

Sections 95 Resource Management Act 1991

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

Consent Number: 180020

Applicant: Lauren & Matthew Spicer, & Diana Cruse

Site address: 683 Dalefield Road, Carterton

Legal Description of Site: Lot 3 DP 478234387546

Description of Application: Early childhood Education Centre with onsite remediation.

Planning framework:

The planning instrument relevant to the site is the Wairarapa Combined District Plan (“District Plan”). The site is zoned Rural (Primary Production) and is within the Airport Obstacle Limitation Surfaces Management Area under this plan. The early childhood Education Centre does not comply with the districtwide permitted activity standard 21.1.25 requirement for on-site sealing and as such defaults to a **Restricted Discretionary Activity** under rule 21.4.14. It also defaults to the same activity class under Rule 4.5.5(c) as its is an activity that is not required for primary production or residential purposes that involves (a) the use of a building over 25m² in gross floor area. Included in the consent application is a proposal to remediate part of the site so that it complies with the NES for assessing and managing soil to protect human health. The proposal complies with permitted activity Rule 21.1.28 in that no building, structure, mast or tree is located where it would penetrate the Airport Obstacle Limitation Surface.

Description of the existing environment

I have adopted the description outlined in the resource consent application which is summarised below.

The site is 3.33ha located in the rural environment and is surrounded by lifestyle and small-scale farm units. The topography is generally flat with existing trees on site providing some visual screening as seen from the road. The main buildings that are proposed to be used for early childhood education are set back approximately 36m from the road boundary. The site and building is accessed by an existing formed and sealed access with metalled driveway.

The screenshot from google maps below shows the general context of the site and the surrounding area.



Figure 1: Early childhood education site (“Application Site”) and surrounding environment.

Proposal

The proposal is adequately described by the applicant and there is no need to alter the description. This is repeated below:

Early Childhood education centres are licensed in accordance with the Education Act 1989 under the Education (Early Childhood Services) Regulations 2008, which prescribe the minimum standards that each licensed service must meet. Ministry of Education licensing criteria are used to assess how the centres meet the minimum standards required by the regulations.

The proposed facility would accommodate up to 30 children onsite long term. There would be 10 children aged 0 to 2 years, and 20 children aged 2 to 5 years. The application includes provision for a maximum of 7 FTE staff.

It is proposed to convert the ground floor of the existing dwelling into an early childhood learning centre. Internal alterations are proposed downstairs to create a children's toilet (including disability toilet), a 90m² learning area and new office space. The kitchen and sleeping area are existing and would be retained. External alterations include building a new entrance and ramp on the southern wall of the dwelling (see site plan).

The first floor of the dwelling would be used for residential purposes by Lauren and Matthew Spicer, who will continue living onsite. It is proposed to construct a new bathroom and a new kitchen upstairs, and build a balcony on the western side of the house with external access. The upstairs bedrooms are existing and will be retained.

The applicant intends to convert the standalone garage into a staff room. The implement shed would be used for storage purposes.

The hours of operation proposed are 7.00am to 6.00pm Monday to Friday. The facility would not be open on weekends or statutory holidays.

It is noted that staff only may be present on the site outside the above hours to carry out administrative tasks or to prepare for the arrival of children.

Access to the site would be from the existing vehicle crossing and there is a compacted metal driveway within the accessway. It is proposed to utilise the driveway for one disabled carpark with an additional 12 car parks in the area that currently forms the front yard (to be accessed via the driveway off Dalefield Road).

The position of the car parking area reflects the advice from EcoAgriLogic Ltd to remediate the front yard following a Preliminary Site Investigation (attached). A woolshed was formerly located on this section of the property and soil sampling showed traces of arsenic. The PSI recommended a number of remediation measures that now form part of the proposal. They include planting the fenced front yard, removing the play house and covering the soil for the proposed parking area with base course.

It is intended that pick up and drop off times by parents would be staggered.

In addition the applicants are proposing to purchase a 10-seater minivan to be used during peak hours, with up to three runs proposed collecting and returning children to town. A pick up and drop off area for the minivan is to be located in the space between the new entrance and the garage/staff room.

New internal fencing has been constructed to provide a confined outdoor exploration area at the rear of the site and to keep children away from the driveway, parking area and entrance. No elevated play structures are proposed. The existing vegetation will be retained with a general tidy up of the landscaping provided.

No new services are required or proposed as part of this application.

It is noted that if the early childhood education centre closes at any time in the future one of the kitchens would need to be decommissioned.

Public Notification – Section 95A-95E Assessment

Section 95A Assessment

Section 95A of the RMA (as amended in October 2017) provides a step – by – step guide to determine whether public notification is publicly notified:

Step 1	<p>Mandatory public notification in certain circumstances.</p> <p>An application must be publicly notified if:</p> <ul style="list-style-type: none"> • the applicant requests public notification • public notification is required under section 95C • the application is made jointly with an application to exchange recreation reserve land
Step 2	<p>If not required by step 1, public notification is precluded in certain circumstances.</p> <p>An application cannot be publicly notified if:</p> <ul style="list-style-type: none"> • a rule or national environmental standard (NES) precludes notification • the application is for one or more of the following, but no other, activities: <ul style="list-style-type: none"> • a controlled activity • a restricted-discretionary or discretionary application for: <ul style="list-style-type: none"> ▪ a subdivision of land ▪ a residential activity (defined in new section 95A(6)) • a boundary activity (defined in section 87AAB; • an activity prescribed in regulations.
Step 3	<p>If not precluded by step 2, public notification is required in certain circumstances.</p> <p>Other than for those activities in step 2, public notification is required if:</p> <ul style="list-style-type: none"> • a rule or NES requires public notification, or • the assessment under section 95D determines that the activity will have, or is likely to have, adverse effects on the environment that are more than minor.
Step 4	<p>Public notification in special circumstances</p> <p>If notification is precluded under step 2, or isn't required under step 3, consideration must be given to whether special circumstances exist that warrant public notification of the application.</p>

Public notification under section 95A is precluded in this instance because:

- None of the circumstances of Step 1 (section 95A(3)) exist.
- Step 2 does not apply.
- Step 3 requires an assessment of effects to determine whether they will not be more than minor and whether there is an NES rule requiring notification.

Will the activity have or likely to have adverse effects on the environment that are more than minor?

Under section 95D when Council is deciding whether the adverse effects are likely to be more than minor the Council can only consider the matters that Council has restricted its discretion. These matters are outlined below:

Rule 4.5.5 (c) Discretion is restricted to the following matters:

- (i) Siting of any building;
- (ii) Design and location of the access;
- (iii) Location, size and effects of any signage;
- (iv) Amenity and visual effects;
- (v) Landscaping and screening;
- (vi) Noise generated by the activity;
- (vii) Changes in the type and amount of traffic;
- (viii) Effects of retail activities in the Rural Zone on the viability and vitality of the existing town centres of Masterton, Carterton Greytown, Martinborough and Featherston;
- (ix) Servicing and infrastructure requirements.

Rule 21.4.14 Discretion is restricted to the following matters:

- (i) Development and site characteristics;
- (ii) Access;
- (iii) Availability of alternative private or public access, parking or loading areas;
- (iv) Design, layout, number and standard of parking and loading areas;
- (v) Design and construction of roads and access;
- (vi) Financial contributions.

I have considered the assessment of environmental effects outlined in the resource consent application. It addresses the matters outlined above that may result in effects that are more than minor. It considers that the environmental effects will be less than minor on any person. It is considered however that there may be effects on affected parties that are not less than minor, for example traffic generation/movement.

In terms of whether the effects warrant full public notification it is considered that overall, given the assessments provided as part of the application, the adverse effects of the proposal on the environment will not be more than minor. There is not an NES rule requiring notification. On this basis, it is considered that public notification is not required.

- Step 4 does not apply as there are no special circumstances which could warrant public notification under s95A(9).

Limited Notification - Section 95B Assessment

Where the consent authority accepts that public notification is not required, the consent authority must determine if limited notification is required under section 95B:

Step 1	<p>Certain affected groups and affected persons must be notified.</p> <p>If the consent authority determines that certain people or groups are affected, these persons/groups must be given limited notification:</p> <ul style="list-style-type: none"> • affected protected customary rights groups • affected customary marine title groups (in the case of an application for a resource consent for an accommodated activity) • an affected person under section 95E to whom a statutory acknowledgement is made (if the proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement)
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Step 2	<p>If not required by step 1, limited notification is precluded in certain circumstances.</p> <p>An application cannot be limited notified if:</p> <ul style="list-style-type: none"> • a rule or NES precludes limited notification of the application • it is for either or both of the following, but no other, activities: <ul style="list-style-type: none"> ○ a controlled land use activity under a district plan ○ an activity prescribed through regulations.
Step 3	<p>If not precluded by step 2, certain other affected persons must be notified.</p> <p>Determine whether, in accordance with section 95E, the following persons are affected persons:</p> <ul style="list-style-type: none"> • in the case of a boundary activity, an owner of an allotment with an infringed boundary; and • in the case of any activity prescribed under section 360H(1)(b), a prescribed person in respect of the proposed activity. • In the case of any other activity, determine whether a person is an affected person in accordance with section 95E
Step 4	<p>Further notification in special circumstances.</p> <p>If the consent authority determines special circumstances exist that warrant limited notification of the application to any other persons not already determined to be eligible for limited notification (excluding persons assessed under section 95E as not being affected persons), the council must give limited notification to those persons</p>

- None of the circumstances of Step 1 (section 95B(2) or (3)) exist.
- Step 2 does not apply as there is no rule that precludes limited notification.
- Step 3 refer below for analysis of whether limited notification is required:

Where a council determines that an application does not require full public notification under s95A, it must decide whether there are any affected parties and give limited notification of the application to those affected parties. (s95B).

Parties are considered “affected persons” under Section 95E if the activity’s adverse effects on them are minor or more than minor (but are not less than minor). The Council must disregard an adverse effect of the activity on the person if the effect does not relate to a matter which the rule restricts discretion.

Parties who have given written approval are not considered to be “affected” for the purposes of 95E of the RMA.

The applicant has discussed the proposal with the Carterton District Council (“CDC”) prior to lodging the resource consent application. During pre-application meetings, eight neighbours were identified as being potentially affected by the proposal. The applicant consulted with these potentially affected parties and four (including the owner) provided their written approval.

The proposal would potentially impact the identified owners/occupiers of the farming properties, in that the rural amenity would be impacted by the educational facility activity within proximity to their properties, due to the associated traffic movements, noise generation, reverse sensitivity and the potential impact on the open rural landscape. The environmental effects on these neighbours may not be less than minor.

The following are the affected parties:

Name	Address	Legal Description	Provided written approval
Monica Leerschool- Hage & Petrus Leerschool	734A Dalefield Road, Dalefield	Pt Section 306 Taratahi District	
Catherine & Ross Percy	718 Dalefield Road (opposite northern boundary)	Lot 1 DP 88733	Yes
Alison & Matthew Carter	710 Dalefield Road (opposite northern boundary)	Lot 1 DP 29233	Yes
Scott Ihaka	665 Dalefield Road (directly adjoining southern boundary)	Lot 2 DP 478234	Yes
Amanda & Tony Robinson	659 Dalefield Road	Lot 1 DP 364397	
Jill Livestre & Robyn Sivewright	649 Dalefield Road	Lot 2 DP 364397	
John Foreman & Kittima Foreman	611 Dalefield Road	Pt Section 236 Taratahi District	

As part of the preparation of the resource consent application, the applicant commissioned a noise assessment report and a traffic assessment report to consider the effects of the proposal. In light of this evidence, it is considered that there are no additional parties that will be adversely affected by the proposal.

Section 95C consideration

At this point the consent authority does not identify a need to request further information.

Notification Decision

On the basis of the above assessment, it is considered that the proposal should proceed on a limited notified basis.

Reported and Recommended by: Andrew Guerin, Senior Planner

Date: 06 July 2018

Decision: That the above recommendations be adopted.



Delegated Officer

Dave Gittings, Manager Regulatory and Planning

Date: 13th July 2018