

# Memorandum

## Non-notification and who is affected

An application under S127 is to be treated as if it were an application for a discretionary activity. Accordingly, for notification purposes, S95 - 95F apply. Whether the application is to be publicly notified, "limited notified", or non-notified will depend on the application meeting the criteria in those sections. In identifying who may be adversely affected by the application, S127(4) directs the consent authority to consider every person who made a submission on the original application and *every person who may be affected by the new application*.

The applicants has stated that the application should be non-notified by using S95(a)(ii) and have stated that in their view S95(a)(ii) allows them to disregard the effects on any adjacent land. The applicant has failed to look at S127(4)(a) which states that;

*(4) 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.*

Given that the CRL now forms part of the existing environment (due to the NoR being lodged with the consent authority mid-2012) the applicant's determination of effects is erroneous and the adjacent land owner (AT) should be considered to be affected.

Further to the above, ARTA was a submitter to the original resource consent application. Given that ARTA (the predecessor to AT) made this submission and the extent of the changes sought, AT considers that it is adversely effected and that this should be considered under S127(4)(a).

## Existing environment

The original application was made prior to the current CRL NoR being lodged and as such did not take the CRL into consideration as being part of the existing environment. The current S127 application does not mention the CRL and goes further and utilises S95D(a)(ii) as a reason to not consider the adverse effects on persons who own land adjacent to the site. Given the possibility of overlapping construction periods, it would seem that this is at odds with S178(2) which states;

*In the period that starts as described in subsection (3) and ends as described in subsection (4), no person may do anything that would prevent or hinder the public work, project, or work to which the designation relates unless the person has the prior written consent of the requiring authority.*

## Recommendation

1. AT requests that AC decline the S127 variation as it would result in a fundamentally different activity and one having materially different adverse effects and that it should be treated as a new application.
2. AT should seek that the effects of the variation are considered under S127(4) and that AT are formally notified,
3. AC should recognise that the existing environment has significantly altered since the original application was approved and that this change in existing environment (the CRL NoR) should be taken into consideration in any assessment process.

