dimensions, and the erosion of one inevitably weakens the others. The failure to protect lawful landowners from adverse cumulative effects violates the wairua (spirit) of both the RMA and the Treaty's four foundational principles—partnership, protection, participation, and equity.

We contend that any claim of social benefit is nullified by the applicants' deliberate and sustained pattern of non-compliance, which has directly contributed to reverse sensitivity, visual encroachment, loss of privacy, and adverse health risks. Instead of enhancing rural life, this development undermines its very fabric. If such behaviour is permitted to proceed through the consent process, it sends a damaging message to the public: that rules are negotiable, watered down and enforcement is optional, even mitigated though let's talk about things to the perpetrators while the victims are regarded as the problem. We, as lawful, rate-paying, and community-contributing landowners, have not just experienced reverse sensitivity or procedural injustice—we have been punished by the very institutions designed to protect us. Professor Greg Newbold (2007) wrote that, "the purpose of imprisonment can therefore be seen as the containment of individuals who are being punished by the loss of their liberty under humane, fair and restrained conditions... in hope that the prisoner will at least leave the institution no worse than when they entered." Yet the reality we face mirrors a form of social imprisonment, punished not for any wrongdoing, but simply for upholding the law. Meanwhile, those who flout it are empowered, emboldened, and even enabled by the system.

The question, then, is this: *Who truly is the criminal in this situation?* Those who breach the rules without consequence, or those who challenge the breach and are sidelined in the process?

References

Durie, M. (1997). *Whānau, whanaungatanga and healthy Māori development.* In P. Te Whāiti, M. McCarthy, & A. Durie (Eds.), *Mai i rangiatea: Māori wellbeing and development* (pp. 1–24). Auckland University Press.

Durkheim, É. (2005). *Suicide: A study in sociology* (J. A. Spaulding & G. Simpson, Trans.). Routledge. (Original work published 1897).

Newbold, G. (2007). *The problem of prisons: Corrections reform in New Zealand since 1840.* Dunmore Publishing.

PART B: RESPONSE TO RFI RESPONSES

Section B1: RFI Request – Selwyn District Council (15 January 2025)

The Selwyn District Council's Request for Further Information (RFI), dated 15 January 2025, raises critical concerns about incomplete or missing information required for assessment under sections 88 and 92 of the Resource Management Act 1991. However, it notably omits any request for a full reassessment of flooding risk or an evaluation of the land contamination encumbrance (CB22A/300), despite both being significant environmental constraints that materially affect the viability of the proposal.

1. Flood Reassessment Not Requested

Despite evidence that the site lies within an ECAN Modelled Flood Hazard Zone and recent flooding events (notably those recorded on 30 March to 1 May 2025), the RFI does **not** require an updated or independent flood risk assessment. Instead, it relies on pre-existing, possibly outdated, Council records or a standardised Flood Assessment Certificate (FAC250065), which lacks field validation or integration with on-site water retention behaviour and neighbouring runoff patterns. This omission conflicts with the precautionary principle as affirmed in *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38, which requires consent authorities to err on the side of caution where the environmental effects are uncertain or inadequately assessed.

2. Contamination Encumbrance Not Addressed

The RFI also does not raise or address the presence of **encumbrance instrument 11823045.4**, which is registered on the Record of Title and explicitly refers to "contaminated land" under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS). The failure to seek clarification or a Preliminary Site Investigation (PSI) under regulation 6 of the NES-CS is a significant deficiency. Furthermore, **Form 9 of the application fails to disclose this contamination encumbrance**, despite Regulation 9(1) of the NES-CS requiring disclosure and assessment of any activity involving disturbance or subdivision on potentially contaminated land.

This omission prevents affected parties from making informed submissions under Schedule 4, Clause 6 of the RMA, *undermining* the transparency required for a robust effects assessment.

3. Consequences for Section 95 Notification

Under s95A(8)(b) of the RMA, public notification is *mandatory* where there is "insufficient information" to determine the scale and significance of adverse effects. The absence of any updated flood risk reassessment or NES-CS contamination review materially limits the Council's ability to make this determination. As a result, **the application should have been publicly notified under s95A(4)** due to the lack of essential environmental risk information and its relevance to surrounding landowners. A recent article in the Farmer's Weekly (12 May 2025) provides a visual and raw insight onto the adverse effects of flooding on farm land and the reality that when it happens Council's are not willing to act (see Appendix 12).

Section B2: Rebuttal to Chapman Tripp Memorandum (27 March 2025)

Prepared by Andrew and Louise Stalker

This rebuttal responds to the legal memorandum submitted by Chapman Tripp on behalf of the applicants, dated 27 March 2025. The memo attempts to reinterpret the directive planning provisions within the Selwyn District Plan, minimise reverse sensitivity effects, and misapply the exemption criteria under Clause 3.10 of the National Policy Statement for Highly Productive Land 2022 (NPS-HPL). We respectfully submit that these interpretations are flawed, legally unsound, and should be rejected.

1. Directive Policies Must Be Strictly Applied

The memorandum contends that the directive term "avoid" in GRUZ-P2 and GRUZ-P7 may be softened or interpreted contextually. This directly **contradicts** binding precedent set in Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38, where the Supreme Court held:

"The word **'avoid'** has its ordinary meaning of 'not allow' or 'prevent the occurrence of'. It is a strong directive, creating a firm obligation on those making decisions under the RMA" (paras 96–97).

GRUZ-P2 requires avoiding residential units on undersized sites, while GRUZ-P7 requires avoiding reverse sensitivity effects on established farming operations. These policies are **not** discretionary and must be applied with their plain meaning. Efforts to reinterpret or "read down" these obligations undermine the District Plan's integrity and the expectations of lawful rural landowners (Environmental Defence Society Inc v NZ King Salmon Co Ltd, 2014).

2. Existing Rural Fragmentation Does Not Justify Further Breach

The memorandum asserts that the existence of small lots in the surrounding area creates a precedent for approving the current non-complying application. However, this argument is both factually and legally incorrect. Our property was purchased in 1997 under an entirely different planning regime. Since that time, the operative District Plan and national policy statements have evolved significantly, with far greater emphasis on preventing land fragmentation, protecting rural character, and preserving highly productive land. Current planning decisions must reflect contemporary legal obligations—not legacy subdivisions granted under outdated rules.

In **Marlborough Ridge Ltd v Marlborough District Council [1998] NZRMA 73**, the Court made it clear that:

> "Past approvals that have contributed to the erosion of rural character are not a lawful basis to allow ongoing or future breaches of rural zoning objectives."

This was further affirmed in **Long Bay-Okura Great Park Society Inc v North Shore City Council [2008] NZEnvC 39**, where the Environment Court stated:

> "If the provisions of a district plan are not to be treated seriously, then the plan's integrity is undermined."

Permitting this consent on the basis of historical non-complying lots would incentivise future fragmentation, undermine the General Rural Zone (GRUZ) objectives, and erode the policy purpose of zoning altogether. Each application must be assessed on its own merits and in line with the current policy framework, not outdated or ***opportunistic*** comparisons to historical consents. The Council must consistently uphold its operative plan, **not dilute** its protections via precedent creep.

3. Reverse Sensitivity Remains a Significant Legal Risk

The applicants argue that reverse sensitivity is minimal due to the low intensity of surrounding agriculture. This is legally irrelevant. In Waimakariri District Council v Addie [2000] NZRMA 385, the Court held:

"Reverse sensitivity is a real and significant adverse effect that must be avoided at the planning and consent stage. It is insufficient to argue that the existing activity level is currently low."

We reserve the right to expand or intensify our agricultural operations. Introducing a residential dwelling adjacent to our working farm exposes us to unjustified legal risks, including nuisance complaints or imposed operating restrictions. These are already real and happening because of the applicant's non-compliance.

As Stewart (2006) explains, reverse sensitivity "shields offending activities from environmental protection rather than protecting the environment from offending activities" (p. 82). Covenants and screening cannot displace land use rights or protect us from future legal challenges.

4. **Failure to Satisfy Clause 3.10 of the NPS-HPL**

The applicants argue the site meets the exemption criteria under Clause 3.10 of the NPS-HPL due to economic infeasibility. However, they fail to meet the threshold under Clause 3.10(2), which requires showing that constraints on productive use are permanent and cannot be overcome through reasonably practicable alternatives. The applicants have not demonstrated that:

- Leasing to a third party,

- Establishing irrigation using their existing domestic well, or

- Rotational grazing or cropping, is unfeasible or permanently unachievable.

The claimed $55,000 well cost is misleading. Under current rules, landowners may extract up to 10,000 litres per day (10 m^3/day) from a domestic well without resource consent — enough to irrigate 2 hectares (ECAN guidance, 2025). This undermines the claimed constraint and exposes their argument's lack of due diligence.

In Clevedon Protection Society Inc v Auckland Council [2022] NZEnvC 177, the Environment Court clarified:

"The purpose of the NPS-HPL is to protect the productive capacity of land, not to guarantee a particular landowner's profitability."

Allowing exemptions based on **weak** economic modelling undermines national and local objectives. A loss of 2.02 hectares must be considered cumulative, primarily when the land is zoned GRUZ and classified LUC 1–3.

Failure to Meet Evidentiary Duty and Mischaracterisation of Policy Framework

In addition to the concerns already outlined, the Chapman Tripp Memorandum fails to meet its *evidentiary* obligations under the Resource Management Act 1991. Specifically, it omits any mention of material compliance breaches by the applicants, including:

- The unlawful occupation of the site beginning 18 April 2024, found to be non-compliant by the Selwyn District Council on 8 May 2024, and
- Environment Canterbury identified the confirmed discharge of greywater to land in July 2024 as a breach of permitted activity standards.
- The property is officially registered on Environment Canterbury's Listed Land Use Register (LLUR) as a HAIL site under Site ID **SIT411579**, identified as **"Yet to be reviewed"** for **GAZ 01-940 RES3537**, indicating its classification as a former landfill or gravel extraction area, which triggers health and environmental concerns that must be fully assessed under the NES-CS before any residential development can proceed.
- These omissions are not trivial. Under **Section 104(1)(a)** of the RMA, a consent authority must have regard to actual and potential effects on the environment. Similarly, **Section 88(2)** requires that an application include an assessment of environmental impacts that is both complete and accurate. *A legal memorandum that forms part of the applicant's response cannot selectively exclude adverse factual matters that go to the core of environmental and procedural integrity.*

Moreover, the memorandum attempts to reinterpret directive policy language in the Selwyn District Plan, such as **"avoid"** under GRUZ-P2 and GRUZ-P7, as *flexible* or contextual. This mischaracterisation is legally unsound and directly contradicts the binding interpretation set by the Supreme Court in *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2014] NZSC 38. Policy directives of this nature are not suggestions to be diluted, they are legal obligations to be upheld, as previously discussed in this submission.

In sum, the Chapman Tripp Memorandum substitutes legal theory for grounded fact, omits key compliance history, and invites decision-makers to ignore operative statutory duties. Therefore, it should be afforded **'little weight'** in the Council's decision-making process.

5. Conclusion and Relief Sought

We respectfully submit the following:

- The applicants have misapplied legal precedent and misunderstood directive policies under the Selwyn District Plan and the NPS-HPL.

- The application increases rural fragmentation and encourages future non-compliance.

- Reverse sensitivity effects are foreseeable and material.

- The application fails to satisfy Clause 3.10(2) of the NPS-HPL.

We request that Resource Consent RC246049 be **fully declined** under section 104D of the RMA.

As rural landowners directly affected, our ability to continue lawful land use is at 'serious risk'. We respectfully request to be heard at any hearing.

References

Clevedon Protection Society Inc v Auckland Council [2022] NZEnvC 177.

Environment Canterbury. (2025). *Small-scale irrigation using domestic wells – Guidance for landowners*. Environment Canterbury Regional Council.

Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd [2014] NZSC 38; [2014] 1 NZLR 593.

Long Bay-Okura Great Park Society Inc v North Shore City Council [2008] NZEnvC 39.

Marlborough Ridge Ltd v Marlborough District Council [1998] NZRMA 73.

Ministry for the Environment. (2022). *National Policy Statement for Highly Productive Land 2022* (Amended August 2024). New Zealand Government.

Resource Management Act 1991, No. 69. (NZ). Public Act.

Stewart, I. (2006). Reverse sensitivity: An environmental concept to avoid the undesirable effects of nuisance remedies. *Canterbury Law Review, 12*, 82–112.

Waimakariri District Council v Addie [2000] NZRMA 385 (EnvC).

Section B3: Procedural Failures Requiring Public Notification

This application is procedurally compromised and must either be **declined outright** or publicly re-notified under Section 95C(2) of the Resource Management Act 1991 (RMA).

On 15 January 2025, Selwyn District Council issued a Section 92 Request for Further Information (RFI), setting a response deadline of 5 February 2025. The applicants failed to meet this statutory timeframe, submitting their formal response only on 4 April 2025; a delay of nearly two months. **No public record was made of any granted extension,** and the Council did not transparently justify its acceptance of this late submission. In stark contrast, as an affected neighbouring party, I was denied an extension when I asked for one, because as advised by planning staff the RMA does not allow it, despite the Act being equally silent on granting informal extensions to applicants. This asymmetrical process application violates natural justice and procedural fairness, as discussed in Royal Forest and Bird Protection Society Inc v Buller Coal Ltd [2012] NZHC 2156; where the High Court confirmed that failure to ensure procedural parity between applicants and affected parties undermines the participatory integrity required under the RMA.

Moreover, the applicants' 4 April 2025 RFI response contained extensive new and material content unavailable during the original notification period, including a Preliminary Site Investigation (PSI), revised building layout and elevation plans, and commentary on flood modelling. These changes introduced new adverse effects and affected parties not previously identified. Under Section 95C(2) of the RMA, public notification is mandatory where new information provided in response to an RFI is necessary to understand the effects of the activity and may result in **additional** persons being adversely affected. The threshold was met in this case.

Compounding these issues, the applicants failed to disclose a legally registered land contamination encumbrance on their Record of Title. This **was not** identified in the Form 9 application or the AEE and only came to light after I independently raised the matter with Johnathan Gregg, Senior Planner. This omission represents a breach of Section 88 of the RMA and fails to comply with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS). The non-disclosure of such a material fact should have rendered the application incomplete, if not invalid, from the outset.

Finally, the applicants were found non-compliant by the Selwyn District Council on 8 May 2024 for living unlawfully in the pole shed and caravan. This occupation constitutes a clear breach of Section 40 of the Building Act 2004, which prohibits using a building for residential purposes without Code Compliance. The penalties for such violations are significant up to $200,000 and $10,000 for each day the offence continues. This conduct cannot be construed as "minor" under the RMA's effects threshold and should have triggered enforcement, not retrospective leniency.

These collective procedural irregularities, legal omissions, and unlawful activities render this application incapable of being assessed adequately without complete public transparency. While facilitating post-lodgement revisions that materially change the application, the Council's failure to require notification under Section 95C(2) constitutes a breach of administrative fairness. Andrew and I respectfully request that this application be declined outright or, at minimum, publicly re-notified to uphold the principles of natural justice and integrity in environmental decision-making.

References

Building Act 2004, No 72. Public Act.

National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health 2011 (NES-CS).

Resource Management Act 1991, No 69. Public Act.

Royal Forest and Bird Protection Society Inc v Buller Coal Ltd [2012] NZHC 2156.

Section B4 - Eliot Sinclair RFI Response (4 April 2025)

The applicant's final plans make no material change to the site layout, earthworks, or stormwater management design. There is no provision for a stormwater bypass channel, catchment swale, or other infrastructure to prevent future overland flow to neighbouring properties.

This omission ignores the observed effects of the **1 May 2025 flood**, which caused top soil runoff to our land. The applicants have since failed to amend the plans or provide any response to those post-lodgement effects.

As we outlined in **Section A1**, this constitutes a clear breach of the applicant's obligation to provide an accurate and complete assessment of environmental effects. The final plans do not remedy the fundamental issue: the proposal is based on outdated modelling and fails to mitigate foreseeable harm.

Section B5: ECAN Flood Assessment (7 February 2025)

The ECAN flood assessment dated 7 February 2025 relies solely on historical LiDAR modelling and a 2013 photograph showing minor ponding. It acknowledges that the data may be limited and "not reflect flooding at its peak."

This letter predates the significant flood event of **1 May 2025**, and the applicant has not submitted updated modelling, reassessment, or addendum to reflect this post-lodgement flooding. As detailed in **Section A1**, the absence of hydrological modelling, risk assessment, or mitigation planning constitutes a procedural and evidentiary failure under **Sections 88(2)** and **104(1)(a)** of the RMA.

Given ECAN's disclaimers and my real-world evidence showing runoff onto our land, the flood assessment is unreliable for decision-making. Therefore if the Council or Commissioner is unable to make a definitive decision on the adequacy of the contamination assessment or compliance with the NES-CS, then consistent with the **precautionary principle** embedded in environmental law and planning case law (see *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38), they must err on the side of caution and decline the application or require full public notification under section 95C(2) of the RMA.

Section B6 – Visual Impact and Loss of Amenity

Reverse Sensitivity and Real-World Harm to Adjacent Lawful Landowners

The legal counsel and consultants for the applicants do not reside next to the applicants and cannot speak to the real-world adverse effects experienced daily by those who do. It is easy to minimise the impacts of unlawful occupation from a spatial distance; however, for us, the

immediate neighbours at [redacted] the ongoing psychological, aesthetic, and financial burden has been very real and ongoing. As the owners of an active agricultural farm directly affected by the applicants' activities, we have borne the full brunt of their unlawful and unconsented occupation of the caravan and shed, an activity permitted by Selwyn District Council until 5 September 2025 and ongoing even after the required consenting due date.

We submit that these effects are toxic and more than minor. In response to the shed's intrusive and dominating presence and the following residential behaviours, we were forced to erect a six-foot security gate and install significant hedging to protect our privacy and reinstate a modicum of rural visual amenity. The costs of these works are attached as Appendix A3: Costs incurred due to reverse sensitivity and the applicants residing in the caravan and shed. These are tangible and quantifiable harms that resulted directly from Council's failure to act in a timely and lawful manner, including the decision by Tristen Snell (Compliance Lead, Selwyn District Council) not to issue an abatement notice to the applicants, despite their breach of zoning rules, Building Act requirements, and the General Rural Zone standards. (See photos of our view before the Applicants bought the bare land and now after; also, our front entrance to our property before and after.)

The doctrine of reverse sensitivity warns against precisely this situation, where an incoming activity (here, unlawful residential use of a shed) compromises the lawful and established use of neighbouring land. The Environment Court in *Ngāti Kahungunu Iwi Inc v Hawke's Bay RC* [2015] NZEnvC 50 recognised that reverse sensitivity effects arise when newcomers seek to alter existing users' regulatory or amenity context. This application, and the Council's ongoing inaction, allowed the applicants to shape the planning environment to their benefit, at direct cost to existing rural landowners like ourselves.

Furthermore, in *Clevedon Protection Society Inc v Auckland Council* [2022] NZEnvC 177, the Court criticised reliance on theoretical effects assessments where lived experience, supported by evidence, clearly contradicted such claims. In our case, this real-world impact is evidenced by our timeline in Appendix 1, which includes photographic records and financial receipts incurred by us.

The fact that SDC never acknowledged these cumulative and material effects until formal notification, and even then, they were not addressed in the assessment of environmental effects, calls into question the integrity of the planning process. These are not abstract planning issues, but lived, ongoing, and compounding harms that warrant recognition and legal remedy. These issues have still not been recognised in the AEE or Legal Memorandum, which, to say the least, is disappointing.

These effects are more than minor, individually and cumulatively, and continued reliance on theoretical assessments that exclude lived experience contradicts both natural justice and the purpose of the RMA.

We would welcome the Commissioner's visit to our property at [redacted] to witness firsthand the visual, psychological, and cumulative effects of the applicants' unlawful and dominating presence. A site visit would provide valuable insight into our subjective experience and the real-world impact that cannot be fully conveyed through written submissions alone.

Section B7 - Adverse Effects more than Minor

We also wish to formally acknowledge that the applicants continue to deny they reside at the site, which is demonstrably false. As recently as last week (17 May 2025), washing was observed hanging on the clothesline, and our security cameras, alongside consistent visual observation, have recorded one or both applicants present on-site daily, and almost always full-time over weekends. These are not incidental visits; they represent full-time occupation.

It is indisputable that the shed was consented solely as a farm storage building. It was never designed or legally authorised for human habitation, plumbing, or greywater systems. The applicants' continued use of the site as a residence, combined with their ad-hoc and unsafe use of IBC tanks and a macerator pump to dispose of greywater, is of grave concern. These systems are not designed or certified for domestic waste, and their operation on a site recorded on Environment Canterbury's Listed Land Use Register (LLUR) as a HAIL G3 location (SIT411579 – RES3537) raises significant health and environmental risks.

This conduct reflects a wilful disregard for the District Plan and public safety. Using such systems on land that contains potentially contaminated fill, with shallow groundwater and surface water connectivity, is not only non-compliant under the NES-CS but arguably negligent. The Council's failure to intervene earlier has placed lawful neighbours, workers, and possibly the applicants at risk of exposure to contaminants, including asbestos.

We urge the Commissioner to consider these actions a compounding pattern of disregard for law, process, and health protection. Each day of continued occupation deepens the reverse sensitivity and cumulative environmental impact.

1. The first time the applicants arrived and spoke to us, they stated that the land was intended solely for grazing 17 sheep and that they were not planning to reside there. This created a false sense of reassurance and trust, which has since been completely eroded.

2. During the shed's construction, the building contractors were observed urinating openly in the paddock, clearly visible from our property. When this was reported to the Council, the applicants assured inspectors that a portable toilet would be delivered the next day. This did not occur. This disregard for basic hygiene and decency is unacceptable and demonstrates their contempt for rules and neighbours.

3. The site is registered on the Environment Canterbury LLUR as a HAIL G3 category site, formerly used for landfill or gravel extraction. Earthworks should not have been carried out without a Detailed Site Investigation (DSI). Relying on a visual walkover assessment is inadequate given the contamination risks, including potential asbestos exposure to tradespeople, us, and the neighbours.

4. The applicants applied to the Selwyn District Council to erect a 'pole storage shed.' On 19 April 2024, the shed underwent a final inspection and failed. That same night, under the cover of darkness, the applicants moved a caravan onto the site. By the next morning, 20 April, a flagpole and clothesline were installed, signalling immediate residential use. As of 21 May 2025, the applicants remain unlawfully living in the shed, rotating between three vehicles to avoid detection. Furthermore, our shingle road has never had so many potholes, extreme dust flow, and road noise (See Appendix 10 for potholes and dust movement). This road has a 100 km per hour limit.

5. To preserve our privacy and mitigate the visual intrusion of the oversized brown shed, which includes windows facing directly towards our home, we were forced to construct a two-metre-high security gate and plant significant hedging. Despite this, the shed's presence continues to dominate our once open rural outlook. Its overlit exterior and security lights shine directly onto our front lawn, creating an ongoing sense of overbearing encroachment.

6. Notably, the author of the HPL Assessment from Eliot Sinclair travelled 200 metres east down McDonald Road to take photographs of the shed, but failed to capture the actual impact from our front gate. This omission is troubling and undermines the integrity of the evidence presented. The real visual and psychological burden experienced from our home has not been acknowledged or assessed (See Appendix 10: Photos 1–8).

7. We now lock our gate routinely due to attempted interference with our property. On one occasion, the applicant crossed the road and opened our gate after we had securely closed it. This prompted us to install additional lighting and surveillance to protect ourselves from their actions, which have repeatedly breached our privacy.

8. On 27 December 2024, an altercation occurred that exemplifies the ongoing pattern of provocation and antisocial behaviour by the applicants. Our neighbour of many years, who has never previously cut our grass verge, was observed doing so that day, having driven his mower 800 metres from his home to reach it. While speaking with him on our grass berm, the applicant exited his shed, crossed the road, and inserted himself into the conversation uninvited. This deliberate escalation resulted in a physical confrontation. The applicant then attempted to use surveillance footage to lay criminal charges against Andrew, an effort ultimately dismissed by the Police due to a lack of evidence. We believe this was a premeditated act intended to provoke

conflict and misuse legal processes to intimidate us. It is entirely inconsistent with the behaviour expected of a neighbour and further illustrates the more-than-minor adverse effects we have endured.

9. These events, combined with the shed's visual dominance, continuous unauthorised occupation, and persistent boundary violations, constitute adverse effects that are significantly more than minor. The situation is not theoretical or temporary. It has profoundly disrupted our quality of life and turned a peaceful rural property into a space marked by stress, surveillance, and intimidation.

10. As discussed, more than minor may be one event on its own, but all numerous such events can only be defined as toxic, anti-social, with a mix of conduct disorder, hence can only be considered **more** than minor.

Section B8: RF1 Response Flood Assessment Certificate

FC250065 Flood Assessment Certificate: Legal and Planning Concerns

The Flood Assessment Certificate FC250065 (FAC), issued by Emma Larsen, the Head of Resource Consents at Selwyn District Council (SDC), contains several critical shortcomings that raise serious concerns about the reliability of its conclusions and their alignment with the precautionary and integrative principles of the Resource Management Act 1991 (RMA). First, the FAC acknowledges that the site is "likely to be subject to inundation in a 200-year Average Recurrence Interval (ARI) flood event" (Selwyn District Council, 2025). However, this modelling fails to account for recent real-world flood evidence observed on 1 May 2025, where substantial runoff from the applicant's site flowed onto neighbouring GRUZ-zoned farmland, as captured in our photographic evidence (see Appendices).

This visual confirmation suggests that the actual flooding risk exceeds that predicted by Council modelling, thus undermining the assumed adequacy of the minimum floor level (4.10m NZVD2016). Second, the certificate is heavily caveat-ed with disclaimers. It states that "flood modelling is not an exact science," that all information is subject to change, and that any Activity on the site is undertaken "at your own risk" (Selwyn District Council, 2025, p. 1). Thus, reverse sensitivity is now very real for us as the affected parties based on these disclaimers.

Moreover, these disclaimers significantly weaken the certificate's legal and planning weight. By shifting liability away from the Council and placing it on future occupants, the FAC fails to meet the RMA's obligation to avoid, remedy, or mitigate adverse effects on the environment (RMA, 1991, s 5(2)(c)). Third, the FAC does not address how floodwaters could mobilise existing soil contaminants, despite the site's confirmed HAIL G3 (landfill) status and shallow groundwater table (0.5–0.8m BGL), as outlined in the Preliminary Site Investigation (Elliot & Sinclair, 2025). Hence, regulation 5(7)(c) of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) requires determining whether the proposed activity may increase the risk of contaminants entering the environment. The PSI confirms the presence of landfill material and shallow groundwater. However, the FAC (Selwyn District Council, 2025) omits this entirely, not mentioning NES-CS, contamination pathways, or groundwater interaction. Its failure to address these known risks constitutes a statutory omission.

Finally, the FAC is inconsistent with the precautionary principle embedded in New Zealand environmental law. As Severinsen (2014) explains, "if there is uncertainty over the extent to which a proposal will impact the environment, a lack of absolute proof should not prevent action being taken to prevent or at least mitigate such effects" (p.351). While the RMA

does not explicitly mention precaution in the consenting context, courts and scholars have affirmed its relevance where effects are uncertain. The applicants are responsible for demonstrating minimal risk, especially where flood hazards and contamination overlap. These factors highlight that the FAC cannot be relied upon to prove that flood risks are adequately mitigated (see appendices for a recent flooding article in Farmers Weekly, 12 May 202; concerning the Christchurch Council's inaction and loss of arable farmland: the farmer is left to deal with the problem).

In addition, the observed and documented flooding on 3 May 2025, the absence of contaminant risk integration, and the speculative nature of modelling undermine the applicant's foundation upon which it seeks to proceed. Reliance on the FAC in this context contradicts section 104(1)(a) of the RMA, which requires complete evaluation of actual and potential environmental effects.

In sum, the FAC does not support the granting of RC246049. It reinforces the need to apply the *precautionary principle* and refuse consent under both limbs of Section 104D. Thus, the effects of building a residence **are more than minor, for our property** and the activity contradicts the purpose and policies of the Selwyn District Plan and NES-CS.

References

Elliot & Sinclair. (2025). Preliminary Site Investigation: RC246049 – [redacted]. Prepared for Paul and Jo-Anne Campbell.

Resource Management Act 1991 (NZ).

Selwyn District Council. (2025, 21 February). Flood Assessment Certificate FC250065: [redacted]. Issued under NH-SCHED1, Partially Operative Selwyn District Plan.

Severinsen, G. (2014). To prove or not to prove? Precaution, the burden of proof and discretionary judgment under the Resource Management Act. Otago Law Review, 13, 351. May 2025.

Section B9: Contamination, NES-CS Non-Compliance, and Unlawful Greywater Discharge

The applicant's site is historically classified as HAIL Category G3 – Landfill Site, based on aerial imagery from the 1990s and the PSI prepared by Eliot Sinclair dated 19 February 2025. Table 4 (p. 9) of the PSI identifies heavy metals and asbestos in soil as likely **hazardous substances** associated with this category. However, the PSI unreasonably downplays the asbestos risk, stating that since no asbestos material was *observed* during shed construction, it is "reasonable to assume" its presence is "highly unlikely." This position is scientifically and legally flawed. As WorkSafe New Zealand notes, asbestos **cannot be ruled** out by visual inspection alone, and the only way to confirm its presence or absence is through lab testing by a qualified contractor (WorkSafe NZ, 2024).

Furthermore, despite acknowledging the site is "more likely than not" to be contaminated under HAIL Category G3 and contains shallow groundwater (0.5 -- 0.8m bgl), no Detailed Site Investigation (DSI) has been undertaken, even though the PSI itself recommends it in Section 7. Under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS), this means the activity is discretionary. Importantly, the PSI does not meet the exemption criteria under Regulation 8(4) of the NES-CS, which requires conclusive evidence that the site is not contaminated and poses no risk to human health. In parallel, Environment Canterbury correspondence (Appendix 13) confirms that the applicants

have installed a shower system inside the shed, with greywater discharged to land using IBC tanks and a macerator pump. This activity is unlawful, presenting a direct health and environmental risk under the Health Act 1956, Building Act 2004, and NES-CS. The shed has effectively been converted into a residential dwelling, which triggers reverse sensitivity, and land use changes under s9(3) of the RMA none of which have been lawfully authorised.

The PSI contradicts itself when it claims in Table 4 that asbestos is unlikely, then admits on p. 11 that the activity is discretionary due to "likely risk to human health if soil disturbance has been undertaken." This internal inconsistency further undermines the report's reliability. As Philippe Dumont (the certifying SQEP) signed off on a report that acknowledges risks and then recommends inaction, this raises questions of professional responsibility and due diligence.

Worryingly, Selwyn District Council allowed a 216m² structure to be constructed on a HAIL-classified site, exposing workers to potential asbestos risks without requiring an asbestos management plan or full public notification. **This is a serious oversight**. Under the Health and Safety at Work Act 2015, any property where work is performed becomes a workplace. Thus, the landowner and council were both responsible for ensuring that no person was put at risk of asbestos exposure during excavation or construction. **As outlined in WorkSafe New Zealand's "Asbestos in the Home" guidance (2024), even a single exposure to airborne asbestos fibres can result in long-term health damage.**

This situation is similar to the Environment Court case of Watson v Wellington City Council [2024] NZEnvC, where a rural property owner was issued an abatement notice for unlawfully converting a shed into a residence and installing residential facilities without consent.

Despite claims of hardship, the court ruled that the structure remained unlawful and that health risks required immediate cessation of use.

In our case, however, SDC **failed to act**. No abatement notice was issued, and the application was not publicly notified, even though the PSI clearly states the site is "more likely than not" contaminated and has complete exposure pathways through ingestion and dermal contact. This contravenes Sections 88(2), 95C(2), and 104(1)(a) of the RMA, as new information capable of revealing additional adverse effects was not made available to the public or nearby landowners.

Moreover, the applicant's legal counsel described the shed as a "farm building," while evidence from the PSI, site photographs, and ours and another affected neighbour's observations confirm that it contains a self contained caravan with a shower, kitchen, washing machine, and macerator pump, demonstrating full residential use. This misrepresentation constitutes procedural misconduct and warrants rejection of the application or, at the very least, full public notification under NES-CS and s95C(2).

We therefore submit that:

1. The PSI itself establishes that the site is a contaminated **HAIL G3** location with complete exposure pathways.
2. The construction of a shed on this land without a DSI or asbestos assessment breached the NES-CS, the Building Act 2004, and the Health and Safety at Work Act 2015.
3. Greywater and human effluent discharges were unconsented and unlawful.

4. Public notification was mandatory under Section 95C(2) of the Resource Management Act 1991, as new material risks emerged post-lodgement and were withheld from affected parties.

5. The Council has a statutory obligation to act under NES-CS and health laws, and its failure to enforce these has jeopardised both public health and planning integrity; and furthermore,

6. The Environment Court precedent in Watson v Wellington City Council [2024] confirms that occupation of a shed as a home without full consent is unlawful, regardless of mitigation claims or hardship.

Accordingly, this resource consent application **must be** declined outright due to material procedural failings, unremedied health risks, and cumulative environmental harms. If the application is not declined, it must be suspended and publicly notified, with a full DSI, soil testing for asbestos, and a review by WorkSafe New Zealand and public health officials.

Please note the following:

Legal Consequences and Potential Fines

1. **Resource Management Act 1991 (RMA)**

Unauthorised Use of Land or Breach of Conditions

- Section 9(3): It is an offence to use land in a manner that contravenes a district plan without resource consent.
- Section 338(1)(a): Any person who contravenes section 9 commits an offence.
- Penalties (Section 339):
    - Individuals: Up to 2 years imprisonment or a fine up to **$300,000.**
    - Continuing offence: An additional **$10,000** per day for each day the offence continues.
    - Companies: Fines of up to **$600,000** plus daily penalties.

2. **Building Act 2004**

Illegal Construction or Use of a Building

- Under section 40, it is an offence to carry out building work without a building consent (including change of use or illegal occupation).
- Section 168 sets penalties:
    - Fines up to **$200,000,** with additional fines of **$10,000** per day for continued non-compliance.

3. **Health Act 1956**

Discharging Grey Water to Land Without Consent

- Section 29 (nuisance and public health hazard) and Section 30 (duty of territorial authority).
- Unauthorised discharge that creates a health nuisance can trigger a public health notice.
- Local authorities are empowered to prosecute under this Act, with:
    - Fines up to **$500** for each offence, plus **$50** per day for continuing offences.
    - More severe penalties under associated regulations.

4. **Health and Safety at Work Act 2015 (HSWA)**

Unsafe Site Practices & Asbestos Risk

- If work is carried out at a site that exposes workers or others to asbestos or contaminated soil, the site is a "workplace" and duties apply under the HSWA.
- Sections 36–38 require PCBUs (including landowners and planners) to ensure a safe working environment.
- Section 49: Failure to comply with a duty:
    - Individuals: Up to **$150,000**.

- Organisations: Up to **$500,000.**

- Section 47 (reckless conduct): Up to **$3 million** for organisations, or **5 years** imprisonment and fines for individuals.

Accountability of Selwyn District Council (SDC)

While local councils are generally protected from prosecution if acting within statutory duties, case law (e.g. *Southland Fish and Game v Southland RC* [2012] NZEnvC 45) confirms that councils may be judicially reviewed or subject to ombudsman investigations for:

- Failure to enforce compliance.
- Allowing ongoing breaches or discretionary processing favouring one party.
- Procedural unfairness or bias under S95 notifications.

Section B10: Sensitive Activity Setback Plan

Rebuttal to "Sensitive Activity Setback" Plan – Resource Consent RC246049

This rebuttal addresses and **opposes** the "Sensitive Activity Setback" plan submitted supporting RC246049. The Setback plan suggests compatibility with surrounding dwellings and downplays potential reverse sensitivity concerns. However, it is materially deficient, fails to address key planning instruments, and is inconsistent with binding legal precedent under the Resource Management Act 1991 (RMA).

1. Statutory Obligation to Give Effect to Planning Instruments

The Selwyn District Plan is a lower-order planning document that must "give effect to" higher-order instruments such as the National Policy Statement for Highly Productive Land (NPS-HPL). Clause 3.7(1) of the NPS-HPL directs that territorial authorities must avoid

rezoning or land use that compromises highly productive land unless no practicable alternative exists (Clause 3.7(2)(b)).

The applicant's reliance on setback distance is not a substitute for compliance with the operative zoning objectives and policies. It does not overcome the site's fundamental non-compliance with GRUZ-R5 (minimum lot size for a residential dwelling). It does not satisfy the GRUZ zone's core purpose: prioritising and protecting land for rural production.

2. Misuse of "Setback" to Justify Non-Compliance

The map omits the presence of an encumbrance on title for contamination and the proximity of surrounding land actively used for primary production. Moreover, it fails to differentiate between lawfully established and non-compliant residential activities. It presents a spatial argument without addressing legal status, an error of law and planning interpretation.

3. Supreme Court Authority: "Avoid" Means "Do Not Allow"

The most relevant legal precedent is the decision in Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38. The Supreme Court held that policies in planning documents that use directive language, particularly the word "avoid", must be treated as binding. Specifically:

"We consider that '**avoid**' in policies 13(1)(a) and 15(a) means 'not allow' or 'prevent the occurrence of'. That is its natural meaning" (King Salmon, [96]).

"It is not legitimate to refer back to Part 2 [of the RMA] to justify an outcome that is contrary to the clear terms of the NZCPS" (King Salmon, [88]).

The Court rejected the "overall broad judgment" approach when a planning document contains directive policies. This means that even if the adverse effects could be considered minor or mitigated, if a policy directs avoidance, that must prevail.

4. Reverse Sensitivity is a Known Effect to Be Avoided

The Court in King Salmon was explicit that the preservation and protection duties in Section 6 of the RMA—and corresponding policies in statutory plans, require substantive avoidance of inappropriate development. The attempt to justify residential activity on rural land production through setbacks is flawed. As the Supreme Court noted:

"Environmental protection is a core element of sustainable management... the RMA envisages that there will be areas the natural characteristics or features of which require protection from the adverse effects of development" (King Salmon, [28]).

This extends to reverse sensitivity, a concept well-established in planning law as an adverse effect (see Winstone Aggregates v Papakura DC, A078/05), particularly where rural production is at risk of being constrained by nearby residential uses.

5. The District Plan and NPS-HPL Must Be Upheld

As confirmed in King Salmon, the statutory framework creates a hierarchy of planning instruments. Lower-level decisions, including consents, must give effect to higher-order documents. Where those documents include policies that use directive language like "avoid," such as GRUZ-P2 in the Selwyn District Plan and Clause 3.7 of the NPS-HPL, there is no discretion to approve development that would undermine them:

"A district plan must give effect to any national policy statement… the requirement to 'give effect to' is a strong directive, creating a firm obligation on the part of those subject to it" (King Salmon, [77]–[80]). ***Thus, granting RC246049, based on a setback map, would not only contravene the District Plan but also breach a statutory requirement to give effect to the NPS-HPL.***

In conclusion, the Sensitivity Activity Setback Plan lacks legal or policy weight and fails to address the operative planning framework. It cannot override clear, directive language in the

District Plan and national policy instruments. As such, it should not be relied upon to support approval of a non-complying residential dwelling on a site intended for rural production.

References

Environmental Defence Society Inc v New Zealand King Salmon Co Ltd [2014] NZSC 38.

Winstone Aggregates v Papakura District Council (2005). A078/05 (NZEnvC).

Man O' War Station Ltd v Auckland Council [2017] NZEnvC 6.

National Policy Statement for Highly Productive Land 2022.

Selwyn District Council. (2022). Selwyn District Plan – General Rural Zone (GRUZ).

Section B11: Misrepresentation of Dwelling Plans and Procedural Deception

The applicant's dwelling plans are not for the subject site at McDonald Road (RES 3537). The name and address on the architectural drawings refer to **The Watson Residence** at [redacted]. This property is not connected to the RC246049 site and is currently used as a **commercial Airbnb advertised on Booking.com** within the General Rural Zone (GRUZ)(See Appendix A14.1 - 14.8).This non-compliant activity requires resource consent under GRUZ. Which is not an activity related to farming. Likewise the plans are dated 2023 - quite outdated and irrelevant to the current HAIL-G site conditions. It appears Ben Watson is registered as Ben Watson Limited - care of Metro Advances Limited. Likewise, he is the General Manager South of Holmes Construction Limited - main office - [redacted] and furthermore, [redacted].

This is not a minor oversight but a **deliberate misrepresentation** of the proposed building. The plans are not site-specific, include no topographical adjustments, and have not been verified against the McDonald Road property layout. The applicant's failure to disclose this mismatch undermines the application's *integrity* and the planning process's transparency.

As Selwyn District Council Planner, **Jonathan Gregg** noted in the Council's Section 92 Request (15 January 2025). The proposal was initially referred to as a **"black box"** due to the absence of meaningful detail about the dwelling. In response, the applicants submitted plans for a structure on an entirely different site, belonging to another individual and dated two years ago. This cannot be viewed as a simple clerical error — it is part of a pattern of procedural avoidance and *misleading* conduct.

This deception is consistent with:

The applicant's unlawful occupation of the site beginning 18 April 2024 without resource consent,

1. Installation of non-compliant IBC holding tanks for sewage and greywater.
2. Failure to disclose a contamination encumbrance on their S9 Form.
3. Moreover, repeated deflections in response to the Council's requests for accurate site data.

Further, neighbouring residents, including ourselves, have raised these concerns with SDC since the unauthorised occupation began. The submission of building plans from an unrelated property used for short-term accommodation further erodes confidence in the *reliability* of their application material.

Furthermore, while the applicants' Preliminary Site Investigation (PSI) dated 19 February 2025 clearly identifies the site as "more likely than not" to be contaminated under HAIL G3 (Landfill), the RFI Response dated 4 April 2025 - 4.1 Hail registry (page 5 or 16 bottom) falsely asserts that the land is not on the HAIL register. This is demonstrably incorrect. The Environment Canterbury Listed Land Use Register (LLUR) records the site as SIT411579 under activity RES 3537, with G3 (Landfill) categorisation. Misstating this in the RFI response represents either a significant oversight or a material misrepresentation. This discrepancy further justifies declining the application under S104D of the RMA, as it undermines the reliability of the supporting evidence. It also strengthens the argument that public notification under Section 95C(2) was legally required once new contamination-related risks were raised.

We respectfully submit that:

The **final plans cannot be relied upon** under Section 88 of the RMA, and therefore, the application should be **declined outright** due to a lack of verifiable information and as previously discussed and serious ongoing health risk to the applicants and us as neighbours.

Developer Affiliation and Commercial Interest

Further, it is relevant to note and repeat that **Benjamin Mitchell Watson**, whose building plans were submitted in this application, is the General Manager of Holmes Construction, a prominent Canterbury-based construction firm. He is also the Director of Ben Watson Limited and his registered address is at [redacted] the same site from which the house plans were taken and currently used as a **commercial Airbnb** in a non-complying activity within the General Rural Zone (GRUZ). This is not an incidental error. It indicates a clear connection

between the applicants and a commercial construction entity with access to pre-designed housing stock, property assets, and planning resources (See photos in Appendix 15 proving commercial use). This strongly suggests that:

- The dwelling is unlikely for genuine rural residential use in line with GRUZ objectives.
- The application may form part of a **broader speculative or development-led land strategy**, and
- using commercially operated building plans not intended for this site constitutes a **deliberate misrepresentation**.

This raises serious concerns about the application's transparency and the credibility of the information provided in response to the Council's Section 92 request. The submission of third-party commercial house plans linked to a known development professional **cannot be** dismissed as a clerical oversight.

We respectfully submit that this constitutes a **material breach of planning integrity** and request that the consent be declined.

Section B12 - S104D Argument – Legal Threshold Not Met Due to Unlawful Occupation and Adverse Effects

The RC246049 Application fails to meet the legal thresholds under section 104D of the Resource Management Act 1991 (RMA), which governs the gateway test for non-complying activities. Notwithstanding, an application must meet one of two limbs: that adverse effects are minor or that the activity is not contrary to the plan's objectives and policies. This application satisfies **neither**.

1. Unlawful Residential Occupation – More Than Minor Effect

The Applicants, Paul and Jo-Anne Campbell, have **lived illegally** on the subject property since at least **18 April 2025**, as confirmed by Selwyn District Council's inspection. Under the **Building Act 2004**, section 114(1)(b) requires notification before a building is intended for residential purposes if it was not originally constructed for that use. The applicants have **breached this obligation**.

Penalties for such breaches are severe:

> **Section 168(1)** of the Building Act 2004 imposes a **fine up to $200,000**, with **additional daily fines of $10,000 per day** for continued non-compliance.

This is a serious legal infraction that cannot reasonably be characterised as having a "less than minor" effect under section 104D(1)(a) RMA. The **Environment Court in *Kennedy v Waikato District Council* [2022] NZEnvC 97** held that:

> *"Unauthorised building activity contrary to the Building Act is itself an adverse effect on the integrity of the regulatory system."*

Therefore, the **Council's finding of non-compliance** should weigh heavily against the application. By continuing to reside unlawfully in a shed without appropriate resources or building consent, the applicants have demonstrated **disregard for legal compliance** and created **ongoing and compounding adverse effects** on neighbouring landowners as ourselves.

2. Contrary to the Objectives and Policies of the District Plan

The proposal is also directly contrary to the objectives and policies of the Selwyn District Plan, particularly those protecting:

- Rural character (GRUZ-P2, GRUZ-O1),
- Amenity values (GRUZ-O3),
- Public health and safety (e.g., through proper sanitation, authorised occupation, and lawful development).

The Environment Court in *Queenstown Lakes DC v Hawthorn Estate Ltd* [2006] NZRMA 424 reinforced that non-complying activities must not erode planning integrity or be allowed to "normalise" breaches that would compromise the overall coherence of the plan.

Approving this application despite known non-compliance and a track record of regulatory breach would effectively reward unlawful conduct and diminish the credibility of the SDC's planning framework.

B13 - Relief Sought

The applicants' current land use is unlawful and non-compliant, generating **ongoing adverse effects** that breach both limbs of the section 104D threshold. In line with *Kennedy*, *Hawthorn*, and the RMA's intent to preserve environmental and regulatory integrity, we request that:

- The application will be **declined outright**, OR
- In the alternative, **mandatory public notification** should be required under section 95A(2)(a) due to adverse effects that are **more than minor**.

Misleading [redacted] McDonald Road Address Claim

In the Chapman Tripp memorandum dated 27 March 2025, the applicant's legal counsel claimed that the proposed dwelling would "likely be [redacted] McDonald Road." This claim is factually incorrect and misleading, disregarding existing cadastral boundaries and numbering conventions.

Our property is [redacted] and according to both Google Maps and Council GIS layers, the address [redacted] McDonald Road corresponds to a front-facing shed on our land, as shown clearly in Appendix 15. The numbering sequence on McDonald Road follows standard rural convention, even numbers on our side of the street, with [redacted] following directly after [redacted]. The applicants' property is on the opposite side of the road, making it geographically and legally implausible to allocate them the [redacted] Road address.

More troublingly, the applicants previously issued a trespass notice to me referring to [redacted] McDonald Road in May 2024; shortly after, they were found non-compliant, even though this location, via GPS, corresponds to our operational shed. This act suggests a deliberate pretext or attempt to *claim association* with our land through *misrepresentation*. This raises serious concerns about their intent and credibility, especially considering their history of non-compliance, reverse sensitivity intrusion, and ongoing unconsented occupation.

Such address manipulation could have several legal and operational consequences, including:

- Emergency services are confused in rural areas where GPS and number precision are critical.
- Administrative errors in Council databases, rate allocation, or LIM reports.

- Potential title or legal disputes if 130 is misattributed or associated with the wrong land parcel.
- Undermining public trust in the Council's due diligence processes during consent applications.
- Or even possibility of future land banking leading to commercial subdivision causing us to have land title issues.

Therefore, we urge the Council to prevent any numbering that infringes upon or overlaps with existing legal access points or boundaries. In that case, the Council must correct the record and ensure that no part of this resource consent misuses, confuses, or claims territorial or locational linkage, more importantly, potential access routes to our farm land at [redacted]

This issue speaks not only to accuracy in planning but also to the integrity of the consent process, the protection of existing landowners' rights, and any future legal claims from potential land developers.

B14 - Legal Precedent: *Watson v Wellington City Council* – Enforcement of Unauthorised Residential Use

We draw the Commissioner's attention to the recent Environment Court decision in *Watson v Wellington City Council* [2024] NZEnvC (as reported in *The Post*, 16 May 2025), where the Court upheld an abatement notice requiring the removal of all residential infrastructure from a storage shed unlawfully being used as a dwelling in rural Brooklyn, Wellington. Despite the applicants called *Ben Watson* claiming hardship and lack of alternative accommodation,

Judge Semple determined that no consent existed for residential use and that the structure was authorised solely as a storage building. Accordingly, the Court ruled the abatement notice was lawfully issued and must be upheld.

This case sets a clear and timely precedent: unauthorised use of a storage shed as a dwelling is unlawful and warrants enforcement, regardless of mitigating personal circumstances. In that case, the Court expressed sympathy but clarified that consent obligations under the RMA and the District Plan are not discretionary.

In our present situation, the Campbells have similarly occupied a shed consented for rural storage, without resource or building consent for residential use. They have further installed residential infrastructure, large bay windows, including plumbing, electrical wiring, lighting, and surveillance cameras. Despite the Selwyn District Council's (SDC) own compliance officers confirming a breach of use in May 2024, no abatement notice was issued, allowing the unlawful occupation to continue for over a year.

Of additional concern, as discussed is the applicant's apparent attempt to acquire the address "[redacted] McDonald Road", as demonstrated in our submission, which corresponds to a shed on our land, not theirs.

These patterns raise legitimate questions about the credibility of the applicants and their professional team. Attempts to obscure or conflate property addresses, combined with a track record of unlawful occupation and potential connections to a developer-led land strategy, strongly suggest a deliberate effort to sidestep district plan controls and mislead both Council and neighbouring property owners.

In line with the *Ben Watson* (2024/25) case and the Environment Court's findings in Wellington, this application must not be allowed to retroactively legitimise unlawful activity (See The Post Press release on the case and the Environment Court case Watson V Wellington). The proper response, as the Court made clear in *Watson*, is **not to adjust** policy to accommodate unauthorised behaviour but to uphold the integrity of the plan and require compliance.

Conclusion

This submission has outlined in detail the serious and ongoing procedural, legal, planning, and environmental failures surrounding Resource Consent Application RC246049. It is our firm view that the application must be declined under Section 104D of the Resource Management Act 1991. The adverse effects are more than minor, the activity is non-complying under the Selwyn District Plan, and the credibility of the application has been undermined by a sustained pattern of omission, misrepresentation, and non-compliance.

Throughout this process, the applicants have acted dishonestly from unlawfully occupying a shed as a residence in breach of planning and building regulations, to withholding the existence of a land contamination encumbrance, to relying on house plans linked to a property operating as an Airbnb without the necessary consents. The supporting professionals, including legal counsel and planners, have not demonstrated the independence or rigour required by the RMA's standards. The repeated references to "minor effects" are entirely disconnected from the lived experience of adjacent landowners and ignore the fundamental planning purpose of the General Rural Zone.

We, as lawful and compliant landowners, should not have been forced to reach this forum. It is the failure of the Selwyn District Council to enforce its own District Plan, to uphold

the mandatory requirements of the National Environmental Standards for Contaminated Soil (NES-CS), and to properly assess effects under Section 95, that has brought us here.

Should this application proceed or be granted, we respectfully reserve our right to appeal to the Environment Court, where this matter will be heard in full, in a public domain, and with judicial scrutiny. There, the people of Aotearoa New Zealand will be able to evaluate the conduct of all parties—legal, professional, and governmental, and whether due process has been upheld, or if undue bias, procedural irregularities, and planning erosion have instead prevailed.

We do not make this submission lightly. But it is our sincere belief that if this application is granted, it will set a dangerous precedent, one where unlawful occupation and planning shortcuts are rewarded, and lawful property owners are left to bear the social, environmental, and financial cost. That is not the purpose of the Resource Management Act, nor is it consistent with the principles of fairness and transparency expected in New Zealand's planning system.

Accordingly, we ask that the Commissioner **decline RC246049 outright,** in defence of both the District Plan and the public interest. Should the Commissioner be unable to reach that decision with confidence, the only just and lawful alternative is to require full public notification under Section 95C of the RMA and subject this application to the scrutiny it has, thus far, managed to avoid.

Furthermore, we submit that Selwyn District Council has an **immediate legal and moral duty to enforce compliance** with both the *Resource Management Act 1991* and the *Health Act 1956*. Given the known contamination risks identified in the Preliminary Site Investigation (PSI), and the unconsented use of the shed and caravan as residential dwellings, including the operation of a shower and macerator pump system discharging greywater to land, the continued occupation

of the site represents a **serious public health hazard**. As such, Council must take enforcement action under **sections 322 and 329 of the RMA** to require the removal of the applicants, their caravan, and any residential fittings from the site. Immediate action is warranted to **protect health, ensure the integrity of the District Plan, and uphold public confidence** in the planning system. Non-enforcement in this case would effectively endorse unlawful activity and expose SDC to legal liability under both the RMA and The Health and Safety at Work Act 2015 (HSWA).

AT & LA Stalker

[redacted]

[redacted]

APPENDICES

Appendix A1: Flooding map and photos ith site points 1-6

Appendix A2.1 - Harmans Letter to SDC detailing adverse effects and non compliance

Appendix A2.2 - Letter from Snell to Brian Burke- Lawyer

Appendix A3.1 - photo of occupation in shed

Appendix A3.1 - Harmans - lawyers bill

Appoendix A3.2 - Costings for plants to hide the applicants large shed

Appendix A4 - Ecan emails saying the applicants are illegal

Appendix A5.1 -Wellington family to lose home and **A5.2** attached to this

Appendix A5.2 - Schedule of proceedings attached behind A5.1

Appendix A6.1 to 6.7 - photos of applicants in residence

Appendix A7 - Email from DC response to say the applicants are all good

Appendix A8.1 - A8.2 - photos of Andrew working the land

Appendix A9.1 - Bailey email to me

Appendix A9.2 - bare land in 2019 great views

Appendix A9.3 - Our gate - frontage - great views no high gate

Appendix A9.4 - Our lived reality - everyone missed in their application

Appendix A9.5 - Highly productive land info

Appendix A10 - Fig 1 - price of rams; A10.1 - 10.2 - Fig 2 & 3; Texel Bell Signage; A10.3 - Fig 4 - photo of applicant with her ram; A10.4 - Fig 5 - Facebook more success; A10.5 - Fig - man using their stud genetics; A10.6 - Fig 7 - Stud registration; A10.7 - IBC tanks they use comparison to A10.8 - our tank legal.

Appendix A11.1 - A11.2 - our working farm - Andrew harvesting

Appendix A12.1 - A12.2 - HAIL register and Form 9 incorrectly marked

Appendix A13.1 -A13.2 - current shingle road condition more than minor

Appendix A14.1 - A14 .5 - Evidence house plans are Ben Watson and used as BNB and business registration at [redacted] Likewise works as a General Manager for Holmes Construction Limited.

Appendix A15 - google maps showing [redacted] McDonald road , on our side front shed

SITE MAP WITH PHOTO REFERENCE POINTS

A1