

Sections 104B, 108, 221

Resource Management Act 1991



Decision and Planning Report

Planning Report pursuant to section 42A of the Resource Management Act 1991 recommending whether or not an application for resource consent should be:

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

Decision pursuant to section 113 of the Resource Management Act 1991

APPLICATION NUMBER(S)	RC255352 & RC255430
APPLICANT	Joshua Mitchell
BRIEF DESCRIPTION OF THE APPLICATION	<p>This is a joint application for consent notice variation and land use. The following consents are sought:</p> <ul style="list-style-type: none">• RC255352 - Variation of Consent Notice 12387991.4 to enable the construction of a residential unit with an attached garage that does not comply with the minimum building floor level set out in the consent notice but complies with the Flood Assessment Certificate issued by Selwyn District Council.• RC255430 - Land use consent is sought for an internal boundary setback non-compliance and earthworks exceeding a volume of 350m³ within the SASM 30 overlay.
ADDRESS	172 Seabridge Road, Motukarara, Tai Tapu
LEGAL DESCRIPTION	Lot 1 DP 564058
TITLE REFERENCE	1029281
AREA	1.00 hectares
ZONING / OVERLAYS	<p>Operative Selwyn District Plan (2016), Rural Volume</p> <p>Outer Plains Zone</p> <p>ECan Defined Flood Zone</p> <p>Partially Operative Selwyn District Plan (Appeals Version)</p> <p>General Rural Zone</p> <p>Tsunami Policy Overlay</p> <p>Plains Flood Management Overlay</p> <p>Ngā Tūranga Tūpuna: SASM 30 Overlay</p> <p>Rural Density: SCA-RD2</p>
OVERALL ACTIVITY STATUS	Discretionary

The Application

1. This application, RC255352 was formally received by the Selwyn District Council on 9 May 2025. Further information, that included a land use consent application (RC255430) to be processed with the change of consent notice application, was received on 3 June 2025, and this information now forms part of the application. The land use application was limited notified on 19 June 2025 and the submissions period closed on 18 July 2025. Two submissions were received by Council.



2. The application proposes to vary Consent Notice 12387991.4 that was registered on the record of title of Lot 1 DP 564058 under subdivision consent RC215150. The proposed variation of the consent notice will enable the establishment of a residential unit with an attached garage with a minimum finished floor level of 2.22m LVD1937, based on the updated flood modelling and site-specific data. The consent notice should be varied to read as follows (deletions have been identified in ~~strike through~~ and additions in underline):

"That this site is located within the Plains Flood Management Overlay. ~~Lake Ellesmere/Te Waihora Flood area.~~ Any new dwelling or other principal building shall not be erected unless a minimum ~~finished building floor level of +2.22m 3m above mean sea level~~ (Lyttelton Datum 1937) or +1.86m (New Zealand Vertical Datum 2016) is identified and the finished building floor level is at or above that level.

This site has been assessed as Technical Category 2 under Ministry of Business, Innovation and Employment (MBIE) December 2012 guidelines. The shallow soils do not meet NZS3604 criteria for "good ground", and further geotechnical assessment will be required at building consent stage.

That unless a project-specific geotechnical assessment has been undertaken by a suitably qualified and experienced geotechnical engineer and its recommendations complied with, no dwelling or principal dwelling shall be erected on this site."

3. During the review of the application, it was noted that the proposed residential unit will not comply with the required setback distance of 30m from an internal boundary. The Partially Operative Plan identifies the application site as being within an area of significance to Ngāi Tahu, being SASM-30 (Ngā Tūranga Tūpuna Overlay). Land use consent is also sought to undertake earthworks associated with the installation of building foundations for the residential unit, that will exceed 350m³ as required within the Ngā Tūranga Tūpuna Overlay.
4. The main aspects of the activity are as follows:
- The application site is subject to a consent notice noting that the site is located within the Lake Ellesmere/Te Waihora Flood Area. The consent notice requires that any new dwelling or other principal building shall not be erected unless a minimum building floor level of 3m above mean sea level (Lyttelton Datum 1937) is identified and the building floor level is at or above that level.
 - A building consent, BC250467 for the construction of a two-storey three-bedroom residential unit and an attached 3 bay garage has been lodged on 24 March 2025. This building has not yet been constructed.
 - A flood assessment certificate, FC250063 was issued by Selwyn District Council on 19 February 2025 and requires that the minimum finished floor level shall be +2.22m LVD1937 or +1.86m NZVD2016.
 - The proposed building will be 7m from the southern boundary shared with Lot 2 DP 564058.
 - The application site is within SASM 30 overlay, and the installation of building foundations will exceed a volume of 350m³ and will be 379m³.

5. The position of the proposed residential unit is shown on the site plan included as **Figure 1** below:

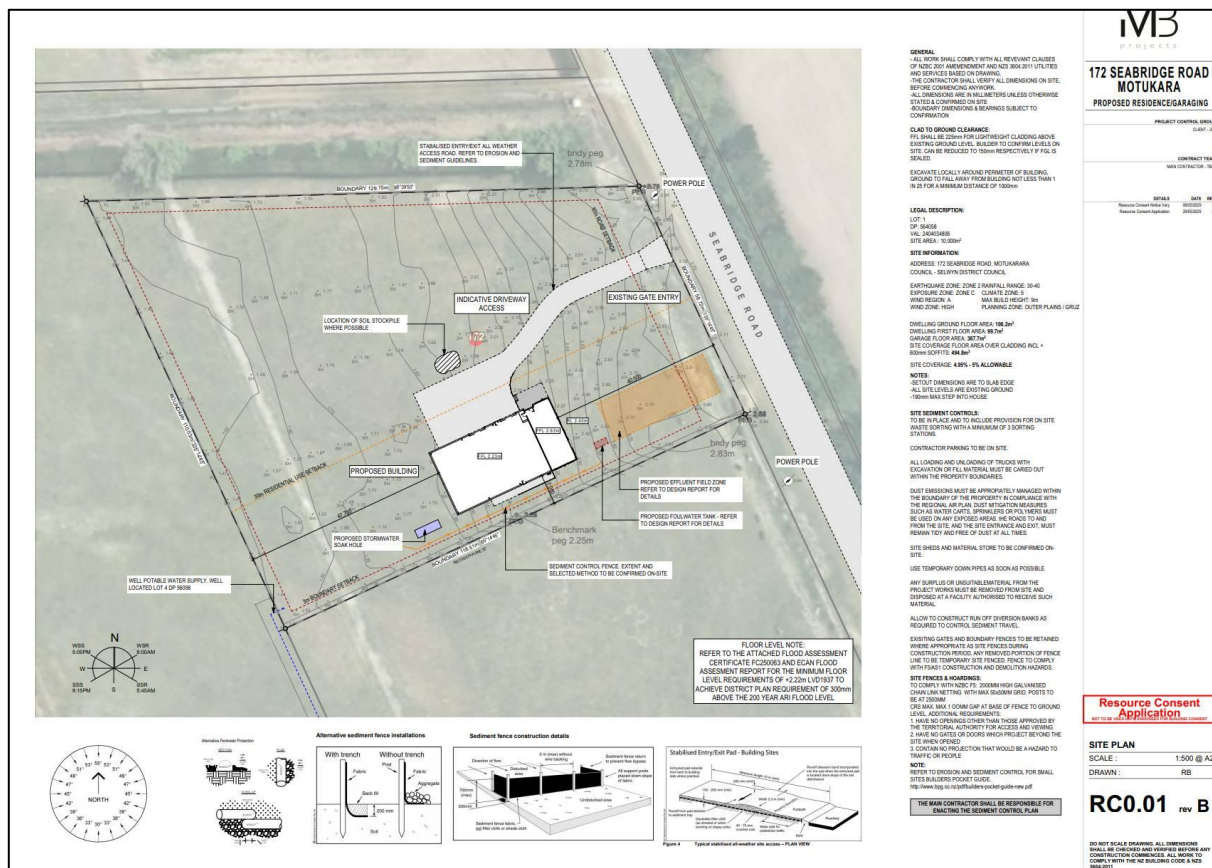


Figure 1: Proposed site plan (Source: Application documents)

6. The variation of the consent notice that was imposed as a subdivision condition and the land use aspects of this proposal have been bundled in one application and will be processed as such, given that there is an overlap between the two such that consideration of one may affect the outcome of the other and it would not be appropriate to separate them. This enables an integrated and holistic assessment of the proposal as a whole.

Background

7. The application site was created as an undersized allotment under subdivision consent, RC215150. Consent was granted for the subdivision of Lot 2 DP 532948 (86.7170 ha) to create Lots 1 to 3 DP 564058 (1.0 hectares each) and Lot 4 DP 564058 (83.7159 hectares).
8. An associated land use consent, RC215151 was issued on 15 October 2021 to allow the establishment of residential units on the undersized allotments created under subdivision consent, RC215150.
9. An extension of time to the lapse date of land use consent RC215151, was granted under RC245415 on 26 September 2024 and the land use consent can be given effect to until 16 October 2030.
10. The application site, Lot 1 DP 564058 is a subject to consent notice 12387991.4 that reads as follows:

"That this site is located within the Lake Ellesmere/Te Waihora Flood area. Any new dwelling or other principal building shall not be erected unless a minimum building floor level of 3m above mean sea level (Lyttelton Datum 1937) is identified, and the building floor level is at or above that level.

This site has been assessed as Technical Category 2 under Ministry of Business, Innovation and Employment (MBIE) December 2012 guidelines. The shallow soils do not meet NZS3604 criteria for "good ground", and further geotechnical assessment will be required at building consent stage.

11. *That unless a project-specific geotechnical assessment has been undertaken by a suitably qualified and experienced geotechnical engineer and its recommendations complied with, no dwelling or principal dwelling shall be erected on this site."*

The Existing Environment

12. The application site is legally described as Lot 1 DP 564058 being 1 hectare in area, as contained in Record of Title 1029281.
13. The site has frontage to Seabridge Road which is a formed and unsealed local road. The application site is pastoral land and is currently undeveloped. I visited the site on 6 June 2025, and a caravan was parked on-site near the northern boundary of the site. This is shown on the photo included as **Figure 2** below:



Figure 2: Application site (Source: Site visit)

14. The formed vehicle crossing provided access to the site off Seabridge Road is also shown in **Figure 2**.
15. The two neighbouring lots to the south of the application site were also created as undersized allotments and are still undeveloped.
16. The site is located within the Plains Flood Management and Tsunami Policy Overlay areas. Te Waihora/Lake Ellesmere is located approximately 2km to the south of the application site.
17. The application site is screened from the adjoining site to its north by a mature shelter belt, while its southern boundary contains young vegetation. The main access to the site is from Seabridge Road.
18. The wider area is predominantly pastoral land that is used for grazing stock and consists of properties ranging from 1 hectare to more than 80 hectares.

Activity Status

Statutory Considerations

19. Section 221 of the Resource Management Act states:

221 Territorial authority to issue a consent notice

- (1) *Where a subdivision consent is granted subject to a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners after the deposit of a survey plan (not being a condition in respect of which a bond is required to be entered into by the subdividing owner, or a completion certificate is capable of being or has been issued), the territorial authority shall, for the purposes of section 224, issue a consent notice specifying any such condition.*
- (2) *Every consent notice must be signed by a person authorised by the territorial authority to sign consent notices.*
- (3) *At any time after the deposit of the survey plan,—*

- (a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:
- (b) the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.
- (3A) Sections 88 to 121 and 127(4) to 132 apply, with all necessary modifications, in relation to an application made or review conducted under subsection (3).
- (4) Every consent notice shall be deemed—
 - (a) to be an instrument creating an interest in the land within the meaning of section 51 of the Land Transfer Act 2017, and may be registered accordingly; and
 - (b) to be a covenant running with the land when registered under the Land Transfer Act 2017, and shall, notwithstanding anything to the contrary in section 103 of the Land Transfer Act 2017, bind all subsequent owners of the land.
- (5) Where a consent notice has been registered under the Land Transfer Act 2017 and any condition in that notice has been varied or cancelled after an application or review under subsection (3) or has expired, the Registrar-General of Land shall, if he or she is satisfied that any condition in that notice has been so varied or cancelled or has expired, make an entry in the register and on any relevant instrument of title noting that the consent notice has been varied or cancelled or has expired, and the condition in the consent notice shall take effect as so varied or cease to have any effect, as the case may be.

20. An application for to vary a consent notice under s221(3) of the Resource Management Act 1991 (RMA) is assessed as a **discretionary** activity.

Partially Operative Selwyn District Plan (Appeals Version) ("the Partially Operative Plan")

21. The application site is zoned General Rural. The site is also subject to the Tsunami Policy Overlay, the Plains Flood Management Overlay, the Ngā Tūranga Tūpuna: SASM 30 Overlay and within the rural density area: SCA-RD2.
22. 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

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

Operative/treated as operative:

RULE	TOPIC	NON-COMPLIANCE	STATUS
GRUZ-REQ4	Structure setbacks (Internal boundary)	A setback of 30m from an internal boundary is required for a residential unit. The proposal is to establish a residential unit with an attached garage within this 30m setback (7m from the southern boundary)	Restricted Discretionary (Rule GRUZ-REQ4.2)
SASM-R2.6.a.vi	Earthworks	Earthworks is a permitted activity for the installation of building foundations for residential units, residential accessory buildings and farm accessory buildings where the volume of earthworks does not exceed 350m ³ . The volume of earthworks proposed for the installation of building foundations will be 379m ³ .	Restricted Discretionary (Rule SASM-R2.2)

24. The application site was created as an undersized allotment under subdivision consent, RC215150. Sufficient balance land was provided at the time the application site (Lot 1 DP 564058) was created, to comply with the minimum site size requirements of one residential unit per 20 hectares. A land use consent, RC215151 was issued on 15 October 2021 to allow the establishment of residential units on the undersized allotments created under subdivision consent, RC215150.
25. The application site is within the Plains Flood Management Overlay. The PODP describes a high hazard area as land within any of the following:
- Coastal Erosion Overlay; or
 - Coastal Inundation Overlay; or
 - Waimakariri Flood Management Overlay; or
 - Plains Flood Management Overlay, but limited to land where, in a 1 in 500 year Average Recurrence Interval flood event, either:
 - a. the water depth (measured in metres) x the water velocity (measured in metres per second) is greater than 1; or
 - b. the water depth is greater than 1m
26. The flood model results on Canterbury Maps show that the application site is subject to a maximum water depth of 0.5m above ground and is therefore not located within a high hazard area. Selwyn District Council has issued Flood Assessment Certificate, FC250063 for the application site on 19 February 2025.
27. Therefore, the land use proposal is a **restricted discretionary** activity under the Partially Operative Plan.

Status – Partially Operative Plan Only

28. Overall, the bundled proposal is a **discretionary** activity under the Partially Operative Plan.

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

29. The application site is zoned Outer Plains. The site is also subject to Ecan Defined Flood Zone.
30. 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.
31. All rules that would apply to this proposal are now treated as inoperative and accordingly no further consideration has been given to the Operative Plan.

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

32. The Detailed Site Investigation submitted with the underlying subdivision application, RC215150 and the review by Ecan's Contaminated Site's Team concluded that no HAIL activities were identified and had no concern with the subdivision going ahead.
33. The applicant confirmed in the application form, Form 9 that the land is not currently being used, has not been used in the past or is unlikely to have been used for an activity listed in the Hazardous Activities and Industries List (HAIL). Therefore, the NES-CS does not apply.

Overall Activity Status

34. As per the Activity Status section above, the proposal is being considered as a **discretionary** activity overall.

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

35. The provision of written approvals is relevant to the notification and substantive assessments of the effects of a proposal under sections 95D, 95E(3)(a) and 104(3)(a)(ii). Where written approval has been provided, the consent authority must not have regard to any effect on that person. In addition, that person is not to be considered an affected person for the purposes of limited notification.
36. The applicant has provided written approval from the owners of:
- Lot 2 DP 564058, Valuation number 2404034807
37. The location of Lot 2 DP 564058 in relation to the application site is shown in **Figure 3** below.



Figure 3: Location of Lot 2 DP 564058 in relation to the application site (Source: SDC Maps)

Limited Notification

38. A decision regarding notification pursuant to sections 95A-E has been undertaken separately. In summary it was determined that the land use application, RC255430 be limited notified. Notice was served on the following parties:
- Te Ngāi Tūāhuriri Rūnanga
 - Te Taumutu Rūnanga
 - Heritage New Zealand Pouhere Taonga

Submissions

39. In accordance with Section 95B of the Resource Management Act 1991, the land use application was limited notified on 19 June 2025. The submissions period closed on 18 July 2025 with two submissions being received by Council from:

- Mahaanui Kurataiao on behalf of Te Taumutu Rūnanga – 226 Antigua Street, Christchurch
- Heritage New Zealand Pouhere Taonga – 64 Gloucester Street, Christchurch Central

40. The concerns raised and mitigation measures identified to mitigate the effects of the proposal as included in the submissions are summarized below:

Concerns raised by Mahaanui Kurataiao on behalf of Te Taumutu Rūnanga

- The subject site, 172 Seabridge Road, is located in the Waihora Co-Governance Area, a cultural landscape classification which recognises the significance of Te Waihora and the wider catchment. The applicants' site is not only within the Co-Governance Area, but within the SASM 30 overlay – Part of Te Waihora margins and wetlands, located within 2-2.5km of the lake's shores. Activities within the margins, wetlands and flood plains must be managed cautiously and with intent because they influence the way the lake is managed.
- The proposal to reduce the finished floor level from 3m above mean sea level (Lyttelton Datum 1937) to +2.22m (Lyttelton Datum 1937) or +1.86m (New Zealand Vertical Datum 2016) could place additional pressures/limitations on the ability for Te Waihora to expand, as it naturally does and must be allowed to. The protection of communities and private property is often given priority over and above environmental events and the tribal property right over the lakebed. Permitting developments that could influence lake level management, both now and in the future, is inconsistent with Ngāi Tahu values and the policies outlined in TW5 of the MIMP.
- Te Taumutu Rūnanga requests that the consenting authority requires the dwelling to be constructed with a finished floor level consistent with that evaluated and approved under the underlying subdivision consent.
- Without sufficient management, the proposed earthworks have the potential to degrade environmental values by causing sediment, nutrient, contamination, and dust migration.
- Earthworks are also a significant concern as any disturbance to land has the potential to uncover or damage previously unrecorded wāhi taonga or Māori artefacts. Because Te Waihora is a significant landscape to Ngāi Tahu heritage, used for travel, meaning kai and more, this potential is considered higher.
- Restoring indigenous biodiversity values is one of the most important challenges for the future management in the takiwā and the establishment of indigenous biodiversity promotes ecosystem services like enhancing the cultural landscape, increasing indigenous habitat, filtering sediment and sequestering carbon.
- On site wastewater management is required to give effect to this development and the site is located within the margins of Te Waihora. Wastewater discharges can contain a variety of contaminants that are considered harmful and can degrade the mauri of many natural resource's values by tāngata whenua. Therefore the on-site management of contaminants is crucial before they are carried off site.

Mitigation measures identified by Mahaanui Kurataiao on behalf of Te Taumutu Rūnanga

- Based on the above concerns Te Taumutu Rūnanga wishes the following consent conditions to be applied by the consenting if the consent is granted:
 - The dwelling must be designed and constructed to align with the requirements imposed by the underlying subdivision consent. Particularly regarding the required finished floor level.
 - An Accidental Discovery Protocol (ADP) must be in place during all earthworks required to exercise this consent to deal with archaeological finds and protect the interests of mana whenua. This condition does not constitute a response under the Heritage New Zealand Pouhere Taonga Act (HNZPT 2014).

- An Erosion and Sediment Control Plan for any earthworks required to give effect to this consent must be prepared, inspected, and maintained in accordance with Environment Canterbury's Erosion and Sediment Control Toolbox for Canterbury until such time the exposed soils have been stabilised.
- Indigenous planting is required to enhance the cultural landscape, increase indigenous habitat, filter sediment and sequester carbon.
- Te Taumutu Rūnanga recommended the following advice notes to be applied by the consenting if the consent is granted:
 - The future wastewater treatment system should implement a secondary level treatment system.
 - The overall proposal should refer to the Ngāi Tahu Subdivision and Development Guidelines to the greatest practical extent.

Concerns raised and recommendations proposed by Heritage New Zealand Pouhere Taonga (HNZPT)

- The subject site is within an area of particular cultural significance, is located within the Ngā Tūranga Tūpuna relating to Te Waihora / Lakes Ellesmere within the Mahaanui iwi Management Plan Silent Files and Kaitorete Spit ID 64 which is identified as a Wāhi Tapu / Wāhi Taonga on the Kaitorete Spit.
- The AEE notes that erosion and sediment control measures will be followed, further details are required to clearly demonstrate whether the control measures are relative to the location, topography and environment of the area. As such, HNZPT recommends that given the application relates to earthworks volume exceedance specifically, a thorough Erosion and Sediment Control Plan should be provided. This should clearly detail mitigative measures to be implemented during works, in order to understand how the natural character of the waterbody and its margins, Te Tai o Mahaanui / the coastal environment would be protected from additional effects associated with the earthworks volume exceedance.
- Some erosion and sediment controls are detailed in Appendix D – Architectural Drawings prepared by MB Projects, dated 29/05/2025, RC01.01. HNZPT recommends that further measures could be taken relative to the cultural significance of this area to ensure no adverse effects on natural features with cultural values occur.
- No Design Report for on-site services has been provided as part of the limited notification to HNZPT and it is recommended that if the services intend to utilise local drainage systems, consideration of relevant effects to the nearby Ngā Wai should also be made for any stormwater or wastewater discharge.
- There do not appear to be any known archaeological sites, defined as any place occupied prior to 1900 that may provide archaeological information on the history of New Zealand, in the immediate vicinity of the subject site.

41. Both Mahaanui Kurataiao and Heritage New Zealand Pouhere Taonga were neutral towards all or part of the application and identified on their submission forms that they did not wish to be heard in support of their submissions. Mahaanui Kurataiao has requested that their consent conditions and advice notes be applied by the consent authority if the consent is granted and HNZPT requested that their comments be taken into account if the consent is granted.
42. Based on the above, I consider that a hearing need not to be held in accordance with Section 100 of the Resource Management Act 1991.

Section 104 Assessment

43. Section 104 of the Act sets out the matters the Council must have regard to when considering an application for resource consent.
44. 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.

...

45. 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.
46. 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.

Section 104(1)(a) – Effects on the Environment

Permitted Baseline

47. 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.
48. The Partially Operative Plan requires a minimum setback of 30m between an internal property boundary and a residential unit. The proposed residential unit with an attached garage will be established 7m from the southern internal boundary.

49. The application site is located within the Ngā Tūranga Tūpuna: SASM 30 Overlay and earthworks for the installation of building foundations for residential units, residential accessory buildings and farm accessory buildings where the volume of earthworks does not exceed 350m³ are permitted. The volume of earthworks because of the proposal will be 379m³.
50. Therefore, the permitted baseline in the Partially Operative Plan in relation to the minimum internal boundary setback and volume of earthworks within the Ngā Tūranga Tūpuna Overlay is of some relevance and will be considered in the following assessment.

Receiving Environment

51. 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 is a rural area, where residential units on undersized allotments were consented, and balance land subject to mechanisms preventing the erection of any residential unit, were provided.

Restrictions on Matters Considered

52. The status of the activity is **Discretionary**. As such, the Council's discretion is unrestricted, and all adverse effects must be considered.
53. The objectives, policies, reasons for rules and assessment matters in the Plans provide useful guidance when considering the adverse effects of the proposal, and these are discussed where relevant below.

Effects

54. The adverse effects that might be considered relevant to this proposal are:

- Natural Hazards effects
- Setback effects
- Cultural effects
- Heritage Effects

Natural Hazards Effects

55. The application proposes to vary Consent Notice 12387991.4 that was registered on the record of title of Lot 1 DP 565048 under subdivision consent RC215150. This consent notice requires that any new dwelling or other principal dwelling building shall not be erected unless a minimum building floor level of 3m above mean sea level (Lyttleton Datum 1937) is identified and the building floor level is at or above the level and was imposed due to the flood risk associated with the Lake Ellesmere/Te Waihora area.
56. However, the applicant consulted Environment Canterbury in respect of the proposal and their flood hazard assessment dated, 31 July 2024, stated that Selwyn District Council has completed rain-on-grid flood modelling for the majority of the district. This modelling includes 200 and 500-year average recurrence interval (ARI) events. In both ARI events, the modelling shows flooding covering the western half of the application site, with the eastern half of the property (towards Seabridge Road) clear of flooding. The flooding of the property reaches a level of 1.9m LVD1937 in a 200-year ARI flood event. Based on this information, Environment Canterbury concluded that there are no high hazard areas on the property and recommended that a residential unit built at the application site, Lot 1 DP 565048, with a floor level at least 2.2m LVD1937 would meet the Partially Operative Plan requirement to be 300mm above the 200-year ARI flood level.
57. Mr M Twaites from Environment Canterbury confirmed on 18 February 2025 that the information in the flood hazard assessment report dated 31 July 2024 is still up-to-date and relevant.
58. The minimum building floor level of 3m above mean sea level (Lyttleton Datum 1937) as required in Consent Notice 12387991.4 was reviewed by Mr Victor Mthamo and Mr Graeme McNicholl, Development Engineers at

Selwyn District Council, and they noted that Selwyn District Council's flood modelling considered the Lake Ellesmere water levels.

59. The Environment Canterbury assessment identifies an appropriate building site within the application site, and this is illustrated in **Figure 4**:

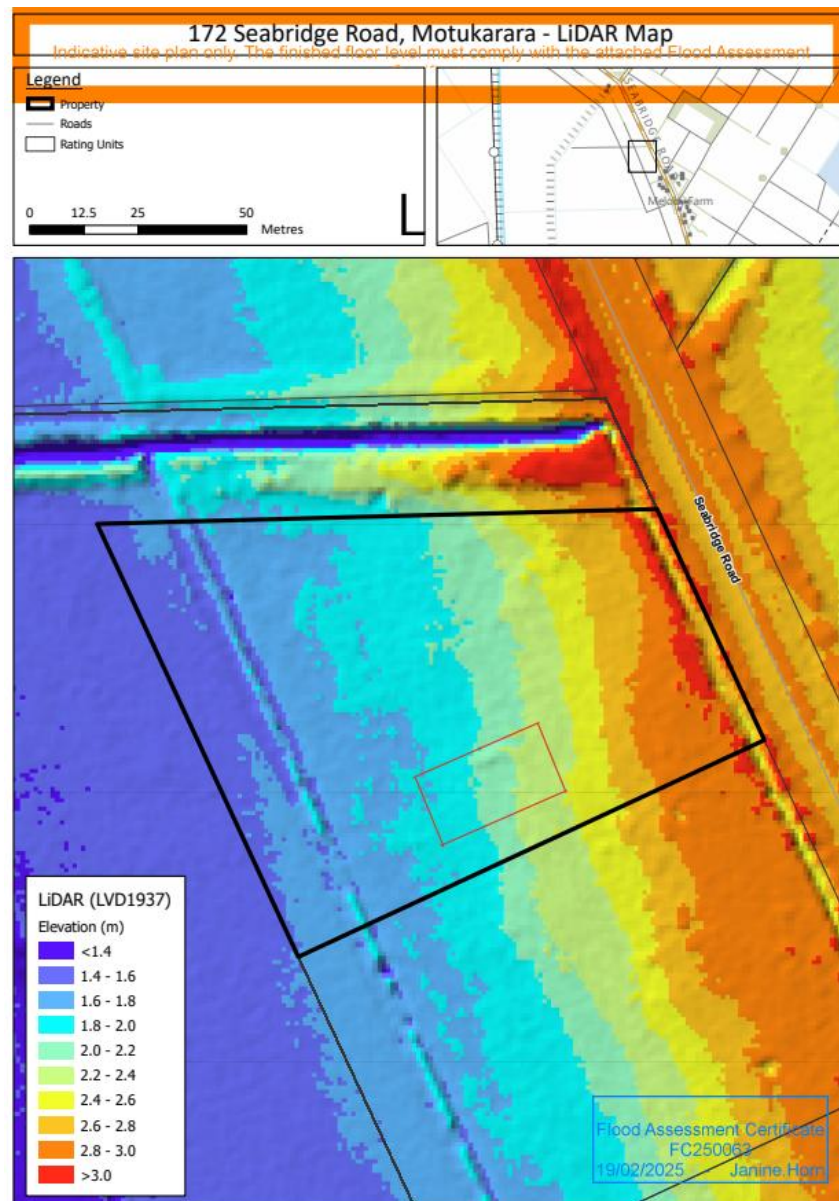


Figure 4: Appropriate building site identified by ECan (Source: FC250063)

60. Based on the information provided by Environment Canterbury and a review by Mr Mthamo, Selwyn District Council Development Engineer, Council has issued Flood Assessment Certificate, FC250063 confirming that Lot 1 DP 564058 is not within a high hazard area and that the minimum finished floor level shall be +2.22m LVD1837.
61. In view of the technical advice above it is considered that varying Consent Notice 12387991.4 to require a minimum finished floor level of +2.22m LVD1937 is acceptable.
62. The site is also subject to a Tsunami Policy Overlay. Whilst there are no applicable rules that apply in the General Rural Zone, there is policy direction and a matter for discretion (NH-P9). NH-P9 seeks to ensure that where use or development within the Tsunami Policy Overlay results in the congregation of vulnerable persons,

that adequate provisions has been made for their evacuation in the event of a tsunami. This policy direction is not relevant to this application as there will be no congregation of vulnerable persons.

- 63- Overall, any adverse flood hazard and tsunami effects are considered to be less than minor.

Structure Setback Effects

64. The application proposes to establish a residential unit with an attached garage within the required 30m internal boundary setback. The proposed building will be positioned 7m from the boundary shared between the application site and Lot 2 DP 56058.
65. The adjoining property to the south of the application site, Lot 2 DP 56058 is considered to be the only property to be potentially affected by the internal boundary setback breach. This property is currently undeveloped, and written approval has been obtained from the owner of this property. As such any adverse effects on the adjacent property owner should be disregarded and any adverse effects as a result of the non-complying internal boundary setback will be less than minor.

Cultural Effects

66. The application site is subject to the Ngā Tūranga Tūpuna: SASM 30 Overlay. SASM-R2.6.a.vi permits earthworks for the installation of building foundations for residential units, residential accessory buildings and farm accessory buildings where the volume of earthworks does not exceed 350m³. The volume of earthworks for the installation of the proposed building will be 379m³ and as such compliance with this rule is not achieved.
67. SASM-R2.9 requires that any application arising from the above non-compliance shall not be subject to public notification and where advice from the Rūnanga is received in respect of an application following engagement undertaken by either the applicant or the Council, that advice shall inform whether notification of the application is to be served on the relevant Rūnanga. Upon lodgement of the application Mahaanui Kurataio Ltd has requested to review the application to provide feedback on the application on behalf of the local Runanga. This application was sent to Mahaanui Kurataio Ltd for review on 11 June 2025.
68. At the time the application was limited notified, Mana Whenua Advice had not been provided, but Mahaanui Kurataio addressed the potential adverse effects of the proposal on Mana Whenua values, particularly regarding Te Waihora, in their submission. These concerns are summarized in the "Notification" paragraph, and they recommended consent conditions and advice notes as mitigation measures to be applied by the Consent Authority if the consent is granted.
69. Te Taumutu Rūnanga noted that the reduced finished floor level could place additional pressures/limitations on the ability for Te Waihora/Lake Ellesmere to expand, as it naturally does and must be allowed to and that the protection of communities and private property is often given priority over and above environmental events and tribal property right over the lakebed. Permitting developments that could influence lake level management, both now and in the future, is inconsistent with Ngāi Tahu values and the policies outlined in TW5 of the MIMP. Therefore, Mahaanui Kurataio recommended a condition that the dwelling must be designed and constructed to align with the requirements imposed by the underlying subdivision consent, particularly regarding the required finished floor level. I acknowledge their concerns, but I also acknowledge that consent has been granted with the underlying subdivision for the development of a residential unit on the application site. As discussed in my assessment of natural hazards effects, I consider that the appropriate technical evidence has been used in support of the reduced finished floor level of +2.22m LVD1937 required in the flood assessment certificate, FC250063, and as such I do not consider it appropriate to include the recommended consent condition that the dwelling must be designed and constructed to align with the required finished floor level in the underlying subdivision consent, RC215150.
70. I agree with Mahaanui Kurataio that the establishment of indigenous biodiversity promotes ecosystem services like enhancing the cultural landscape, increasing indigenous habitat, filtering sediment and sequestering carbon, but consider their requirement for an indigenous planting consent condition to be impractical as no specification for indigenous planting has been provided with their submission and recommend the incorporation of indigenous planting as an additional advice note only.
71. The other conditions recommended by Mahaanui Kurataio, including conditions for an Accidental Discovery Protocol (ADP) and Erosion and Sediment Control Plan are recommended, and the applicant has agreed to the

inclusion of these conditions. Therefore, I considered that any adverse cultural effects will be appropriately mitigated and will be less than minor.

Heritage Effects

72. The Partially Operative Plan also requires that notice shall only be served on Heritage New Zealand Pouhere Taonga, absent their written approval. As detailed earlier, Heritage New Zealand Pouhere Taonga (HNZPT) provided a submission on the application. Within their submission they have assessed the heritage effects against the values of the Ngā Tūranga Tūpuna and requested that their comments be taken into account if the consent is granted.
73. HNZPT noted that no Design Report for on-site services has been provided with the application and recommended that if the services intend to utilise local drainage systems, consideration of relevant effects to the nearby Ngā Wai should also be made for any stormwater or wastewater discharge. A service design report will be considered at building consent stage, and I consider it appropriate to include this recommendation as an advice note.
74. HNZPT further recommended that a thorough Erosion and Sediment Control Plan should be provided and that further measures could be taken relative to the cultural significance of this area to ensure no adverse effects on natural features with cultural values occur.
75. The applicant has agreed to the inclusion of conditions for an Accidental Discovery Protocol (ADP) and Erosion and Sediment Control Plan and as such I consider that any adverse heritage effects will be appropriately mitigated.

Conclusion

I conclude that any adverse effects on the wider environment are considered to be less than minor.

Section 104(1)(b) – Relevant Provisions of Statutory Documents

District Plans (section 104(1)(b)(vi))

Operative Plan – Objectives and Policies

76. The proposal is permitted under the Operative Plan. Therefore, I consider the proposal to be consistent with the Operative Plan.

Partially Operative Plan – Objectives and Policies

77. The Partially Operative Plan Objectives and Policies that I consider relevant relate to Natural Hazards, SASM and GRUZ.

Natural Hazards

78. NH-O1 requires that development is avoided in areas where risks to natural hazards to people, property and infrastructure is unacceptable and in all other areas the risks are mitigated. NH-P1 seeks to avoid development subdivision in high hazard areas unless the development is not likely to result in loss of life or serious injuries, suffer significant damage or loss; require new or upgraded hazard mitigation works; and not likely to exacerbate the effects of the natural hazard. NH-P2 seeks to avoid land use development in high hazard areas. NH-P3 seeks to restrict development outside high hazard areas unless any potential risk of loss of life or damage to property is appropriately mitigated. NH-P4 seeks that natural hazard mitigation works shall consider the potential for adverse effects on indigenous biodiversity, Ngāi Tahu cultural values, or sites of historic heritage or geological value. NH-P10 provides for development outside of high hazard areas where every new residential unit or principal building has an appropriate floor level above the 200 year ARI.

79. The application site is not within a high hazard area and a Flood Assessment Certificate has been obtained requiring an appropriate minimum FFL for the proposed residential unit consistent with NH-O1, NH-P2 and NH-P10. Submissions of the application was received from Mahaanui Kurataio and Heritage New Zealand Pouhere Taonga and as discussed previously the applicant has agreed to conditions considered to mitigate any adverse cultural and heritage effects and I consider the proposal to be consistent with NH-P3.

SASM

80. SASM-P1 requires that the historic and contemporary relationship of Ngāi Tahu mana whenua with their ancestral lands, water, sites, wāhi tapu, and wāhi taonga within the Selwyn District is recognised and protected. Associated policies SASM-P1, SASM-P2 and SASM-P4 are of relevance and require protection of identified wāhi tapu and wāhi taonga from disturbance, damage, or destruction, and ensure activities do not adversely affect them, to recognise the cultural significance of ngā wai/water bodies, and to engage with the relevant rūnanga at the resource consent stage.
81. Engagement has been undertaken with Mahaanui Kurataio including a request by the applicant for limited notification to Te Taumutu Rūnanga and Te Ngāi Tūāhuriri Rūnanga consistent with SASM-P4. The Rūnanga have recommended conditions of consent and advise notes which achieve consistency with SASM-P1 and SASM-P2.
82. Overall, the proposal is consistent with the SASM objectives and policies.

GRUZ

83. GRUZ-P1 seeks to maintain and enhance rural character and amenity values by retaining a low overall building density and managing the density of residential development. GRUZ-P2 seeks to avoid residential units on sites smaller than the minimum size subject to some exceptions including where minimum density is achieved through balance land
84. Consent has been granted under RC215150 and RC215151 for the creation of undersized rural site and the establishment of residential unit on these undersized sites. The subdivision consent provided sufficient balance land that adjoins the undersize application site to achieve the minimum residential density requirement in the rural zone.
85. Overall, I consider the proposal to be consistent with the Partially Operative Plan objectives and policies.

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

Canterbury Regional Policy Statement (CRPS)

86. The District Plans give effect to the relevant higher order documents, including the CRPS. Therefore, I consider there is no need to assess these provisions.

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

87. The NES-CS was discussed earlier in this report, with my conclusion being that it is not triggered by this application.

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

88. The NPS-HPL sets out the objectives and policies for highly productive land and provides direction on how provides direction to improve the way highly productive land is managed under the RMA.
89. The application site contains Class 3 soils and under the NPS, the Class 3 soils meet the definition of highly productive land.

90. The NPS-HPL was assessed in the underlying subdivision and land use consents, RC235121 and RC235122 and it was considered that NPS for Highly Productive Soil should not prevent the subdivision of these highly productive soils.
91. Therefore, this proposal is not considered to be contrary to the objectives and policies of the NPS-HPL.

Section 104(1)(c) – Other Matters

92. No other matters are considered to be relevant to this proposal.

Part 2 – Purpose and principles

93. The consideration under section 104 is subject to Part 2 of the Act – Purpose and principles.
94. 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.
95. 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.
96. The relevant District Plans have been prepared having regard to Part 2, with a coherent set of policies designed to achieve clear environmental outcomes; therefore, taking into account relevant case law, I consider that assessment under Part 2 is unlikely to be necessary. For the sake of completeness, however, Part 2 is briefly assessed below.
97. In addition to section 5, I note that the following clauses of Part 2 would be particularly relevant:

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(c) the maintenance and enhancement of amenity values:

(f) maintenance and enhancement of the quality of the environment:

98. Based on my assessment of the proposal in this report, I conclude that the proposal will be consistent with Part 2 of the Act, as the proposal will manage the use of the site in a way that enables people to provide for their well-being and mitigate any adverse effects on the environment.

Conclusion

98. The application is for the following consents:
- RC255352 - Variation of Consent Notice 12387991.4 to enable the construction of a residential unit with an attached garage that does not comply with the minimum building floor level set out in the consent notice but complies with the Flood Assessment Certificate issued by Selwyn District Council.
 - RC255430 - Land use consent is sought for an internal boundary setback non-compliance and earthworks exceeding a volume of 350m³ within the SASM 30 overlay.
99. The overall status of the application is Discretionary.

100. I conclude that any adverse effects on the wider environment are considered to be minor.
101. I consider the proposal to be entirely consistent with the Operative and Partially Operative Plan.
102. The proposal is not considered to be contrary to the objectives and policies of the NPS-HPL.
103. Overall, I conclude that the application may be granted, subject to conditions of consent.

Recommendation

104. I recommend that application for the variation of Consent Notice 12387991.4 RC255352 and land use consent RC255430 are granted, pursuant to sections 221, 104, 104B of the Resource Management Act 1991, subject to the conditions of consent below pursuant to sections 108 and 108AA of the Act.

Report by: Narda Botha Resource Management Planner	Date: 24 July 2025
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Decision

In reaching my decision, I have undertaken a careful review of all relevant evidence and information relating to this application.

In respect to the matter of the Consent Notice, I have had regard to the findings of the Environment Court in *Ballantyne Barker v Queenstown Lakes District Council*. In that decision, the Court reaffirmed both the elevated level of protection afforded by a consent notice and the correspondingly high threshold that must be met when a Consent Authority is considering its removal or cancellation. Of particular relevance to this proposal are the following two paragraphs from the Court's decision

[45] The case law makes it clear that because a consent notice gives a high degree of certainty both to the immediately affected parties at the time subdivision consent is granted, and to the public at large, it should only be altered when there is a material change in circumstances (such as a rezoning through a plan change process), which means the consent notice condition no longer achieves, but rather obstructs, the sustainable management purposes of the RMA. In such circumstances, the ability to vary or cancel the consent notice condition can hardly be seen as objectionable.


[44] ...good planning practice should require an examination of the purpose of the consent notice and an enquiry into whether some change of circumstances has rendered the consent notice of no further value.

In this context, and having regard to the evidence before me, I find that a material change in circumstances has occurred, specifically arising from the introduction of new planning provisions relating to management of natural hazard in the Partially Operative District Plan, which underpinned the original Consent Notice. Additionally, further evidence has been obtained from Environment Canterbury and reviewed by a Selwyn District Council Development Engineer, confirming the required finished floor level under the current planning framework is +2.22m LVD1937. Based on the evidence before me and within the context of the findings of the Court as discussed, I record that varying the Consent Notice is acceptable.

For the sake of completeness, I am also satisfied that the proposed variation to the Consent Notice will not give rise to any adverse effects on cultural values. This is on the basis that the revised finished floor level remains consistent with the underlying intent and purpose of the original Consent Notice.

For the avoidance of doubt, I agree with all other aspects of Ms. Botha's assessment.

Accordingly, for the reasons set out herein, consent is **granted** pursuant to sections 221, 104, 104B of the Resource Management Act 1991, subject to the conditions of consent below pursuant to sections 108 and 108AA of the Act.

 Commissioner O'Connell	Date: 28 July 2025
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RC255352 Variation of Consent Notice Condition

1. Consent Notice 12387991.4 shall in regard to Lot 1 DP 564058 shall be varied to read as follows:

"That this site is located within the Plains Flood Management Overlay. Any new dwelling or other principal building shall not be erected unless a minimum finished floor level-of +2.22m (Lyttelton Datum 1937) or +1.86m (New Zealand Vertical Datum 2016) is identified and the finished floor level is at or above that level.

This site has been assessed as Technical Category 2 under Ministry of Business, Innovation and Employment (MBIE) December 2012 guidelines. The shallow soils do not meet NZS3604 criteria for "good ground", and further geotechnical assessment will be required at building consent stage.

That unless a project-specific geotechnical assessment has been undertaken by a suitably qualified and experienced geotechnical engineer and its recommendations complied with, no dwelling or principal dwelling shall be erected on this site."

ADVICE NOTES:

- (a) Pursuant to section 221(5), it is the Landowner's responsibility to formally lodge with Land Information New Zealand to have the consent notice variation updated on the relevant record of title. Until this is done, the existing consent notice remains in force and must be complied with.
- (b) Upon the Landowner's request, the Council will prepare the instrument for the variation of the consent notice. All costs associated with this process shall be met by the landowner.

RC255430 Land Use Conditions

1. The proposal shall proceed in general accordance with the information formally received with the application on 9 May 2025 and the further information received on 3 June 2025, and the attached stamped Approved Plans entitled **172 Seabridge Road, Motukara – Proposed Residence/Garaging** and dated 29/05/2025, except where another condition of this consent must be complied with.
2. An Accidental Discovery Protocol (ADP) must be in place during all earthworks required to exercise this consent to deal with archaeological finds and protect the interests of mana whenua. This condition does not constitute a response under the Heritage New Zealand Pouhere Taonga Act (HNZPT 2014).
3. In the event of the discovery/disturbance of any archaeological material or sites, including taonga (treasured artefacts) and koiwi tangata (human remains), the consent holder must immediately:
 - a) Cease earthmoving operations in the affected area of the site; and
 - b) Advise the Council of the disturbance via email to compliance@selwyn.govt.nz
 - c) Advise appropriate agencies, including Heritage New Zealand Pouhere Taonga and the local Mana Whenua (Te Taumutu Rūnanga) [or change in different rūnanga] of the disturbance.
4. An Erosion and Sediment Control Plan for any earthworks required to give effect to this consent must be prepared, inspected, and maintained in accordance with Environment Canterbury's Erosion and Sediment Control Toolbox for Canterbury <http://esc.canterbury.co.nz/> until such time the exposed soils have been stabilised.

ADVICE NOTES:

- Indigenous planting is required to enhance the cultural landscape, increase indigenous habitat, filter sediment and sequester carbon.

- The future wastewater treatment system should implement a secondary level treatment system.
- The overall proposal should refer to the Ngāi Tahu Subdivision and Development Guidelines to the greatest practical extent.
- If the services intend to utilise local drainage systems, consideration of relevant effects to the nearby Ngā Wai should also be made for any stormwater or wastewater discharge.

Attachment(s)

1. RC255430 Land Use Approved Plans - 172 Seabridge Road, Motukara - Proposed Residence/Garaging

Selwyn District Council Advice Notes for the Consent Holder

Lapse Period (Land Use Consent)

- a) Pursuant to section 125 of the Resource Management Act 1991, if not given effect to, this land use consent shall lapse five years after the date of issue of the decision, i.e. the date of receipt of the Notice of Decision email, unless before the consent lapses an application is made to the Council to extend the period after which the consent lapses and the Council decides to grant an extension.

Resource Consent Only

- b) This consent is a Selwyn District Council resource consent under the Resource Management Act. It is not an approval under any other Act, Regulation or Bylaw. Separate applications will need to be made for any other approval, such as a water race bylaw approval or vehicle crossing approval.

Building Act

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

Regional Consents

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

Monitoring

- e) In accordance with section 36 of the Resource Management Act 1991, the following monitoring programme and associated fee has been charged: No monitoring required
- f) If the conditions of this consent require any reports or information to be submitted to the Council, additional monitoring fees for the review and certification of reports or information will be charged on a time and cost basis. This may include consultant fees if the Council does not employ staff with the expertise to review the reports or information.
- g) Where the conditions of this consent require any reports or information to be submitted to the Council, please forward to the Council's Compliance Team, compliance@selwyn.govt.nz.
- h) Any resource consent that requires additional monitoring due to non-compliance with the conditions of the resource consent will be charged additional monitoring fees at a time and cost basis.

Vehicle Crossings

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

transportation@selwyn.govt.nz. Use the following link for a vehicle crossing information pack and to apply online: Selwyn District Council - Application to Form a Vehicle Crossing (Entranceway)

Impact on Council Assets

- j) Any damage to fixtures or features within the Council road reserve that results from construction or demolition on the site shall be repaired or reinstated at the expense of the consent holder.