



Sections 95, 95A – 95F Resource Management Act 1991

Report determining whether applications for Resource Consent should be processed as publicly notified, limited notified or non-notified

Consent number:	LUC25/0028 and LCA25/0007
Applicant's Name:	Ashburton District Council
Street Address:	Ashburton Museum and Art Gallery, 329 West Street, Ashburton
Legal Description of Site:	Lots 1 to 4 DP 46522
Zone:	Residential A
Application summary:	<p>Resource consent is sought to replace and relocate air conditioning equipment from the roof to ground level currently occupied by four on-site car parks exclusively marked for staff use.</p> <p>A resource consent is sought for the new enclosure structure surrounding the proposed new air conditioning equipment; as well as changes to the conditions imposed on the original resource consent authorising the use of the Ashburton Museum and Art Gallery on the application site.</p>

1.0 DESCRIPTION OF THE PROPOSAL

The existing Ashburton Museum and Art Gallery was established in accordance with resource consent LUC09/0025. This consent was approved by way of Consent Order from the Environment Court dated May 2011 following an Appeal against the Council's decision to grant consent from some of the immediately surrounding property owners [ENV-2010-CHC-236]. The Museum and Art Gallery building was subsequently constructed and opened to the public in February 2015.

The resource consent included the installation of air conditioning equipment on the roof of the building behind an acoustic barrier wall. The application sets out that there has been ongoing difficulties and issues with the air conditioning of the building. This has advanced to the stage where this equipment requires replacement. The proposed new equipment is heavier, meaning placement on the roof is no longer suitable. On that basis a new location at ground level has been chosen within an area of the site near the intersection of West and Wills Streets, which is currently set aside for staff car parking.

The proposed new equipment will occupy an area of 10m x 6.5m on the southeastern frontage of the site adjoining West Street/State Highway 1. The equipment will be contained within an enclosure consisting of 150mm thick concrete walls on two sides (North and West), with the existing museum building being the third (South) side, and a slat wall facing West Street. There will be no roof on the enclosure. The concrete walls will be 4 metres in height and the equipment will sit below the height of the walls.

To ensure the appearance of the building is maintained, the pipes running up the building façade will be included within a covered shield/box structure designed to blend with the existing building. The application notes that the final design of the enclosure itself is subject to detailed design of the heating, ventilation and air conditioning system, however, the application states that the bulk and location will not change.

The location and design of the new enclosure seek to ensure there is little change in the acoustic noise levels arising from the replacement and relocation of the air conditioning equipment. The application includes an Assessment of Noise Effects prepared by Marshall Day Acoustics Ltd (attached as Appendix 3 to the application documentation).

The proposed relocation will necessitate the removal of four of the existing eight staff car parks on the application site. These four car parks will not be reinstated elsewhere on the site. The application refers to the potential option of re-instating four staff parks to an area that is currently grassed adjoining the driveway for access to the loading area along the boundary of the site. However, as this would have resulted in increased vehicle movements on the loading area driveway adjacent to a residential neighbour (130 Wills Street), this was not pursued. Therefore, the proposal will result in a loss of four staff car parks on the site. One of the existing staff car parks to be removed is a mobility space. The proposal includes that one of the other car parks remaining on site will be converted to a mobility parking space, such that the number of mobility parking spaces provided on the site will not change.

The nature of the proposal is such that it increases the scale of the existing Museum and Art Gallery building/structure, which is located within the Residential A zone. On that basis a resource consent has been sought for the new structure. Furthermore, the nature of the changes proposed impact on compliance with the conditions imposed on the existing resource consent (LUC09/0025). On that basis a change of consent conditions is also sought to address the conflicts arising with those conditions, as described further below.

Condition 28

One of the conditions agreed to through the Court mediation process was Condition 28, which specifies noise limits from the roof plant, as follows:

	2400 hrs to 0700 hrs	0700 hrs to 0900 hrs	0900 hrs to 1700 hrs	1700 hrs to 2100 hrs	2100 hrs to 2400 hrs
Monday to Friday	30dBA	40dBA	40dBA	40dBA	30dBA
Saturday	30dBA	30dBA	40dBA	30dBA	30dBA
Sundays & Public Holidays	30dBA	30dBA	30dBA	30dBA	30dBA

The Marshall Day Noise Report calculates that the proposed relocation will not comply with condition 28. The application therefore seeks to remove condition 28 and instead rely on the relevant rules and standards specified in the Ashburton District Plan.

This will result in the noise limits imposed on the activity increasing from 40dB to 50dB during daytime hours and from 30dB to 40 dB during nighttime hours (all references to L_{Aeq} (1 hour)).

Condition 14

Condition 14 required on-site staff car parking and associated access off Wills Street to be established and maintained in accordance with the plans submitted as part of the original application.

As set out above, the proposal results in the removal of four of these parks so condition 14 can no longer be complied with.

The application seeks that the condition be amended to add the following text:

...except for those amendments approved as part of resource consent LUC25/XXXX.

Conditions 1, 31 and 33

Condition 1 is a standard condition requiring that the establishment, operation and maintenance of the Art Gallery and Museum proceed in accordance with the plans and particulars submitted in support of the application, together with the other stipulated conditions of the consent.

Similarly, Conditions 31 and 33 require the site to be landscaped in accordance with the Landscape Design Plan and particulars submitted with the application; and any dead, diseased, or damaged landscaping to be replaced immediately with plants of the same or similar species.

Like Condition 14 above, the application seeks that Conditions 31 and 33 both be amended to add the following text:

...except for those amendments approved as part of resource consent LUC25/XXXX.

2.0 DESCRIPTION OF THE EXISTING ENVIRONMENT

The site is located at 329 West Street in Ashburton (see **Figure 1** below). The site has frontages on to West, Cameron and Wills Streets. West Street is designated as State Highway 1 and as such carries a high volume of traffic.



Figure 1: Application site location (Source: application document).

As set out above, the site contains an existing art gallery and museum including associated car parking and landscaping. The location and design of the building makes it a dominant feature of the area fronting on to State Highway 1 between Cameron and Wills Streets (see **Figure 2** below).



Figure 2: Aerial photograph of the application site (Source: application document).

Activities in the local area are mixed including residential, the Domain/reserve, memorials, government services, railway line and the state highway. Immediately to the west the site is adjoined by residential land uses reflecting the underlying zoning.

3.0 PLANNING FRAMEWORK

3.1 Ashburton District Plan

The Residential A zone is described as a High Density Residential Zone located in the heart of Ashburton (Kapuka) close to the town centre and key commercial and recreational facilities (see planning map in **Figure 3** below). The zone provides for high density residential development such as apartments, joined townhouses, terrace housing or multi-unit elderly housing complexes. This provides a choice of accommodation options and areas with low maintenance development. The purpose of the zone is to enable efficient use of the land close to the town centre, increase diversity of residential development and to provide choice.

A full assessment of the proposal is set out in the application document. It is not intended to repeat that detail here. Clearly the proposed activity is not anticipated by the underlying zoning, and hence the existing resource consent applying to the site.

The use of the site is a change to the 'community activity' already approved by that existing resource consent. **Rule 4.8.4** of the Ashburton District Plan (District Plan) specifies that Community Activities are a

discretionary activity in the Residential A zone. I agree with the assessment set out in the application that this proposal is similarly assessed as a community activity and accordingly a Discretionary activity resource consent is required under this rule.

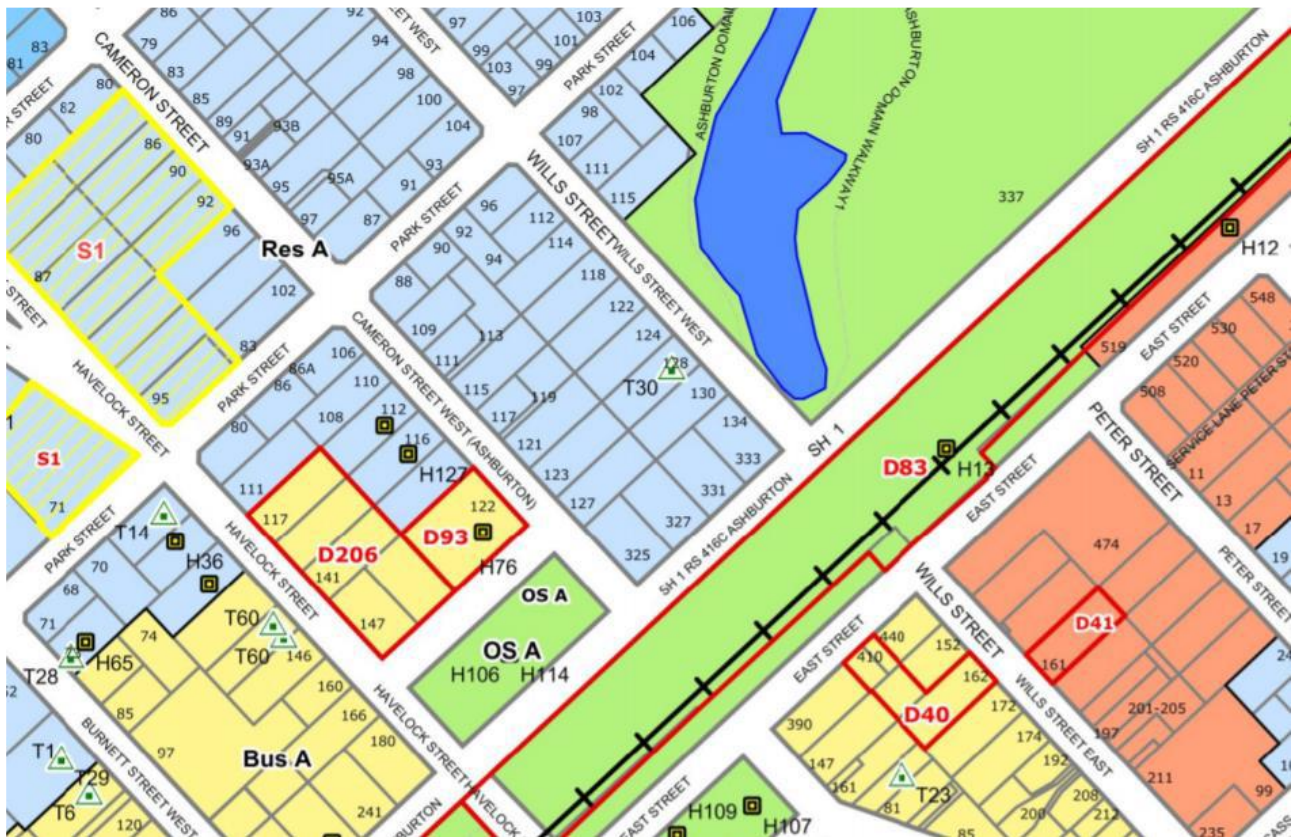


Figure 3: Ashburton District Plan – planning map

In addition, it is noted that Site Standard **4.9.10** (Design and Appearance) specifies that within the Residential A zone, all new buildings, or additions to the exterior of existing buildings that are greater than 40m² in area, shall be a Restricted Discretionary activity. The proposed enclosure area will be approximately 65m² in area; however, any such non-compliance does not alter the overall activity status.

In summary, resource consent is required as a Discretionary activity to expand an existing community facility within the Residential A zone.

4.0 ASSESSMENT OF ENVIRONMENTAL EFFECTS

The assessment below is undertaken in accordance with the various requirements relating to notification as set out in the RMA.

As a fully discretionary activity the consent authority may take into account any relevant matters when assessing the effects of the proposal. However, it should be noted that in terms of the change of condition aspects of the application, section 127 of the RMA sets out:

- It is only the effects of the change or cancellation of a condition that can be considered; and
- For the purposes of determining who is adversely affected by the change or cancellation, the consent authority must consider, in particular, every person who—
 - a) made a submission on the original application; and
 - b) may be affected by the change or cancellation.

4.1 Mandatory Exclusions

The assessment of the adverse effects of the activity has been undertaken in accordance with the mandatory exclusions set out in section 95D, being:

- a) Effects on the owners or occupiers of land on which the activity will occur and on adjacent land for the purpose of the assessment regarding full public notification (s95D(a)).
- b) An adverse effect of the activity if a rule or national environmental standard permits an activity with that effect (s95D(b)) (the permitted baseline).
- c) Trade competition and the effects of trade competition (s95D(d)).
- d) Effects on persons who have given written approval to the application (s95D(e)).

4.2 Permitted Baseline (section 95D(b))

Under section 95D(b), the adverse effects of the activity on the environment may be disregarded if the district plan or a national environmental standard permits an activity with that effect. This is referred to as the permitted baseline. The permitted baseline has not been considered in this instance as there are no permitted community activities within the Residential A zone.

It is noted that the application refers to it being permitted to generate noise to a level which is greater than the consented proposal. However, the AEE makes it clear that *“care needs to be taken in applying such a permitted baseline as there is an applicable resource consent which requires compliance with a lower acoustic standard, but it is considered appropriate to give some acknowledgement to the permitted noise standards in the Ashburton District Plan”*. I would concur with that assessment.

Similarly, in terms of the provision of on-site car parking, it is noted that changes to the District Plan as required by the National Policy Statement on Urban Development (NPS-UD) now mean that the Ashburton District Plan no longer includes any requirement to provide a minimum number of parking spaces.

4.3 Amenity Character Effects

Adverse effects on the amenity and residential character in the vicinity of the application site were the primary consideration at the time of the original application to establish the art gallery and museum on the site. In so far as the current activity complies with that approval it forms part of the receiving environment. It is noted that the primary use of the site is not changing and this application does not provide the opportunity to revisit whether the current use of the site is appropriate. Rather the scope of this application is limited to the assessment of the specific changes now proposed in order to determine whether they are appropriate in the context of that receiving environment and the applicable planning framework.

In that context amenity and character effects are restricted to the visual appearance of the proposed enclosure housing the new relocated air conditioning equipment occupying the areas where four staff car parks are currently located.

The application includes a graphic 3D illustration of the proposed new façade from West Street (see **Figure 4** below).

This shows the external column added to the existing building façade to house the pipework. The enclosure wall facing the residential sites is concrete, as well as that facing Wills Street. The West Street frontage is set back and made up of a series of slats to break up the visual appearance and enable landscaping to be incorporated along the road frontage.



Figure 4: Proposed view looking West from West Street (Source: Application AEE documentation).

The application states that the proposed enclosure “*will have a positive effect on the existing amenity and character of the site and assist in reducing the existing visual dominance of the building*”. I would not go so far as to assess this change as being positive in the context of the additional built form on a site containing a building already much larger than anticipated in a residential zone. However, the design and appearance of the enclosure is considered to be sympathetic to the existing built form on site.

Overall, it is considered that the proposed location adjacent to the State Highway 1 and away from residential neighbours, along with the reduced height being more consistent with a residential scale, are such that any additional adverse effects on the wider environment are considered to be minor. In terms of the effects on the immediately adjoining sites, any adverse effects of the proposed built form are scale and nature mitigation measures are considered to be limited to the immediately adjoining property at 130 Wills Street.

4.4 Noise Effects

As outlined above, noise effects from the existing roof plant are managed by way of condition 28 of the existing resource consent. This stipulated various noise limits depending on the time of day being measured at or beyond the boundary of the application site as set out in the Table above. Those noise limits are significantly less than those included in the Operative District Plan.

The Noise Assessment conducted by Marshall Day Acoustics identifies that the noise level at the closest residential boundary (130 Willis Street) will be 38dBA ($L_{Aeq} (1 \text{ hour})$). This noise level is fully compliant with the provisions of the Ashburton District Plan, which include a maximum nighttime noise level of 40dBA.

The Noise Assessment details that the total noise from both the proposed plant compound and existing roof mounted mechanical plant, that will remain on the roof, can operate and comply with the applicable District Plan permitted activity noise limit of 40 dB $L_{Aeq} (1 \text{ hour})$ when measured at the first floor of the closest residential dwelling at 130 Wills Street.

The Noise Assessment also considers the elevated ambient noise levels in the vicinity of the application site due to the traffic on State Highway 1. Marshall Day assessed existing traffic noise levels at the adjacent residences of between 47 and 58 dB L_{Aeq} , which are substantially above the permitted activity noise environment of 40 dB L_{Aeq} . In that context the proposed enclosure will act as a barrier to reduce traffic noise received at 130 Wills Street.

Overall, Marshall Day conclude that the “*existing residential amenity will not be substantially altered by the proposed changes*”. The report also states that noise emissions will provide appropriate residential amenity for the protection of sleep.

In the context of the receiving environment, in which noise from traffic on State Highway 1 dominates, the proposed change in noise standards (from a minimum 30 to 40 dBA) is not as significant as would otherwise be expected. My understanding of noise assessment is that elevated ambient noise levels within the receiving environment are such that any additional noise source does not have the same incremental effect on total cumulative noise levels as might otherwise be expected. In other words, the existing elevated ambient noise levels act to mask the effects of any proposed additional noise source.

Notwithstanding, condition 28 was agreed to by all parties in order to resolve the Appeal of the Council’s decision to the Environment Court. The proposal to change those noise limits and replace them with the current District Plan noise standards represents a departure from that agreement and an increase in noise from sources on the application site other than vehicle movements and pedestrians.

Therefore, as set out in section 127 (4), I consider that all those properties that were party to the Appeal and side agreement arising from that Appeal on the original application to be affected persons in terms of the proposed change of condition.

4.5 Traffic/Parking Effects Assessment

The proposal results in a 50% reduction in the number of car parks on site that are currently set aside for staff use (from eight to four). The application includes discussion of an option to re-instate these four carparks elsewhere within the site; and it is understood that consultation with residential neighbours included this option. However, the application as lodged seeks to remove the four staff car parks from the site required for the air conditioning equipment enclosure and otherwise rely on overflow parking on Wills Street when required.

In assessing the effects of the proposed reduction in car parking it is noted that the Ashburton District Plan no longer includes a minimum requirement for the provision of on-site car parks. In accordance with the National Policy Statement on Urban Development 2020 (NPS-UD), the Ashburton District Plan was required to be amended to remove minimum car parking requirements. That occurred on 20 February 2022, with subsequent Plan Change 5 making various consequential amendments as a result of the removal of car parking requirements. Plan Change 5 become operative on 4 June 2024.

Notwithstanding, a total of eight on-site car parks for staff use are currently provided for staff, and are required to be provided in accordance with the conditions imposed on the existing consent. On that basis an assessment of the effects of removing those car parks is required in relation to the proposed change of consent condition.

The application sets out that the proposed reduction in staff car parking is most likely to lead to a transferred increase in car parking demand on Wills Street, which is the closest available car parking area to the existing staff car park. Wills Street does not include any time restrictions on car parking and there is existing line marking present to ensure vehicles do not park over or across vehicle entrances.

A request for further information sought clarification as to whether the proposal to reduce the number of on-site car parks had any impact on the Visitor Parking Management Plan (VPMP), as required by conditions 19 to 22 of the existing consent. Noting that any such reduction would lead to a corresponding increase in the number of vehicles being parked on the adjoining streets during any public events where parking demand exceeded the on-site supply.

The response was that as the proposed alteration to staff car parking arrangements “*will not affect the purpose, intention or application of the VPMP, nor will it introduce any conflicts in the management of visitor car parking in the local area*”¹.

The application considers that the adverse effects of the reduction in car parks is less than minor. This is due to the greater availability of roadside carparking within Wills Street, the existing line markings and the small amount of potential increased demand for roadside car parking.

Overall, in accordance with the requirements and policy direction set out in the NPS-UD, it is considered that the effects of the reduction in car parking are less than minor.

4.6 Effects Summary

Overall, it is considered that the effects of the proposal on the wider environment beyond the application site and those are minor, and could not be described as being “more than minor”.

In terms of the more localised effects, it is considered that the visual effects of the proposed enclosure are such that the persons at 130 Wills Street are affected, i.e., such effects are not less than minor. Furthermore, in terms of noise it is considered that the changes to the noise standards imposed on the conditions of the existing consent are such that those persons that appealed the original application are also considered adversely affected.

The same conclusion would have been reached in relation to carparking, with the difference being that the guidance set out in the NPS-UD is such that Councils are no longer able to provide minimum parking standards in a District Plan. In that context the effects of the reduction in four staff car parks is considered to be less than minor.

5.0 PUBLIC NOTIFICATION ASSESSMENT (SECTION 95A)

5.1 Step 1 - Mandatory Public Notification in Certain Circumstances (section 95A(3))

In this case, public notification is not required under Step 1 as:

- the Applicant has not requested full public notification of the application (section 95A(3)(a)); and
- public notification is not required under section 95C due to the refusal/failure to provide further information or to agree to the commissioning of a report (section 95A(3)(b)); and
- a joint application was not lodged to exchange reserve land under the Reserves Act 1977 (section 95A(3)(c)).

5.2 Step 2 - If not required by Step 1, Public Notification is Precluded in Certain Circumstances (section 95A(5))

In this case, public notification is not precluded under Step 2 as:

- the application is not subject to a rule or national environmental standard that precludes public notification (section 95A(5)(a)); and
- the application is not for one of the following:
 - a controlled activity; or
 - a boundary activity.

5.3 Step 3 - If not Precluded by Step 2, Public Notification is Required in Certain Circumstances (section 95A(8))

In this case, public notification is not required under Step 3 as:

¹ RFI response dated 9 April 2025.

- the application is not subject to a rule or national environmental standard that requires public notification (section 95A(8)(a)); and
- the adverse effects of the activity on the wider environment have been assessed above and found to not be “more than minor” (section 95A(8)(b)).

5.4 Step 4 - Public Notification in Special Circumstances s95A(9)

I consider that there are no special circumstances that exist in relation to the application in terms of the public notification assessment undertaken in accordance with section 95A(9) of the RMA.

5.5 Public Notification Determination

Pursuant to section 95A(5)(b)(i), I consider that public notification is not required.

6.0 LIMITED NOTIFICATION ASSESSMENT (SECTION 95B)

If an application is not publicly notified under section 95A, section 95B(1) of the RMA requires a decision whether there are any affected persons (under section 95E). The following steps are used to determine whether to give limited notification of an application.

6.1 Step 1 - Certain Affected Groups and Persons Must be Notified (sections 95B(2) and 95B(3))

In this case, limited notification is not required under Step 1 as:

- there are no affected customary rights groups (s95B(2)(a)); and
- there are no affected customary marine title groups (s95B(2)(b)); and
- the activity is not on or adjacent to, and will not affect land that is the subject of a statutory acknowledgment (s95B(3)(a)).

6.2 Step 2 - If not required by Step 1, Limited Notification precluded in certain circumstances (section 95B(6))

In this case, limited notification is not precluded under Step 2 as:

- the application is not subject to a rule or national environmental standard that precludes limited notification (section 95B(6)(a)); and
- the application is not for a controlled activity.

6.3 Step 3 - If not Precluded by Step 2, Certain Other Affected Persons Must be Notified sections 95B(7) and (8))

Step 3 requires a determination of affected persons pursuant to section 95E of the RMA. Section 95E states that a person is ‘affected’ if the adverse effects of an activity on a person are minor or more than minor (but not less than minor).

The assessment above has determined that those persons party to the Consent Order and related side agreement to the existing consent are considered to be affected for the purpose of section 95B. It is noted that none of these parties have provided written approval to the proposal so remain to be considered affected persons in terms of the RMA.

In addition, as the site adjoins State Highway 1, and results in greater potential for parking along the State Highway frontage, I consider that Waka Kotahi/NZTA should also be considered an affected party.

On that basis the following persons are considered affected pursuant to section 95B of the RMA:

Address	Legal Description	Owner / Occupier
124 Wills Street	TS 587 ASHBURTON TN	E & A Shearer
128 Wills Street	TS 588 ASHBURTON TN	Haworth Housing
130 Wills Street	TS 1274 ASHBURTON TN	D & D Sauer
121 Cameron Street	TS 576 ASHBURTON TN	K & H Smith
123 Cameron Street	TS 575 ASHBURTON TN	D & N Chilton
127 Cameron Street	TS 1275 ASHBURTON TN	C & M Ross
State Highway 1	N/A	NZTA / Waka Kotahi

6.4 Step 4 - Further notification in special circumstances s95B(10)

I consider that there are no special circumstances that exist in relation to the application. However, it is noted that the nature of the side agreement and Consent Order relating to the existing resource consent is such that the six residential properties should be notified of the subject application.

It is noted that the application AEE requests that the six residential properties listed in the Table above are notified of the applications, notwithstanding that the effects conclusion of the AEE is that the adverse effects of the proposal on those parties are less than minor. In that situation the requirements of the RMA (section 95B and 95F) do not require limited notification of the proposal. Whilst the RMA allows an Applicant to request full public notification, no such provision applies to limited notification under section 95B.

On that basis, should the decision-maker disagree with the assessment of environmental effects set out above and concur with that included in the application AEE, I would recommend that special circumstances are relied upon to limited notify the application to the persons referred to above as provided for under section 95B(10) of the RMA.

6.5 Limited Notification Conclusion

Pursuant to section 95B of the RMA, limited notification to the parties listed in the Table above is required.

7.0 RECOMMENDATION

That for the reasons set out below, this application be processed on a limited notification basis, pursuant to Sections 95A-95F of the Resource Management Act 1991.

Signed:



Nick Boyes
Reporting Planner (Consultant)

Date: 28 April 2025

8.0 DECISION

The above applications LUC25/0028 and LCA25/0007 have been considered under a delegated authority from the Ashburton District Council and are determined to be processed on a limited notified basis pursuant to sections 95A-95F of the Resource Management Act 1991.



Signed:

Graham Taylor
Independent Hearing Commissioner

Date: 1 May 2025

Commissioner Note:

I have read and concur with the above recommendation. I agree that the owners of the six properties party to the consent order and side agreement as identified in the above table are affected by the change in conditions relating to noise, notwithstanding that the proposal will comply with the Operative Plan noise rules. The existing Museum and Gallery is a fully discretionary activity and forms part of the existing consented environment, but only insofar as it complies with the conditions of that consent. S127(4) requires that I consider who is affected by the change in condition. Parties to the consent order who would otherwise rely on condition 28 relating to noise could reasonably expect compliance with the condition. I therefore agree that they are affected persons for the purpose of s95B. My decision has not therefore found it necessary to rely on special circumstances under s95B(10) of the RMA.

I have made this determination in relation to parties to the consent order only. I have not placed any weight on the side agreement, as this exists outside of the current resource consent as a matter between the parties only.

I also note that the above determination is in only respect of the narrower tests applying to identification of affected persons for the purpose of s127(4) and 95B. It does not predetermine any conclusions as to environmental effects that may be made in considering whether or not to grant the applications under s104 and s104B of the RMA.



Graham Taylor
1 May 2025