|  |  |
| --- | --- |
| Resource Management Act 1991 | CCC logo Black&White |
| **Report / decision to determine notification of a**  **resource consent application**  (Sections 95A / 95B) | |

***Use this template for applications lodged on or after 30 September 2020***

*If there is a relevant Plan Change refer to templates P-400b – 400f for additional wording. This template only contains the basic references to PC14 for applications in the RLL, RSS, RBP outside Lyttelton, and proposed Future Urban zone.*

|  |  |
| --- | --- |
| **Application number:** | **RMA/+** |
| **Applicant:** | + |
| **Site address:** | + |
| **Legal description:** | + |
| **Zone:** |  |
| **District Plan**: | + |
| **Proposed Plan Change 14**: | + *delete red rows if no relevant PC14 provisions* |
| **Overlays and map notations:** |  |
| **District Plan**: | + |
| **Proposed Plan Change 14**: | + *delete red rows if no relevant PC14 provisions* |
| **Road classification:** | + |
|  |  |
| **Activity status:** | + |
|  |  |
| **Description of application:** | + |

|  |
| --- |
| **Proposed activity** |

*Describe the application - include snipped plans only if they assist with understanding the proposal.*

*The scope of the activity should be defined, but you can cross-reference the applicant’s description where appropriate, e.g.*

*The proposal is described in detail on page +/in paragraph + of the application. The key aspects are:*

This is a **fast-track application** under section 87AAC as it requires land use consent for a controlled activity under the District Plan, and includes an electronic address for service. *Delete if not a fast-track application*

The proposal is classified as a **boundary activity** under section 87AAB(1) because it only infringes boundary rules/a boundary rule adjoining private property. *Delete if not applicable – it will only be relevant to notification reports and limited notified s104 reports as will otherwise be a PBA.*

The purpose of this report is to determine whether the application is processed on a non-notified, limited notified, or publicly notified basis, pursuant to Sections 95A and 95B of the Resource Management Act.

|  |
| --- |
| **Description of site and existing environment** |

*Adopt the description in the application where possible, e.g.*

The application site and surrounding environment are described in section + of the AEE submitted with the application. I adopt the applicant’s description / I adopt the applicant’s description and note the following additional points:

*If not adopting description from AEE, describe the environment, particularly in the context of the issues you are assessing. Mention any other* ***relevant*** *aspects of the planning framework, e.g. lawfully established existing activities, unimplemented resource consents.*

*Include photos where appropriate.*

|  |
| --- |
| **Activity status** |

**Christchurch District Plan**

*Amend this section if the application involves Coastal Hazards as the City Plan rules are still applicable.*

The site is zoned +. This zone + *explain briefly what the zone provides for, in the context of the application*.

The proposal requires resource consent for a + activity under the following rules:

[***Table of commonly breached rules***](trim://19/1220888?view)*(delete)*

| **Activity status rule** | **Standard not met** | **Reason** | **Matters of control or discretion** *(if relevant)* | **Notification clause** |
| --- | --- | --- | --- | --- |
| *Activity status rule, e.g.*  *14.4.1.2 RD24* | *Rule infringed (if relevant), e.g.*  *14.4.2.5 Outdoor living space* | *Extent of infringement – permitted vs proposed, or reason RC required, e.g.*  *Minimum 6m dimension not achieved (5.56m)* | *Rule # and matters of control or discretion, e.g.*  *14.15.20 – Outdoor living space* | *No or specify the details, e.g.*  *May not be publicly or limited notified* |
|  |  |  |  |  |
|  |  |  |  |  |

For completeness I note that: *add/delete/edit as relevant*

* **Earthworks:** Earthworks are exempt under Rule 8.9.3.iv no earthworks will commence within the building footprint (as defined in the District Plan) until building consent has been issued.
* **Acoustic insulation:** The building is within +m of +, however acoustic insulation is not required as the exemption in Rule 6.1.7.2.1.a.i. A / B applies. OR Rule 6.1.7.2.1 Sensitive activities near roads and railways applies as the building is within +m of +, and the necessary acoustic information will be provided with the building consent. *Planner to check if building consent has been lodged and if it has, ensure an acoustic design report has been provided and sent to EHOs (via Connect task). If no report or EHO acceptance of a report, trigger this as a non-compliance and RFI for the report.*
* **Landscaping:** Compliance with Rule 14.12.2.7 Landscaping will be achieved by the provision of 2m wide landscaping along the road boundary.
* **Street tree:** Earthworks within 5m of the base of the adjacent street tree will be carried out by or under the supervision of a works arborist employed or contracted by the Council and comply with Rule 9.4.4.1.1 P12. *Or mention any global consent.*
* **Cultural values:** The site is located within a Mahaanui Iwi Management Plan Silent File area however the relevant matters of discretion do not require consultation or assessment of effects on cultural values.
* +

**Proposed Plan Change 14 Housing and Business Choice** *delete if no relevant provisions*

Proposed Plan Change 14 (PC14) was notified on 17 March 2023, and includes residential and commercial intensification provisions directed by the National Policy Statement on Urban Development 2020 (NPS-UD) and the Medium Density Residential Standards in [Schedule 3A](https://legislation.govt.nz/act/public/1991/0069/latest/LMS634505.html) of the RMA (as modified by the proposed sunlight access qualifying matter). The MDRS (including objectives and policies) does not apply to this proposal as the Residential Large Lot zone / Small Settlement zone / Banks Peninsula zone outside Lyttelton / proposed Future Urban zone is not a ‘relevant residential zone’ (Policy 2, Schedule 3A).

The Independent Hearings Panel’s recommendations were released on 30 July 2024. Decisions made to date are limited to Policy 3 NPS-UD areas (in and around commercial centres) and are not relevant to this application.

**National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES)** *Delete this whole section if NES not applicable*

The [NES](http://www.legislation.govt.nz/regulation/public/2011/0361/latest/whole.html) controls soil disturbance on land where an activity on the Hazardous Activities and Industries List (HAIL) is being carried out, has been carried out, or is more likely than not to have been carried out.

The application site has been identified as HAIL land but the NES is not applicable as the proposed soil disturbance and removal does not exceed the permitted volumes.

OR

The application site has been identified as HAIL land therefore the NES applies. The proposal requires consent as a + activity under the following regulations:

| **Activity status regulation** | **Regulation not met** | **Reason** | **Matters of control or discretion** | **Notification clause** |
| --- | --- | --- | --- | --- |
| *As below* | Regulation 8(3) Disturbing soil | The volume of soil disturbed will exceed 25m3 per 500m2. Approx. +m3 disturbance is proposed.  The volume of soil to be removed from the site will exceed 5m3 per 500m2. Approx. +m3 is proposed to be removed. | *As below* | *As below* |
| Regulation 9(1) Controlled activities | *As above* | A Detailed Site Investigation exists and the report states that soil contamination does not exceed the applicable standard in Regulation 7. | Specified in Regulation 9(2) | Must not be publicly notified |
| Regulation 10(2) Restricted discretionary activities | *As above* | A Detailed Site Investigation exists and the report states that soil contamination exceeds the applicable standard in Regulation 7. | Specified in Regulation 10(3) | No clause |
| Regulation 11 Discretionary activities | *As above* | A Detailed Site Investigation has not been carried out / has not been provided to the Council. | N/A | No clause |

**Overall activity status**

Overall, the application must be assessed as a + activity (being the most restrictive activity status). *Only include this section if consent required under both District Plan and NES.*

|  |
| --- |
| **Written approvals [Sections 95D, 95E(3)(a)]** |

No written approvals have been provided with the application.

OR

The applicant has obtained written approval from the owners and occupiers of the following properties:

Pursuant to section 95D(e) any adverse effects on these persons must be disregarded.

|  |
| --- |
| **PUBLIC NOTIFICATION TESTS [Section 95A]** |

Section 95A sets out the steps that must be followed to determine whether public notification is required:

|  |  |
| --- | --- |
| **Step 1: Mandatory notification – section 95A(3)** | |
| Has the applicant requested that the application be publicly notified? | **Yes/No** |
| Is public notification required under s95C (following a request for further information or commissioning of report)? | **Yes/No** |
| Is the application made jointly with an application to exchange reserve land? | **Yes/No** |

Public notification is not mandatory under this section. *Or discuss as relevant*

|  |  |
| --- | --- |
| **Step 2: If not required by Step 1, notification is precluded if any of the following apply – section 95A(5)** | |
| A rule or NES precludes public notification for all aspects of the application | **Yes/No** |
| The application is a controlled activity | **Yes/No** |
| The application is a boundary activity | **Yes/No** |

Public notification is precluded under this section.

*OR* Public notification is not precluded under this section as the application is a +

|  |  |
| --- | --- |
| **Step 3: Notification required in certain circumstances if not precluded by Step 2 – section 95A(8)** If the answer to anything in Step 2 is Yes, answer N/A to the next two questions as they are no longer applicable. | |
| Does a rule or NES require public notification? | **Yes/No/N/A** |
| Will the activity have, or is it likely to have, adverse effects on the environment that are more than minor? (discussed below) | **Yes/No/N/A** |

*If notification is either precluded under Step 2, or required by a rule or NES, and there are no special circumstances, delete the following effects assessment section as it is not required.*

**Assessment of effects on the environment**

When assessing whether the adverse effects on the environment will be, or are likely to be, more than minor, any effects on the owners and occupiers of the application site and adjacent properties must be disregarded pursuant to section 95D(a). Accordingly, this part of my assessment focuses on the wider environment beyond the application site and adjacent properties.

As a controlled/restricted discretionary activity the Council’s assessment of the effects of this proposal is limited to matters relating to … (*matters relating to the rules breached, e.g. the impact of the building on the streetscape*).

OR

As a non-complying/discretionary activity the Council’s assessment of this proposal is unrestricted and all actual and potential effects must be considered.  Guidance as to the effects that require consideration is contained in the relevant objectives and policies, and any associated matters of discretion or control.

*Regard must be had to the objectives and policies in the plan to get a full understanding of the context for assessing effects on the environment and effects on persons, so brief reference to these may be appropriate. e.g.* The objectives and policies in the District Plan set the context for assessing the effects of the application. *Then outline relevant provisions.* (As noted above, the MDRS objectives and policies introduced in PC14 do not apply in the Residential Large Lot / Small Settlement / Banks Peninsula zone outside Lyttelton / proposed Future Urban zone.)

The applicant has obtained written approval from the owners and/or occupiers of the properties listed above, so pursuant to section 95D(e) any effects on them must be disregarded. *(or delete if no written approvals).* Trade competition and its effects must also be disregarded (section 95D(d)). *(delete if not relevant to the application)*

Section 95D(b) allows the effects of activities permitted by the District Plan or an NES to be disregarded (the “permitted baseline”).

*Discuss what could be established on the site as a permitted activity under the Plan or a NES. Only mention non-fanciful activities which provide a useful and appropriate comparison – for example, if the proposal is for a residential unit in a residential zone, the permitted baseline should also relate to residential activities; if the proposal is for a café in a residential zone the effects should not be compared with permitted community facilities because the Plan includes special exemptions for these in recognition of their benefits to the local community. Rules that have legal effect but are not yet treated as operative cannot be used for permitted baseline purposes.*

In my opinion there is no reason why the discretion to disregard the adverse effects of permitted activities should not be exercised in this case.

In the context of this planning framework, I consider that the potential adverse effects of the activity relate to …

Effects heading

*Use the matters of control or discretion to guide your assessment and make sure you comment briefly on all relevant matters. For discretionary and non-complying activities it can still be helpful to discuss these but you need to clearly state that they provide a guide to assessment only. Address cumulative effects where relevant.*

*Summarise the conclusions of technical experts and add further comments where necessary. Don’t just cut and paste their whole email/memo.*

*When deciding whether adverse effects will be or likely to be more than minor – s95D:*

* *Must disregard effects on the site and adjacent properties*
* *Must disregard effects on persons who have given written approval.*
* *Must disregard trade competition and associated effects*
* *May disregard the permitted baseline*
* *Cannot take conditions into account unless inherent in application or volunteered by applicant.*
* *Cannot consider positive effects.*
* *Must have sufficient information to determine effects*

**Cultural effects**

Whitiora, on behalf of Ngāi Tūāhuriri Rūnanga, has been consulted and has no concerns regarding the nature of this proposal, subject to the inclusion of conditions to protect cultural values by managing any potential adverse effects on earthworks / water quality.  These include *(select as relevant)*erosion and sediment control, Accidental Discovery Protocol, management of machinery, hazardous substances, and ecological protection, restoration of the ground post-construction, establishment of indigenous planting near the waterway, and stormwater management. *Remember to add all required conditions. ADP must be a condition not an advice note.*

*Or tailor your assessment if Whitiora has concerns/specific comments or the site is within the Mahaanui consultation area*

*Finish with a conclusion on effects on the environment, and the scale of these, e.g.*

The adverse effects of this proposal are localised and relate only to the owners/occupiers of the adjacent properties. Any effects on the wider environment are considered to be minor/negligible.

*Or conclude that the effects on the environment will be more than minor. Take care with ‘scale of effects’ terminology as the tests are different for effects on the environment and affected persons.*

|  |  |
| --- | --- |
| **Step 4: Relevant to all applications that don’t already require notification – section 95A(9)** | |
| Do special circumstances exist that warrant the application being publicly notified? | **Yes/No** |

*If special circumstances might exist, consider whether notification would be likely to result in the Council receiving further information relevant to the issues for determination of the substantive application. In if doubt, discuss with TL/Manager/Legal Services.*

|  |
| --- |
| **Conclusion on public notification** |

Having evaluated the application against the provisions of section 95A, my conclusion is that the application **must/must not be publicly notified**.

**If publicly notified, delete the following section**

|  |
| --- |
| **LIMITED NOTIFICATION TESTS [Section 95B]** |

Where an application does not need to be publicly notified, section 95B sets out the steps that must be followed to determine whether limited notification is required.

|  |  |
| --- | --- |
| **Step 1: Certain affected groups/persons must be notified – sections 95B(2) and (3)** | |
| Are there any affected protected customary rights groups or customary marine title groups? | **Yes/No** |
| If the activity will be on, adjacent to, or might affect land subject to a [statutory acknowledgement](http://legislation.govt.nz/act/public/1998/0097/latest/DLM431351.html), is there an affected person in this regard? | **Yes/No/N/A** |

*Or discuss as relevant:*

*A* ***protected customary rights group*** *is affected if the activity may have adverse effects on a protected customary right carried out under* [*Part 3*](http://www.legislation.govt.nz/act/public/1991/0069/latest/link.aspx?id=DLM3213345#DLM3213345) *of the Marine and Coastal Area (Takutai Moana) Act 2011 and the group has not given written approval for the activity.*

***Statutory acknowledgement wording*** *– include if application is within, adjacent to, or impacting directly on the relevant statutory acknowledgements, being Wairewa (Lake Forsyth) and the Coastal Marine Area*

Section 3 of the Ngāi Tahu Claims Settlement (Resource Management Consent Notification) Regulations 1999 requires that Council must forward to Te Rūnanga o Ngāi Tahu a summary of every resource consent application for activities within, adjacent to, or impacting directly on a statutory area. Pursuant to section 208 of the Ngāi Tahu Claims Settlement Act 1998 Council must have regard to the statutory acknowledgement relating to a statutory area in forming an opinion in accordance with sections 93 to 94C (now sections 95B(3) to 95E) of the RMA as to whether Te Rūnanga o Ngāi Tahu is a person who may be adversely affected by the granting of a resource consent for such activities.

Te Rūnanga o Ngāi Tahu is/is not considered to be an affected person as +.

|  |  |
| --- | --- |
| **Step 2: Preclusions to limited notification – section 95B(6)** | |
| Does a rule or NES preclude limited notification for all aspects of the application? | **Yes/No** |
| Is the application for a land use consent for a controlled activity under the District Plan? | **Yes/No** |

There are no preclusions to limited notification under this section. *Or comment on any relevant rules.*

|  |  |
| --- | --- |
| **Step 3: Notification of other persons if not precluded by Step 2 – sections 95B(7) and (8)** If the answer to either of the questions in Step 2 is Yes, answer N/A here as it is no longer applicable | |
| For a boundary activity, are there any affected owners of an allotment with an infringed boundary under s95E? | **Yes/No/N/A** |
| For other activities, are there any affected persons under s95E, i.e. persons on whom the adverse effects are minor or more than minor, and who have not given written approval? | **Yes/No/N/A** |

**Assessment of affected persons**

The statutory context for assessing the adverse effects of this application on the environment is outlined earlier. It is equally relevant to the assessment of affected persons, which extends to include the owners and occupiers of adjacent properties.

I note that persons who have given their written approval to the application are not classified as affected persons (section 95E(3)(a)). Additionally, there is discretion to disregard the effects of permitted activities where relevant (section 95E(2)(a)). *Delete one or both statements as relevant.*

I consider that the owners and occupiers of the following properties are affected persons because the adverse effects on them are likely to be minor or more than minor, and they have not given their written approval to the application:

+

*Discuss why, cross-referencing your assessment of effects on the wider environment where relevant, and addressing effects on the owners and occupiers of the adjacent properties.*

*When determining affected persons – s95E:*

* *If the application is a boundary activity only the owners of properties with an infringed boundary can be considered affected.*
* *A person is affected if the adverse effects on them are minor or more than minor, but not less than minor.*
* *For CA and RDA, must disregard effects outside the matters specified in the plan or NES*
* *May disregard the permitted baseline*
* *Persons who have given written approval are not affected*
* *Must have regard to relevant statutory acknowledgements*
* *Persons are not affected if satisfied that it is unreasonable in the circumstances for the applicant to seek their written approval.*

*If relevant, discuss why you don’t consider anyone, or anyone else, to be affected and why, e.g.*

Pursuant to Section 95E(1) of the Act a person is not deemed affected by an activity where the adverse effects are less than minor. *Note the limited notification clauses of the Plan override this section of the Act, so. CIAL etc must be considered an affected person regardless of the assessment of effects on them if the rule states this.*

*If you consider it unreasonable to obtain the written approvals, explain why, including the extent of efforts made by the applicant. Note that case law has indicated that there are very few justifiable reasons why it is unreasonable to obtain written approval (given the availability of the internet, etc for contacting people overseas). If you think there may be valid grounds to determine “unreasonableness”, this should be discussed with your Team Leader at an early stage in the processing of the application.*

|  |  |
| --- | --- |
| **Step 4: Relevant to all applications – section 95B(10)** | |
| Do special circumstances exist that warrant notification to any other persons not already identified above (excluding persons assessed under s95E as not being affected)? | **Yes/No** |

*If special circumstances might exist, consider whether notification would be likely to result in the Council receiving further information relevant to the issues for determination of the substantive application. In if doubt, discuss with T/Manager/Legal Services. Note the exclusion, which means you can’t use special circumstances to limited notify anyone you’ve already determined under s95E as not being affected.*

|  |
| --- |
| **Conclusion on limited notification** |

Having evaluated the application against the provisions of section 95B, my conclusion is that the application **must be limited notified** to the affected persons/groups listed above.

OR

Having evaluated the application against the provisions of section 95B, my conclusion is that the application **must not be limited notified**.

|  |
| --- |
| **RECOMMENDATION** |

That, for the reasons outlined above, the application **be publicly notified** in accordance with section 95A of the Resource Management Act 1991.

OR

That, for the reasons outlined above, the application **be processed on a limited notified basis** in accordance with sections 95A and 95B of the Resource Management Act 1991, and that it be served on all affected persons identified under section 95E who have not given written approval to the activity (as listed above).

OR

That, for the reasons outlined above, the application **be processed on a non-notified basis** in accordance with sections 95A and 95B of the Resource Management Act 1991.

**Reported and recommended by:** type your name and position **Date:** type it in

**Reviewed by:** type your name and position **Date:** type it in

|  |
| --- |
| **Decision** |

That the above recommendation be accepted for the reasons outlined in the report.

🗹 I have viewed the application and plans.

🗹 I have read the report and accept the conclusions and recommendation.

|  |
| --- |
| Decision maker notes *Add any further notes of relevance/reasons for decision, otherwise delete this box* |

**Delegated officer:**

[Insert signature]

OR

**Commissioner: *(Conflict of Interest Form*** [***P-426***](trim://14/571681?view) ***also needs to be signed by commissioner)***

|  |  |  |
| --- | --- | --- |
| Name: |  |  |
| Signature: |  |  |
| Date: |  |  |

OR

**Hearings Panel Chair – Independent Commissioner**

|  |  |  |
| --- | --- | --- |
| Name: |  |  |
| Signature: |  |  |
| Date: |  |  |

**Hearings Panel member – Commissioner / Councillor / Community Board member**

|  |  |  |
| --- | --- | --- |
| Name: |  |  |
| Signature: |  |  |
| Date: |  |  |

**Hearings Panel member – Commissioner / Councillor / Community Board member**

|  |  |  |
| --- | --- | --- |
| Name: |  |  |
| Signature: |  |  |
| Date: |  |  |