|  |  |
| --- | --- |
| Resource Management Act 1991 | CCC logo Black&White |
| **Report / Decision on Change or Cancellation of Condition(s)**  (Section 127) | |

|  |  |
| --- | --- |
| **s127 application number:** | **RMA/+** |
| **Original 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:** | Discretionary activity |
|  |  |
| **Description of application:** | Change of conditions pursuant to section 127 |

|  |
| --- |
| **Introduction** |

The applicant is seeking to change the conditions of an existing resource consent (RMA/+) which was granted on a non-notified basis by the + on +.

*Describe what the consent is for, outline the reasons why the proposal originally required resource consent. It is important to fully define the scope of the activity, but the applicant’s description should also be cross-referenced where the proposal is complex and the full details need to be repeated.*

*State how the applicant is seeing to change the conditions, quoting the condition number(s), the wording of the original condition and the new wording sought.*

*Note: The Delegated Officer only has delegation to consider s.127 applications where the original consent was not publicly notified and did not require a hearing. All other s.127 applications must be considered by a Hearings Panel or Commissioner (preferably the original decision-maker).*

|  |
| --- |
| **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.*

|  |
| --- |
| **Statutory considerations** |

Section 127 of the Resource Management Act 1991 states:

*“****127.Change or cancellation of consent condition on application by consent holder***

1. *The holder of a resource consent may apply to the consent authority for a change or cancellation of a condition of a consent, subject to the following:*
2. *the holder of a subdivision consent must apply under this section for a change or cancellation of the consent before the deposit of the survey plan (and must apply under section 221 for a variation or cancellation of a consent notice after the deposit of the survey plan); and*
3. *no holder of any consent may apply for a change or cancellation of a condition on the duration of the consent.*
4. *Repealed*
5. *Section 88 to 121 apply, with all necessary modifications, as if-*
6. *the application were an application for resource consent for a discretionary activity; and*
7. *the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.*
8. *For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who –*
9. *made a submission on the original application; and*
10. *may be affected by the change or cancellation.*

**Proposed Plan Change 14 Housing and Business Choice**

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 Independent Hearings Panel’s recommendations on PC14 were released on 30 July 2024, and the Council made decisions on recommendations relating to NPS-UD Policy 3 areas (i.e. in and around commercial centres) on 18 September and 2 December 2024. Decisions to date are not relevant to this application. *Or amend if the site is within a Policy 3 decision area and there are alternative recommendations relevant to the application*

*Residential wording outside Policy 3 decision areas*

With regard to the MDRS, the site is identified as being within a qualifying matter area – *describe QM that applies*. As a result, the rules do not have immediate legal effect given section 86BA(1)(c)(ii) and the operative district plan rules continue to apply. While the objectives and policies have legal effect from the date of notification, Policy 2 of the MDRS requires that the MDRS (including the objectives and policies) does not apply where a qualifying matter is relevant. There are no other provisions in PC14 relevant to this application.

OR

The MDRS (including objectives and policies) do 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’. There are no other provisions in PC14 relevant to this application.

*Non-residential wording*

While the objectives and policies have legal effect, none are relevant to this application. *Or discuss whether there are any obs and pols relevant to the change of conditions.*

|  |
| --- |
| **Type of application** |

*Notes to planners; The first consideration is whether the application can be treated as one for a change of conditions or that it is, in effect, one that is so materially different in character from that originally authorised that it should be treated as an application for a separate use or activity, even though it involves a change of a condition of an existing consent[[1]](#footnote-1).*

*Case law[[2]](#footnote-2) states that whether an application is one for variation of the condition or whether in reality it is seeking consent to an activity which is materially different in nature, is a question of fact and degree to be determined in the circumstances of the case. Relevant considerations will include a comparison between the activity for which consent was originally granted (including the conditions imposed) and the nature of the activity if the variation were approved. In deciding whether an application for variation is in substance, a new application, a consent authority should compare any differences in the adverse effects likely to follow from the varied proposal with those associated with the activity in its original form. Where the variation would result in a fundamentally different activity or one having materially different adverse effects, a new application may be required. This is particularly the case whether an application for variation seeks to expand or extend an activity with a consequential increase in adverse effects.*

*The application for variation must also be taken to embrace all necessary consents resulting from the application (e.g. if new areas of non-compliance arise, these should be identified and the effects and relevant plan provisions addressed within the report). [para 77 and 91, Body Corporate case].*

*The Council has a discretion over how to process applications made under s.127. If it is unclear whether an application is more appropriately processed under s.127 or a new consent (which is often the case), the Council may choose to process it under both s.127 and s.104.*

*Suggested wording:*

The first consideration that is required is whether the application can be treated as one for a change of conditions or whether it will result in a fundamentally different activity or one having materially different adverse effects, such that it should be treated as a new application. The original application sought to… *Discuss why the nature of the activity won’t fundamentally change, and whether or not the adverse effects will be materially different. Include whether the change will result in any additional or increased non-compliance with the District Plan rules.* In my opinion this application can be considered as a change to the original resource consent as the nature of the activity will not fundamentally change and the adverse effects will not be materially different from those associated with the original consent.

|  |
| --- |
| **Written approvals [Sections 95D(e), 95E(3)(a) and 104(3)(a)(ii)]** |

No written approvals have been provided with the application.

OR

Written approval has been obtained from the owners and/or occupiers of the following properties:

Any adverse effects on these persons must be disregarded.

|  |
| --- |
| **Effects on the environment and affected persons [Sections 95A, 95B, 95E(3), 95D and 104(1)(a)]** |

Pursuant to Section 127(3) the application must be assessed as a discretionary activity. As such, the Council’s assessment is unrestricted and all actual and potential effects of this proposal must be considered. In my opinion the effects on the environment associated with the proposed change/cancellation of conditions relate to…

*Discuss the effects of the proposed change, comparing the adverse effects of the activity in its original from with any adverse effects of the amended proposal. Note - the assessment of adverse effects on the environment excludes effects on the owners/occupiers of the site and adjacent properties.*

*Discuss who may be adversely affected by the change or cancellation of condition(s), keeping in mind that it is the adverse effects of the change/cancellation of condition as opposed to the adverse effects of the activity itself which are relevant.*

*You need to give particular consideration to every person who made a submission on the original application (if notified), and may be affected by the change/cancellation. If you conclude that a submitter is affected, then their written approval should be sought.*

*As well as submitters, you need to discuss whether any other persons may be affected. This will be relevant whether the original applications were notified or non-notified.*

*If other persons are considered to be affected by the change/cancellation, this may be an indication that the effects are materially different and the application may be more appropriately processed as a new consent rather than a change/cancellation of conditions*

*Mention any written approvals, e.g.*

I note that the owner/occupier of the adjoining site to the… has given their approval to the proposal. Pursuant to s.95D, 95E(3)(a) and 104(3)(a)(ii), a consent authority must not take into account any effects on persons who have given their written approval to an application.

|  |
| --- |
| **Notification assessment [Section 95A and 95B]** |

Sections 95A and 95B set out the steps that must be followed to determine whether public notification or limited notification of an application is required.

**Public notification**

Step 1. The application does not meet any of the criteria for mandatory notification in section 95A(2).

Step 2. *127 for boundary activity:* Under section 95(A)(5)(b) the application must not be notified as the change of conditions is a discretionary activity and relates to a boundary activity.

*127 for other activities:* The application does not meet any of the criteria in section 95(A)(5)(b) precluding public notification.

Step 3. This step is not applicable as notification of the application is prevented by Step 2. *(if step 2 states it must not be notified)*

*OR* There are no rules or NES requiring notification, and any adverse effects on the environment will be no more than minor (section 95A(8)).

Step 4. There are no special circumstances that warrant public notification (section 95A(9).

*Comment on any of the above matters that are applicable.*

**In accordance with the provisions of section 95A, the application must/must not be publicly notified.**

**Limited notification assessment**

Step 1. There are no affected groups or persons in relation to customary rights, customary marine titles or statutory acknowledgements as outlined in section 95B(2) and (3).

Step 2. There are no rules or NES preventing limited notification, and the application is not for a controlled activity land use consent under the District Plan (section 95B(6)).

Step 3. As discussed above, no persons are considered to be affected under section 95E (sections 95B(7) and (8)).

OR

As discussed above, there are affected persons who have not given their written approval to the application so it must be limited notified under section 95B(7)/(8).

Step 4. There are no special circumstances that warrant notification to any other persons (section 95B(10)).

*Comment on any of the above matters that are applicable.*

**In accordance with the provisions of section 95B, the application must/must not be limited notified.**

|  |
| --- |
| **Recommendation (A) - Notification** |

That the application be processed on a **non-notified** basis in accordance with Sections 95A – 95F of the Resource Management Act 1991.

OR

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

OR

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

|  |
| --- |
| **Relevant objectives, policies, rules and other provisions of a Plan or proposed Plan [Section 104(1)(b)(vi)]** |

*Adopt the applicant’s assessment where possible.*

Regard must be had to the relevant objectives and policies in the Christchurch District Plan. In my opinion the proposed change of conditions is consistent with these as +

|  |
| --- |
| **Relevant provisions of a National Environmental Standard, National Policy Statement, Regional Plan, Regional Policy Statement or Coastal Policy Statement [Section 104(1)(b)]** |

The District Plan gives effect to the relevant provisions of the higher order documents referred to in s104(1)(b), the National Policy Statement on Urban Development which has largely been implemented via Plan Change 14. As such, there is no need to specifically address them in this report.

*Comment on any other documents of relevance to the change of conditions, e.g. NES, Regional Plans and Policy Statements, the Coastal Policy Statement, and National Policy Statements such as the NPS-HPL.*

|  |
| --- |
| **Part 2 of the Resource Management Act and any other relevant matters [Section 104(1) and 104(1)(c)]** |

Taking guidance from recent case law[[3]](#footnote-3), the District Plan is considered to be the mechanism by which Part 2 is given effect to in the Christchurch District. The Plan was competently prepared through independent hearing and decision-making processes in a manner that appropriately reflects the provisions of Part 2.

Accordingly, no further assessment against Part 2 is considered necessary.

OR

Assessment against Part 2 is only considered necessary in respect of ...

*OR discuss if the application involves coastal hazards, as the District Plan has not yet given effect to the higher order documents relating to these and is therefore incomplete in relation to such applications.*

*Discuss any other matters not already addressed in the report.*

|  |
| --- |
| **Section 104(3)(d) notification consideration** |

Section 104(3)(d) states that consent must not be granted if an application should have been notified and was not. No matters have arisen in the assessment of this application which would indicate that it ought to have been notified.

|  |
| --- |
| **Recommendation (B) – Substantive decision** |

That, for the reasons outlined above, the application **be granted** pursuant to Section 127 of the Resource Management act 1991.

The conditions of consent shall now read as follows:

*Insert all of the original conditions and advice notes, ~~strike out~~ the old condition(s) and replace it/them with the new condition(s) shown in* ***bold****. If you are replacing the original condition with more than one new condition, use the same condition number (e.g. replace condition 3 with new conditions 3A, 3B, 3C)*

1) The development shall proceed in accordance with the information submitted with the original application, **as varied by s127 application RMA/+++. The approved consent plans are entered into Council records as RMA/+++** *(original RMA number)*.

*When stamping the plans for land use consents, put the original consent number first, followed by the 127 RMA number in brackets, e.g. “RMA/2023/123 (& RMA/2023/789)”. For subdivision consents only the 127 number is needed.*

**Advice Note:**

The lapse date of the consent remains unchanged, i.e. +++ insert lapse date of original consent. (*This is usually 5 years from the date the consent was issued. For notified consents that were not appealed it is 5 years plus 15 working days).* The consent will lapse on this date unless it is given effect to before then.

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

**Peer reviewed by:** type your name and position **Date:** type it in

*(Peer review required if Planner Level 2 or Planning Technician, and all separate s.95 decisions – delete if not required).*

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

That the above recommendations be adopted for the reasons outlined in the report.

*Note: That Delegated Officer only has delegation to consider s.127 applications where the original consent was not publicly notified and did not require a hearing. All other s.127 applications must be considered by a Hearings Panel or Commissioner (preferably the original decision-maker).*

**Delegated officer:**

[Insert digital signature]

OR

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

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

1. Warbrick v Whakatane D.C. A019/95 [↑](#footnote-ref-1)
2. Body Corporate 970101 v Auckland C.C. M1725/99 (pages 39-49) [↑](#footnote-ref-2)
3. *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 [↑](#footnote-ref-3)