

Appendix 7

Notification Addendum

ADDENDUM

Notification Decision Section 95E of the Resource Management Act 1991

Date:	23 October 2020	App Number:	LU/0108/20
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Applicant:	Shaw Property Holdings Ltd
Property Address:	928 Kaipaki Rd
Legal Description:	Lot 2 DP 444992 (RT 558891) & Lot 3 DP 424105 (RT 493900)
Site Area:	40.73ha & 9.25ha
Activity Status:	Discretionary
Zoning:	Rural
Policy Area(s):	Significant Natural Area WP344 and Archaeological Site S15/285
Designation(s):	Nil
Proposal:	Land Use Consent for a Discretionary Activity for the establishment and operation of a mineral extraction activity (sand quarry) under the Waipa District Plan

1 INTRODUCTION

This report sets out an addendum to the notification decision on this application (Council Document number ECM10446953).

2 INTRODUCTION

Following the initial decision to limited notify LU/108/20 (decision of 13 August 2020), further information was provided, by the applicant, to clarify matters relating to traffic volumes and the duration of the activity. This information was circulated to those parties who had been limited notified and the information was loaded onto Council's website.

After limited notification, Council was contacted by NZ National Fieldays Society Inc ("NZNFS") who own and operate the Mystery Creek Events Centre. They advised that they considered

themselves to be adversely affected by the application and sought the opportunity to submit. Council staff advised NZNFS that they had not been identified as an affected party, and Council could not accept a submission.

A letter was subsequently received from NZNFS on 28 September, in the form of a “submission” even though they were not identified as an affected party for the purposes of limited notification. Their “submission” was received and acknowledged, and NZNFS were advised that Council could not legally accept their submission for the purposes of the RMA as they had not been identified as an affected party.

In their letter, NZNFS advise that they run major events on a national and international scale, and that NZNFS owns and runs the Mystery Creek events centre. In their letter they clarify that NZNFS owns the brands Fieldays, Equidays, and THE Expo, and that they exhibit other events which they do not own. Overall there are 124 events operated annually from the site know as Mystery Creek Events Centre.

3 AFFECTED PARTY REVIEW

NZNFS - First Independent Review

As a result of the request by NZNFS to be identified as an affected party, Council sought an independent planning review as to whether there were adverse effects on NZNFS. Notably this review preceded NZNFS’s letter. The planning review concluded there were no adverse effects on NZNFS.

NZNFS – Second Independent review

A subsequent independent legal review was undertaken as to whether NZNFS could be considered an affected party for the purposes of notification under the RMA. This legal review took into account the NZNFS letter (presented as a “submission”), the Integrated Traffic Assessment, and the possibility of consent condition(s) to mitigate effects.

The legal review determined that:

- a. there would be real difficulties in relying on a condition as a means of precluding relevant effects on NZNFS;
- b. there is currently so little information available to the Council about the potential effects on NZNFS and likely difficulties in implementing a condition;
- c. there is a serious risk in placing reliance on any condition(s) to exclude NZNFS from being potentially affected.

NZNFS – Affected Party Assessment

Section 95E(1) of the RMA is the relevant section for the purposes of affected party consideration for NZNFS. Under this section, effects must be “minor”, “more than minor”, or “not less than minor” for a party to be considered affected.

Taking into account information supplied in the letter from NZNFS, the principal considerations as to whether NZNFS is an affected party, for the purposes of notification, are as follows:

- a. **Question 1:** *does traffic from the quarry site have the potential to affect the operation of NZNFS?*

NZNFS is a major traffic generator from major events, with these events being lawfully established by way of their own bespoke zone (the “Mystery Creek Events Zone”) and under resource consents.

This assessment is made on the basis of the information provided with the application, specifically:

- The Integrated Traffic Assessment and application as lodged; and
- The additional information provided by the applicant that was circulated to notified parties.

Potential effects on NZNFS arising from the quarry application are not limited to effects “at the Mystery Creek gate”, but have the potential to impact traffic from events, well beyond the Mystery Creek gates. Kaipaki Road is a major feeder road for event traffic, with traffic management for large events often in place along Kaipaki Road and the main intersections with Kaipaki Road.

The location of the quarry site, while not in close proximity for Mystery Creek, does nonetheless have potential effects on the ability for NZNFS to conveniently and efficiently operate events from Mystery Creek.

These effects are noted in the Integrated Traffic Assessment that was lodged as part of the quarry application.

- i. Table 3.8 of the applicant’s Integrated Traffic Assessment (“ITA”) specifically identifies the *“potential for safety and efficiency effects at Mystery Creek when events are on”*.
- ii. References to potential effects on Mystery Creek are cited in the ITA at paragraph 3.8.3 (*“potential conflicts with events”*).
- iii. Paragraph 3.5 notes that *“...If the quarry were to get a large supply contract, it is possible that 100% of quarry traffic could be directed to a single route for the duration of that contract”*.

- iv. Paragraph 3.8.4 of the ITA notes that *“The effects arising from peak trip generation (i.e. 133 HCV/day) over an extended period could be significant. The duration and intensity of peak trip generation is an important factor to consider.”*

Legal advice received is that Council should not rely on condition(s) to preclude NZNFS being considered potentially affected.

Taking these facts together and considering the lawfully established activities at Mystery Creek and the activities permitted under its zoning; the ITA; and the considerations set out in NZNFS’s letter of September 28, NZNFS is assessed as being affected by the quarry application, with effects being minor or more than minor.

- a. **Question 2:** *Are there any other notification considerations for NZNFS?*

There are no other considerations relating to NZNFS under the notification provisions of the RMA.

- b. **Question 3:** *Is NZNFS an affected party for the purpose of limited notification?*

NZNFS is considered to be an affected party under section 95E(1) for the purposes of limited notification.

- c. **Question 4:** *Are any other parties who were not notified who might also be affected?*

I have also undertaken a review of the original notification decision and considered other potentially affected parties.

The lawfully established activities undertaken by NZNFS give them a unique and exceptional status that sets them apart from the general public, in that they operate large scale events which are clearly not comparable to any other party on the Kaipaki Road / Mystery Creek Road quarry traffic route, and they operate large events under their own bespoke zoning.

No other party on the Kaipaki Road / Mystery Creek Road quarry traffic route have unique or special circumstances that sets them apart from the general public or that would require them to be taken into account.

Amenity effects from traffic on other parties are covered in the ITA and effects assessment.

In reviewing the potential for other parties to be potentially affected, the matters for consideration are adequately covered in the original notification decision, which is confirmed.

Accordingly, there are no additional parties who are determined to be affected parties, other than NZNFS.

4 RMA PROCEDURE

Having retrospectively determined NZNFS as an affected party, the next consideration is the procedural matter around their ability to submit, and for their submission to be considered.

As indicated, NZNFS wrote to Council on September 28 setting out their concerns. This was in the form of a submission, even though at the time they had not been identified as an affected party.

With NZNFS retrospectively being determined to be an affected party, legal advice provided to Council is that NZNFS could resubmit their letter as a formal submission, after the date of the determination they are an affected party. Council could then accept their submission having met the RMA tests for notifying NZNFS as an affected party. NZNFS would then be accorded the rights of a submitter in accordance with the RMA.

The applicant's legal advisor was notified of the possibility of NZNFS being an affected party on 8 October, and has raised no objection.

While unusual, this process is not legally precluded under the Resource Management Act. It is a pragmatic approach to achieve an agreed outcome:

- only one additional party – NZNFS - is to be notified;
- NZNFS were advised of the decision that they were an affected party on the day of the decision;
- the applicant's legal advisor was given notice of this possibly on October 8 and have raised no objection to this process;
- NZNFS agreed to relodge their letter as a formal submission no later than October 27;
- this process avoids the need to put the application on hold and defer the hearing if Council was to follow the statutory minimum 20 day limited notification period;
- no other party is prejudiced by this process;
- this process achieves exactly the same outcome had Council re-notified the application to NZNFS under the 20 working day period.

The procedural arrangement is therefore as follows:

- a. NZFS have been retrospectively identified as an affected party, as per this decision and legal advice.

- b. They were notified of this decision, on the date of the decision (23 October 2020 - Appendix 1).
- c. NZNFS have agreed to lodge a submission on the application no later than 27 October 2020.
- d. This submission will be accepted as a submission on LU/0108/20 on the basis NZNFS is determined to be an affected party; will be taken into consideration in the planning report; and NZNFS will be accorded rights as a submitter under the RMA.

Notified Party Decision Made under Delegated Authority By:

A handwritten signature in blue ink, appearing to read 'Tony Quickfall', is positioned above the printed name.

Tony Quickfall

Manager District Plan and Growth

Dated: 23 October 2020

Appendix 1: Notification to NZNFS

From: Tony Quickfall

Sent: Friday, 23 October 2020 5:03 PM

To: 'Peter Nation' <Peter.Nation@nznfs.co.nz>

Cc: Wayne Allan <Wayne.Allan@waipadc.govt.nz>

Subject: RE: (ECM:10484624) External Sender: RE: LU/0108/20 - Acknowledgement of Letter

Hi Peter.

Today I have made the decision under my delegated authority that the NZ Fieldays Society is an affected party under RMA section 95E(1) for the purposes of limited notification of application LU/0108/20. The rationale and reasons for this decision will be set out in an addendum report to the reporting planner's report.

Accordingly, please can you re-submit your "letter" as a submission, with the date of your submission updated to the day that your resubmit.

Please note, we require this to be **resubmitted by the end of Tuesday 27th** in order to meet our statutory reporting timeframes.

Please feel free to call if you have any queries.

Regards,

Tony Quickfall *Manager District Plan and Growth* **WAIPA DISTRICT COUNCIL**
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