

Sections 95, 95A-E, 104, 104C, 108, 108AA

Resource Management Act 1991



Decision and Planning Report

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

- Publicly notified, limited notified or non-notified
- Granted or declined, and, if granted, the conditions of consent

Decision pursuant to section 113 of the Resource Management Act 1991

APPLICATION NUMBER(S)	RC245806
APPLICANT	Yorktown Developments Limited
BRIEF DESCRIPTION OF THE APPLICATION	This is an application for land use consent for internal boundary structure setbacks for future residential units.
ADDRESS	9A, 9B, 9C, 9D Painters Road, West Melton; 925A, 925B, 925C, 925D, 949A, 949B, 949C, 949D Sandy Knolls Road, West Melton; 1544, 1556 West Coast Road, West Melton
LEGAL DESCRIPTION	Lot 13 DP 595588, Lot 1 DP 595588
TITLE REFERENCE	1152660, 1152661
AREA	13.317 ha
ZONING / OVERLAYS	Operative Selwyn District Plan (2016), Rural Volume Existing Development Area: Yorktown West Melton Observatory Zone Overlay Partially Operative Selwyn District Plan (Appeals Version) General Rural Zone Plains Flood Management Overlay Liquefaction Damage Unlikely Overlay Observatory Lighting Control Overlay Noise Control Overlay (State Highway) Rural Density (SCA-RD18 - Yorktown)
OVERALL ACTIVITY STATUS	Restricted Discretionary

The Application

1. This application was formally received by the Selwyn District Council on 18 September 2024.
2. The application proposes to establish internal setbacks for future residential units on Lots 1 to 13 of RC235309, to be in general accordance with the Residential Unit Setback Plan shown in *Figure 1*.

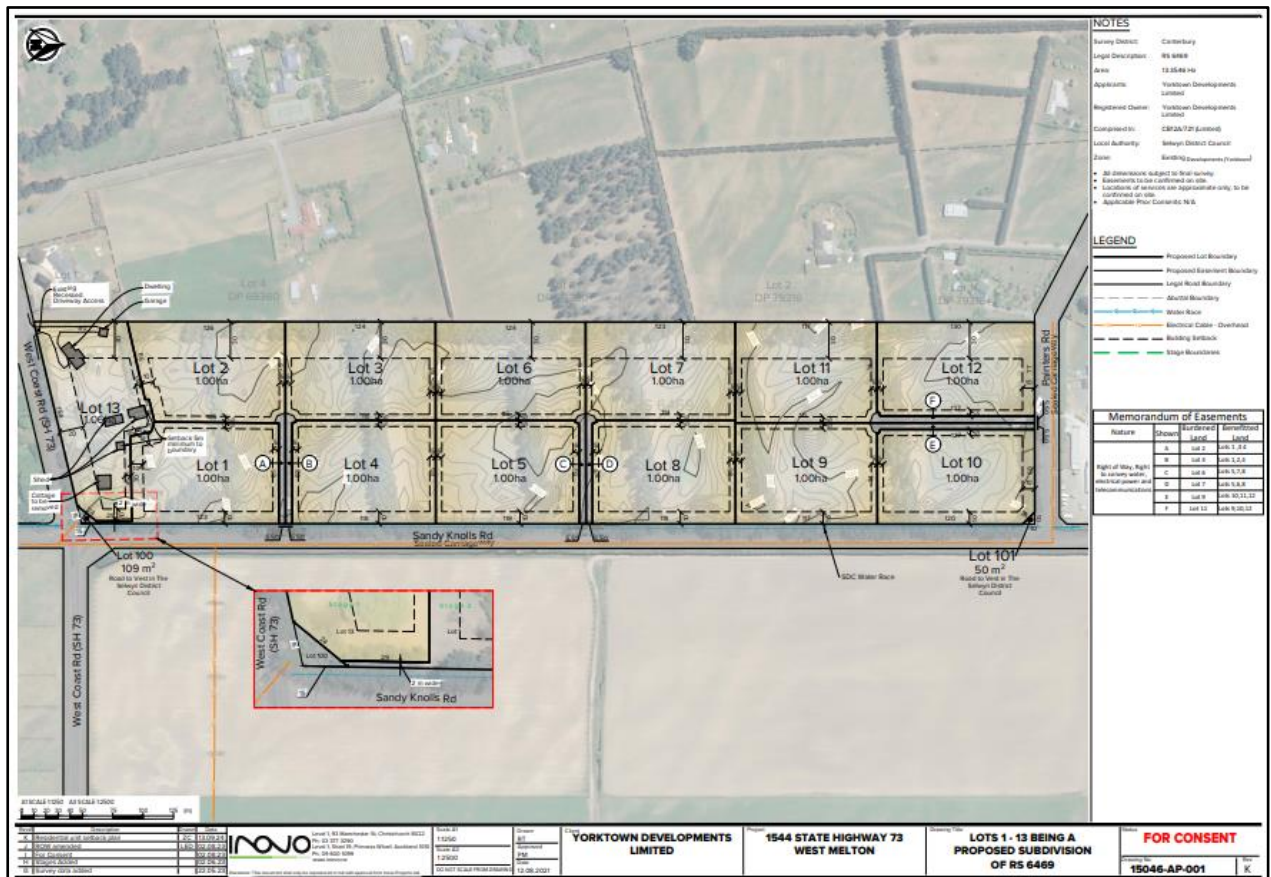


Figure 1: Residential Unit Setback Plan

Background

- In September 2023, Subdivision Consent RC235309 was granted for a 13 lot subdivision, known as Yorktown. Lot 13 contains an existing residential unit. Land Use Consent RC235466 was also granted to remove and disturb soil under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS).

The Existing Environment

- The application site has recently been developed in accordance with RC235309, and is generally flat in topography. Lot 13 of RC235309 contains an existing residential unit which is to be retained.
- The surrounding sites are rural in nature and contains a working farm and various rural residential units.
- I visited the site on 21 October 2024.

Activity Status

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

- The application site is zoned General Rural. The site is also subject to the following overlays: Plains Flood Management Overlay; Liquefaction Damage Unlikely Overlay; Observatory Lighting Control Overlay; Noise Control Overlay (State Highway); and Rural Density (SCA-RD18 - Yorktown).

8. The Council released the Appeals Version of the Partially Operative Plan on 27 November 2023. Many provisions are beyond challenge and are operative/treated as operative (pursuant to cl 103 of Schedule 1 and s 86F of the Act). Those subject to appeal continue to have legal effect pursuant to s 86B.

Land use

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

Operative/treated as operative:

RULE	TOPIC	NON-COMPLIANCE	STATUS
GRUZ-R3/REQ4	Structure Setbacks	A residential unit setback of 30m is required from any internal boundary. A reduction to this setback requirement is sought for Lots 1 to 13 for a setback of 5m. Lots 1 and 2 also seek to reduce respective western and southern internal boundary setbacks to 10m to provide separation from the existing residential unit on Lot 13.	Restricted Discretionary (Rule REQ6.2)

10. Therefore, the land use proposal is a Restricted Discretionary activity under the Partially Operative Plan.

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

11. The application site is zoned Existing Development Area: Yorktown. The site is also subject to the following overlay: West Melton Observatory Zone Overlay.
12. 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.
13. All rules that would apply to this proposal are now treated as inoperative and the proposal is a permitted activity under the Operative Plan.

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

14. Prior land use consent RC235466 has already considered this issue and sought consent for the disturbance and removal of contaminated soil under the NES-CS. Therefore, the NES-CS does not apply to this proposal.

Notification Assessment

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

Receiving Environment

15. 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 rural in nature, with surrounds including rural residential style development.

Restrictions on Matters Considered

16. The status of the activity is **Restricted Discretionary**. As such, the Council's discretion is restricted to the relevant matters listed in GRUZ-MAT3 (Internal Boundary Setback) and NH-MAT5 (Wildfire), as discussed below.

17. The application proposes to establish internal setbacks for future residential units on Lots 1 to 13.

Effects

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

- Internal Boundary Setback Effects, and
- Wildfire Risk

Internal Boundary Setback Effects

19. The proposal seeks to reduce the internal boundary setbacks for the future residential units on Lots 1 to 13 to a minimum of 5m, whereas the Partially Operative Plan requires an internal boundary setback minimum of 30m.
20. The proposal also seeks to reduce the internal boundary setback for future residential units from 30m to 10m on Lot 1 and Lot 2, from the shared boundaries with Lot 13. A 10m setback is sought, rather than 5m like the remainder of the site, to provide an additional separation from the existing residential unit on Lot 13.
21. The matters listed under GRUZ-MAT3 are as follows:
- (1) Effects on privacy or dominance of adjoining sites;*
 - (2) Whether the reduced setback would result in the site remaining compatible with the surrounding character when viewed from neighbouring sites.*
 - (3) The necessity to enable more efficient or practical use of the remainder of the site or the long term protection of listed trees, heritage items, cultural sites, or natural features on the site.*
 - (4) The extent to which the reduced setback is to facilitate practical use of the building or day to day management of the site, including the need to align with existing buildings in the vicinity and their associated use.*
 - (5) The degree to which the topography, location, design, landscaping, screening, and appearance of the building mitigates the visual effects of the reduced setback.*
 - (6) Whether a reduced setback from boundaries with the rail corridor will enable buildings, balconies, or decks to be constructed or maintained without requiring access above, on, or over the railway corridor.*
 - (7) The extent to which any reduced setback will result in reverse sensitivity effects on primary production or activities that directly support primary production.*
22. Regarding privacy, the proposal is not creating any setback intrusions with adjoining landowners beyond the application site. The proposed setback reductions are facing internally within the application site, and do not adversely affect privacy or have the potential to create dominance effects towards properties that are not owned by the applicant.
23. As the proposed setback reductions are internal to the application site, the overall development remains compatible with the surrounding character, and future building setbacks will be indistinguishable from the neighbouring sites, given the separation distances from external site boundaries.
24. There are no listed trees, heritage items, cultural sites, or natural features that are located within the application site.
25. While internal boundary setback reductions are proposed, any future residential unit built on site will still be subject to compliance with other built form requirements for the General Rural Zone, such as maximum building coverage requirement of 500m² for Lots 1 to 12 and 530m² (5%) for Lot 13. This ensures that future residential units are designed in a practical manner anticipated for the zone.

26. The proposed internal setback reductions enable future residential development to be constructed in a way that considers the individual lot characteristics and topography, such as flood modelling data included within RC235309.
27. The application site is not within proximity to a rail corridor, therefore matter (6) is not relevant to this proposal.
28. The applicant is the owner of each allotment that adjoins a proposed internal setback reduction. The 30m minimum setback is proposed to be retained for Lots 2, 3, 6, 7, 11, 12 and 13 western internal boundaries that adjoin neighbouring lots which may support primary production activities. Therefore, it is considered that there is no change in effect for the neighbouring properties from what was approved under RC235309.
29. In conclusion, I consider any adverse effects on any other persons and the wider environment will be less than minor in relation to the proposed internal boundary setback reduction.

Wildfire Risk

30. In relation to wildfire risk, the matters listed under NH-MAT5 are:
- (A) The degree of risk to life and property because of the non-compliance;*
- (1) The extent to which any vegetation required for visual screening of a principal building affects the wildfire risk to any residential unit or other principal building.*
31. Risk to life and property has been considered as having two components for the purpose of this assessment, these being the probability of an event occurring, and the consequence of an event should it occur.
32. The influential factor in relation to probability is the setback of a residential unit from shelterbelts. This variable has a bearing on how easily wildfire could traverse between a shelterbelt and a residential unit. The proposal is for an internal boundary setback reduction for future residential units only, and does not propose changes to the compliant 30m setback of adjoining General Rural zoned properties to the west of Lots 2, 3, 6, 7, and 11 to 13, where numerous shelterbelts are located. Given that there are no shelterbelts located throughout the application site, it is considered that the risk to property from wildfire traversing between a shelterbelt and residential unit has less than minor adverse effect.
33. The influential factor in relation to consequence is the number of occupants that may reside in each future residential unit. This variable has a bearing on the number of people who could potentially be injured should wildfire reach the residential unit.
34. No planting for visual screening is proposed as part of this application. The applicant has advised that the degree of risk to life and property from the reduction of setback will be made known to the future owners of the allotments. Future steps to mitigate risk will then be up to the future owners.
35. As there is no reduction of the internal setback towards adjacent property owners where a shelterbelt is or may be planted in the future, there is no change to wildfire risk as part of this proposal. For this reason, is considered that adverse effects on any other persons and the wider environment are anticipated to be less than minor in relation to wildfire risk.

Positive Effects

36. Positive effects are not relevant to the consideration of notification and will be considered as part of the s 104 assessment later in this report.

Conclusion

37. I conclude that the adverse effects of the proposal on any person or the wider environment will be less than minor.

Public Notification (Section 95A)

38. Section 95A states that a consent authority must follow the steps in the order given to determine whether to publicly notify an application for resource consent.

STEP 1: MANDATORY PUBLIC NOTIFICATION IN CERTAIN CIRCUMSTANCES (SECTIONS 95A(2) AND 95A(3))	
Has the applicant requested the application is publicly notified?	No
Is public notification required under section 95C (no response or refusal to provide information or agree to the commissioning of a report under section 92)?	No
Has the application has been made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?	No

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

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

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

Conclusion

39. In conclusion, in accordance with the provisions of section 95A, the application must not be publicly notified and a determination on limited notification must be made, as follows.

Limited Notification (Section 95B)

40. Section 95B states that a consent authority must follow the steps in the order given to determine whether to give limited notification of an application for resource consent, if it is not publicly notified under section 95A.

STEP 1: CERTAIN AFFECTED GROUPS AND AFFECTED PERSONS MUST BE NOTIFIED (SECTIONS 95B(1)-(4))	
Are there any affected protected customary rights groups, as defined in s 95F?	No
Are there any affected customary marine title groups, as defined in s 95G (in the case of an application for a resource consent for an accommodated activity (as defined in the Act))?	No
Is the proposed activity on or adjacent to, or may it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11; and is the person to whom that statutory acknowledgement is made an affected person under s 95E?	No

STEP 2: LIMITED NOTIFICATION PRECLUDED IN CERTAIN CIRCUMSTANCES (SECTIONS 95B(5) AND 95B(6))

Are all activities in the application subject to one or more rules or national environmental standards that preclude limited notification?	No
Is the application for a controlled activity under the district plan only and not a subdivision of land?	No

STEP 3: CERTAIN OTHER AFFECTED PERSONS MUST BE NOTIFIED (SECTIONS 95B(7)-(9))

In the case of a "boundary activity", is an owner of an allotment with an infringed boundary an affected person?	No
For any other activity, are there any affected persons in accordance with section 95E of the Act (as assessed in the Assessment of Adverse Environmental Effects above)?	No

STEP 4: LIMITED NOTIFICATION IN SPECIAL CIRCUMSTANCES

Do any special circumstances exist in relation to the application that warrant notification to any other persons not already determined to be eligible for limited notification (excludes persons assessed under section 95E as not being affected)?	No
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Conclusion

41. In conclusion, in accordance with the provisions of section 95B, the application must not be limited notified.

Notification Recommendation

42. I recommend that the application RC245806 be processed on a **non-notified** basis in accordance with sections 95A-E of the Resource Management Act 1991.

Report by:
Savannah Redmond
Consultant Planner

Date: 8/11/2024



Commissioner O'Connell

Date: 13 November 2024

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.

...

57. Section 104C applies to restricted discretionary activities. It requires that the consent authority must only consider those matters over which its discretion is restricted in a plan, national environmental standard or other relevant regulations. It allows that the consent authority may grant or refuse the application, and, if granted, it may impose conditions under s 108, but only for those matters over which discretion has been restricted.

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

58. An assessment of the adverse environmental effects of the proposal was completed above as part of the notification section of this report. That assessment is equally applicable to section 104 and is applied as such. Again, it is noted that the permitted baseline is relevant (section 104(2)), and regard must not be had to any person who has given written approval (section 104(3)(ii)).

59. It is also appropriate to consider the positive effects of the proposal at this section 104 stage. The proposal will not have any significant positive effects, other than to enable the applicant to efficiently utilise the site.

60. As concluded in my notification assessment, I consider that the adverse effects on the environment resulting from the proposal will 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

61. Objective B3.4.2 seeks to provide for a variety of activities in the rural area, while maintaining rural character and avoiding reverse sensitivity effects. Policy B3.4.3 seeks to avoid, remedy or mitigate significant adverse effects of activities on the amenity values of the rural area. Policy B3.4.6 seeks to maintain low levels of building density in the Rural zone and the predominance of vegetation cover.

62. The proposed setback reductions for future residential units maintains the function, form, and amenity of the surrounding rural environment, without significant adverse effects on rural character, visual amenity, or privacy or surrounding properties.
63. The proposal is a permitted activity under the Operative District Plan. It is therefore considered the proposal is consistent with the objectives and policies of the Operative Plan.

Partially Operative Plan – Objectives and Policies

64. The Partially Operative Plan objectives and policies that I consider relevant relate to rural character, visual amenity, privacy, and wildfire risk.
65. Objective GRUZ-O1 seeks use and development in rural areas that supports, maintains, or enhances the function and form, character, and amenity value of rural areas. Policy GRUZ-P1 seeks to maintain or enhance rural character and amenity values of rural areas by retaining a low overall building density.
66. The proposed setback reductions for future residential units on allotments previously approved under subdivision RC235309. The proposed setback reductions do not create adverse effect towards the function, form, or amenity of the surrounding rural environment.
67. Objective NH-O1 seeks that new use and development is avoided in areas where the risks from natural hazards to people, property and infrastructure are assessed as being unacceptable; and in all other areas, is undertaken in a manner that ensures that the risks of natural hazards to people, property, and infrastructure are appropriately mitigated. NH-P20 seeks to restrict the planting of any woodlot or shelterbelt if it is located in a position that increases the wildfire risk on any neighbouring residential unit or other principal building.
68. Overall, I consider the proposal to be consistent with the Partially Operative Plan.

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

Canterbury Regional Policy Statement (CRPS)

69. 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)

70. The NES-CS was discussed earlier in this report, with my conclusion being that the NES-CS is not applicable to this proposal.

Section 104(1)(c) – Other Matters

71. There are no other matters considered relevant to this proposal.

Part 2 – Purpose and principles

72. The consideration under section 104 is subject to Part 2 of the Act – Purpose and principles.
73. 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.
74. 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.

75. 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.

76. 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—

(b) the efficient use and development of natural and physical resources:

(c) the maintenance and enhancement of amenity values:

8 Treaty of Waitangi

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 take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

77. 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 enable the efficient use of the site without noticeable adverse effects on the surrounding rural character, amenity, privacy, and wildfire risk.

Conclusions

78. Land use consent RC245806 is sought to create internal boundary setback reductions for future residential units on allotments created under subdivision consent RC235309.

79. The proposal is a Restricted Discretionary activity under the Partially Operative Plan, and is a Permitted activity under the Operative Plan.


80. I consider that adverse effects on other persons and the wider environment will be less than minor.

81. I consider the proposal to be consistent with both the Operative District Plan, and the Partially Operative District Plan.

82. Having considered all relevant matters, I conclude that the application may be granted, subject to conditions of consent.

Recommendation

83. I recommend that land use consent RC245806 is **granted**, pursuant to sections 104 and 104C of the Resource Management Act 1991, subject to the conditions of consent below pursuant to sections 108 and 108AA of the Act.

Report by: Savannah Redmond Consultant Planner	Date: 8/11/2024
 Commissioner O'Connell	Date: 13 November 2024

Condition(s) of Consent

RC245806 Land Use Consent Condition

1. The proposal shall proceed in general accordance with the information formally received with the application on 18 September 2024, and the attached stamped Approved Plan entitled RC245806 Land Use Approved Plan and dated 13 September 2024.

Attachment

84. RC245806 Land Use Approved Plan – Lots 1 - 13 Being a Proposed Subdivision of RS 6469 (Rev K) Residential Unit Setback Plan.

Selwyn District Council Advice Notes for the Consent Holder

Lapse Period (Land Use Consent)

85. 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

- (a) 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

- (b) 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

- (c) 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

- (d) In accordance with section 36 of the Resource Management Act 1991, basic monitoring fee has been charged.
- (e) 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.
- (f) 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.
- (g) 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

- (h) 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

- (i) 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.

Vehicle Parking During the Construction Phase

- (j) Selwyn District Council is working to keep our footpaths safe and accessible for pedestrians, including school children. The Council also seeks to avoid damage to underground utility services under footpaths, e.g. fibre broadband. During the construction phase (and at all other times), please:
 - (i) park only on the road or fully within your property – it is illegal to obstruct or park on a footpath; and arrange large deliveries outside of peak pedestrian hours, e.g. outside school start/finish times.