers that 'avoid' needs to be softened to give effect to the higher-level objectives and policies,

and only where there is an existing under-sized lot and an assessment is provided for under GRUZ-R5 (being the rule which deals with residential units on undersized sites, where they meet specific criteria).

113. For GRUZ-P7, the legal memo considers that the reverse sensitivity impacts would be 'less than minor' especially in the context of the existing environment here with varied lot sizes and lower intensity primary production that occurs within the vicinity as a result of this.
114. Firstly, as discussed in my adverse effects assessment, I do not consider the building, in and of itself would detract from the character and amenity of the rural area here, nor result in the loss of highly productive land, given what the plan enables to occur as of right. In terms of GRUZ-P4, I note that a range of economic uses of the land are provided for and would be supported by this policy.
115. Given this, the proposal turns on the introduction of a residential unit, and by association residential activity onto the site, with the activity bringing about a change to that rural character and amenity anticipated in this location by the plan and potentially introducing reverse sensitivity effects on existing primary production activities.
116. In terms of reverse sensitivity (note the definition at paragraph 81 above), I do not consider there is a way to avoid the potential for reverse sensitivity effects. The proposal would introduce a new sensitive activity, at a density that is not, now, anticipated here, into an environment that includes established primary production activities. This is a clear and directive policy which does not seek to manage or minimise reverse sensitivity effects but simply avoid them. Given this, the proposal is **contrary** to the policy as reverse sensitivity effects will not be avoided
117. Turning to GRUZ-P2, I do not consider, and from the AEE, RFI response and legal memo, neither does the applicant, that any of the exceptions in GRUZ-P2 apply and therefore this policy is clear that the development of residential units on sites smaller than the minimum site size required need to be avoided. GRUZ-P2 is a directive policy that does not result in any conflicts with the more general objectives and policies found within the GRUZ chapter or the strategic directions, in my opinion the direction provided by GRUZ-P2 is entirely consistent with the other provisions.
118. In terms of 'grafting' an additional exception where the existing site is undersized, I do not consider that the consideration of this resource consent is the place to do so. The PODP was drafted in such a way that the minimum site areas apply to both subdivision and land use proposals, and I note that a more enabling rule or policy as suggested in the legal memo could have been implemented for new residential activities on existing undersized sites but wasn't.
119. Given this proposal is for a residential unit on a 2ha site, where the minimum site size is 20ha, the proposal is in my view clearly **contrary** to Policies GRUZ-P1(3), GRUZ-P2 and GRUZ-P7.

Conclusion

120. In conclusion, I do not consider there is any conflict or inconsistency between GRUZ-P2 and either GRUZ-O1 or the strategic directions. In my view GRUZ-P2 (and GRUZ-P1 in so far as it relates to density of residential development) implements these higher-level provisions notably in terms of the anticipated rural character, form and amenity that is to be provided across the district in terms of residential densities.
121. As such, whilst the proposal is consistent with the provisions in relation to contaminated land and transport, it is, in my view, **contrary**, to the directive objectives and policies of the Partially Operative District Plan in relation to the General Rural Zone. It is therefore recommended that this application be declined under s104(1)(b)(vi) of the RMA.

Plan Weighting

122. Section 104(1)(b)(vi) requires the consent authority to have regard to an [operative] plan or proposed plan. Where there is conflict between the provisions of an operative and proposed plan, a weighting assessment is required to determine which plan may be afforded more weight.
123. Case law indicates that the extent to which the provisions of the proposed plan are relevant should be considered on a case-by-case basis and might include:

- how far through the plan making process the proposed plan is, and the extent to which it has been tested and undergone independent decision making;
- any circumstances of injustice if the provisions are given more or less weight;
- the extent to which a new provision, or the absence of a provision, implements a coherent pattern of objectives and policies;
- whether the new provisions represent a significant shift in Council policy; and
- whether the new provisions are in accordance with Part 2 of the Act.

124. Given the Operative District Plan rules are no longer operative, I consider that significant weight should be given to the Partially Operative District Plan.

Other Relevant Documents (section 104(1)(b)(i)-(v))

Canterbury Regional Policy Statement (CRPS)

125. The Partially Operative District Plan gives effect to the relevant higher order documents, including the CRPS. For completeness and the avoidance of doubt, the provisions from the CRPS that might be considered relevant are addressed in turn below, and are included in **Appendix G**. I also note that the site is within the 'Greater Christchurch' area, as defined by Map A, in Chapter 6 of the CRPS.

126. Chapter 5 of the CRPS focuses on land use matters whilst Chapter 6 deals with the recovery and building of Greater Christchurch. I consider the following provisions to be relevant;

- Objective 5.2.1 - Location, Design and Function of Development
- Policy 5.3.1 Regional growth
- Policy 5.3.12 Rural production
- Objective 6.2.1 Recovery framework
- Policy 6.3.1 Development within the Greater Christchurch area
- Policy 6.3.9 Rural residential development

127. In terms of these, I note the importance of the definitions in so far as they relate to 'rural activity', 'rural residential activity' and 'urban activity', these below, and shortened to the relevant portion;

- **Rural activities:** means activities of a size, function, intensity or character typical of those in urban areas and includes:
 - Residential activity on lots of 4 ha or more.
- **Rural residential activities:** means residential units outside the identified Greenfield Priority Areas and Future Development Areas at an average density of between 1 and 2 households per hectare.
- **Urban activities:** means activities of a size, function, intensity or character typical of those in urban areas and includes:
 - Residential units (except rural residential activities) at a density of more than one household unit per 4 ha of site area;

128. Given these definitions, the proposal would be defined as a 'rural residential activity' by the CPRS.

129. In terms of the identified provisions above, Objective 5.2.1 seeks to locate development to consolidate growth around urban areas, whilst also enabling people to provide for their social, economic and cultural well-being,

this includes enabling rural activities and supporting primary production and avoids conflicts with incompatible activities. Policy 5.3.1 seeks to provide for limited rural residential development, where this is attached to existing urban areas and promotes a coordinated pattern of development, notably this policy otherwise has an urban focus. Policy 5.3.12 seeks to maintain and enhance the natural and physical resources that contribute to the rural productive economy, this seeks to avoid development that could foreclose the ability to use land for primary production and/or results in reverse sensitivity effects.

130. Objective 6.2.1 seeks to enable development within Greater Christchurch that identifies priority areas for urban development, limits urban development outside of existing or identified areas and maintains the character and amenity of rural areas and settlements. Policy 6.3.1 reinforces this, and Policy 6.3.9 looks to avoid rural residential development beyond that zoned as of 1 January 2013 and otherwise is to be avoided unless specific criteria, set out in the policy are met.
131. The site was not zoned for rural residential development as at 1 January 2013. Otherwise, I am of the view that these objectives and policies, as would be expected, are reflected by the strategic directions of the Partially Operative District Plan, in terms of consolidating urban development and form, including by restricting residential development in rural areas. This also seeks to maintain the rural character and protect rural production from reverse sensitivity effects.
132. As such, given the high level of the CPRS, the proposal is considered to be **inconsistent** with the outcomes sought by the CRPS.

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

133. The NES-CS was discussed earlier in this report, with my conclusion being that it does apply and that subject to the conditions of consent (agreed to by the applicant), the proposal would be consistent with the outcome sought.

National Policy Statement for Highly Productive Land (NPS-HPL)

134. The NZLRI Land Use Capability maps indicate that the site has Class 1-3 versatile soils, meeting the transitional definition of HPL, and therefore the Council must have regard to the provisions of the NPS-HPL. Policy 8 seeks that HPL is protected from inappropriate use and development except as provided in this National Policy Statement, and Policy 9 seeks that reverse sensitivity effects are managed so as not to constrain land-based primary production activities on HPL.
135. In this regard, Clause 3.9 provides a direction for territorial authorities to avoid inappropriate use or development of highly productive land, unless it meets at least one of the exclusions in (2) and the measures in (3).
136. Clause 3.10 provides an exemption test where the matters in Clause 3.9 cannot be met. Notably for this, the tests in 3.10(1)(a)-(c) all need to be met, for any proposal to not be considered inappropriate.
137. I note the objectives and policies of the zone in the Partially Operative District Plan specifically reference the NPS-HPL. As noted above, I also consider that the permitted baseline must be considered here. I note that the plan permits a building coverage of up to 5% on sites greater than 1ha (1,000m² in this case given the site is 2ha), with site coverage here being conservatively 500m² including the proposed residential unit. In my view the Partially Operative District Plan, in giving effect to the NPS-HPL has determined a level of building coverage that would not be 'inappropriate development'.
138. Notwithstanding this, the proposal is supported by an assessment by The AgriBusiness Group (undated) which provides an assessment against the NPS-HPL provisions. This notes that the site is in the Selwyn Waimakariri water zone, which is over allocated, whereby any transfer requires 50% of the transfer to be surrendered. It also notes that the cost of a well would be over \$50,000.
139. In terms of specific primary production activities that occur, the report notes that intensive horticultural has been discounted given the cost of establishment and the lack of/cost of water. Arable land use is also discounted given the lack of water and in terms of pastoral/grazing use, this is discounted for similar reasons.

140. AgriBusiness therefore conclude that the highest and best land use would be small scale lifestyle grazing. This concludes in this regard that this would be economically unviable and would result in an economic loss and that the site would not be economically viable either nor, or over a 30-year timeframe.
141. The report concludes that boundary adjustments or other leasing options are unlikely given the land uses nearby. The proposal would not result in a significant loss of productive capacity, nor result in any fragmentation (this has already occurred) and that the proposed development would result in economic, social and environmental benefits that outweigh the costs associated with the loss of HPL.
142. The report finally notes that the proposal would not result in any reverse sensitivity given the surrounding rural land uses are unlikely to result in reverse sensitivity effects.
143. In this regard, I adopt the expert advice in terms of the economic viability and concur that the size and location of the site and noting it is already fragmented such that it would not result in a significant loss, nor further fragment a cohesive area of productive land here. I also agree that boundary adjustments or lease arrangements are unlikely given the size, location and surrounding rural lifestyle type uses.
144. In terms of reverse sensitivity, I note my comments above at paragraphs 81-88.
145. Whilst not determinative, noting the plan context in terms of building coverage, I consider that the proposal is not inconsistent with Policy 8 of the NPS in terms of inappropriate development. In terms of Policy 9, I note that this seeks to manage reverse sensitivity effects, being different to the 'avoid' in PODP, I do consider that the separation provided would manage reverse sensitivity effects.
146. Overall, I consider that the proposal is not inconsistent with the objectives and policies of the NPS-HPL.

Section 104(1)(c) – Other Matters

Precedent

147. If the consent were to be granted, there is a risk that it could be seen as a signal that the Council is open to residential units on significantly undersized sites.
148. The objectives and policies of the plan, when considered together and as discussed above, require the avoidance of residential units on sites which have an area below that of the minimum required, given the importance of maintaining the distinctive rural character and amenity of the rural zone here.
149. While each application must be assessed on its merits, granting consent could, given the differential between the site size and the minimum required, signal that the very clear and directive density policies of the Partially Operative District Plan (specifically GRUZ-P2) can be set aside, undermining the integrity of the plan's strategy for managing rural character across the entire district.
150. Thus, there is a concern that granting consent in this instance may create an expectation for applicants and pressure for the Council to approve similar proposals where they are on existing undersized sites. This could lead to a gradual erosion of the anticipated rural character over time within the GRUZ.
151. Ultimately, the weight given to district-wide precedent effect is a matter for the commissioner's judgment, having regard to the specific facts of this application. However, I consider that the consent should also be refused under s104(1)(c), on the grounds that there is a significant likelihood of future applications of a similar nature and that a precedent effect across the wider district risks undermining the integrity of the GRUZ provisions and the rural character and amenity they seek to maintain.

Section 104(3)(d) – Notification consideration

152. Section 104(3)(d) states that a consent authority must not grant a resource consent if the application should have been notified and was not. This consideration under s104 does not raise any issues that would lead me to the conclusion that the application should have been either publicly notified or limited notified to additional persons. Therefore, it is my view that section 104(3)(d) does not preclude the granting of consent in this case.

Section 104D 'Threshold Test' – Non-complying activities

153. Section 104D states that a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either the adverse effects on the environment will be minor or the application is for an activity that will not be contrary to the objectives and policies of both the Operative District Plan and Partially Operative District Plan.
154. I have concluded that the adverse effects of the proposal on the environment will be no more than minor.
155. I have also concluded that the proposal will be in keeping with the objectives and policies of the Operative Plan (Rural Volume), noting that the relevant rules are now inoperative, however I have concluded that the proposal is contrary to the objectives and policies of the Partially Operative Plan.
156. Notwithstanding the conclusion in terms of objectives and policies, the proposal passes one limb of the s104D threshold test.

Part 2 – Purpose and principles

157. The consideration under section 104 is subject to Part 2 of the Act – Purpose and principles.
158. The purpose of the Act is contained within section 5 and it is to promote the sustainable management of natural and physical resources. *Sustainable management* means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while: sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and avoiding, remedying, or mitigating any adverse effects of activities on the environment.
159. The other sections of Part 2, sections 6, 7 and 8, address matters of national importance, other matters and Te Tiriti o Waitangi (the Treaty of Waitangi) respectively.
160. The relevant District Plans have been prepared having regard to Part 2, with a coherent set of policies designed to achieve clear environmental outcomes, as discussed above; therefore, taking into account relevant case law, I consider that assessment under Part 2 is not necessary.

Conclusions

161. This is a land use consent application for the erection of a residential unit on an undersized rural allotment.
162. The proposal has been considered as a non-complying activity.
163. I consider that the adverse effects of the proposal on the environment would be no more than minor.
164. I consider that the proposal is **contrary** with the objectives and policies of the Partially Operative District Plan. Given that the provisions of the Operative District Plan are inoperative, I consider significantly greater weight must be given to the Partially Operative Plan given this.
165. I conclude the proposal is **not inconsistent** with the relevant NPS-HPL provisions but is also at least **inconsistent** with the relevant CRPS provisions.
166. Having considered all relevant matters, on balance and overall, I conclude that the application should be **declined**. While the environmental effects are minor, the fundamental conflict with the clear and directive policy framework for managing rural density is so significant that granting consent would undermine the integrity of the Partially Operative District Plan's strategy for maintaining rural character and create a precedent for this also.

Recommendation

167. I recommend that land use consent RC235464 is **declined**, pursuant to sections 104 and 104B of the Resource Management Act 1991.

<p>Report by:</p> <p><i>J Gregg</i></p> <p>Jonathan Gregg Consultant Planner</p>	<p>Date: 4 July 2025</p>
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Appendix A

Appendix C

Appendix D

Appendix E

Appendix F

Appendix G