

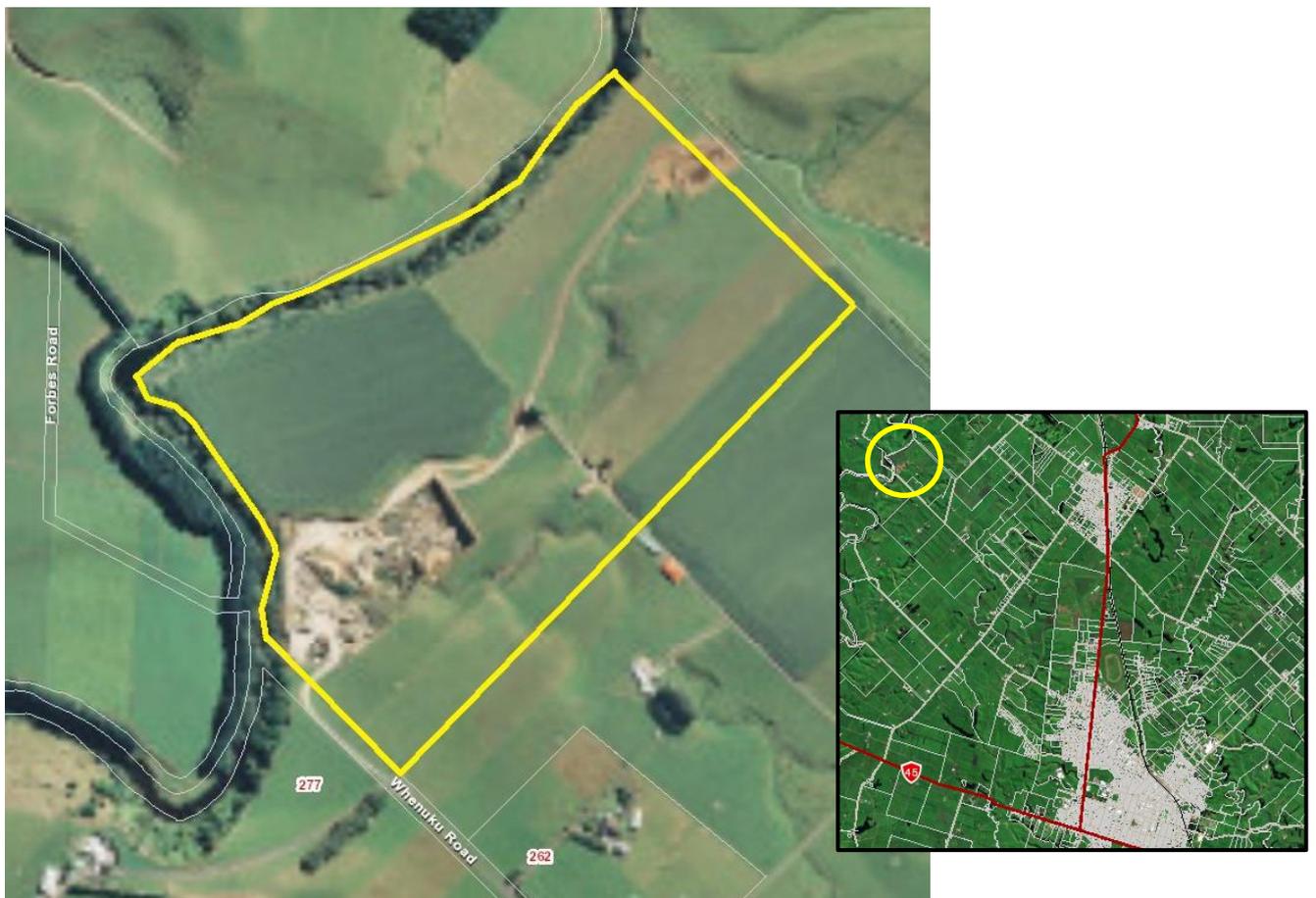
# Notification Report

RML20041

To:	Liam Dagg, Group Manager Environmental Services
From:	Helen Johnson, Consultant Planner
Date:	8 July 2020
Subject:	<b>Proposed change to the conditions of consent RML14076 – Whenuku Road Quarry – Notification of application</b>

## THE APPLICATION

The application relates to an existing quarry operating on a property located at the western end of Whenuku Road, Hawera (Section 38 Patea District). This is a 28.153ha property located on the north-eastern side of Whenuku Road. It is bounded by the Waingongoro River to the north-west and a paper road to the north-east. The property is owned by Williebrodus (Bill) and Mary Schrader but the quarry area is leased by the applicant.



*Figure 1: Location of property (source: Taranaki Regional Council Local Maps)*

The current operator of the quarry – Horizon Trust Management Limited – has applied for a variation to the conditions of their existing consent to operate the Whenuku Road Quarry,

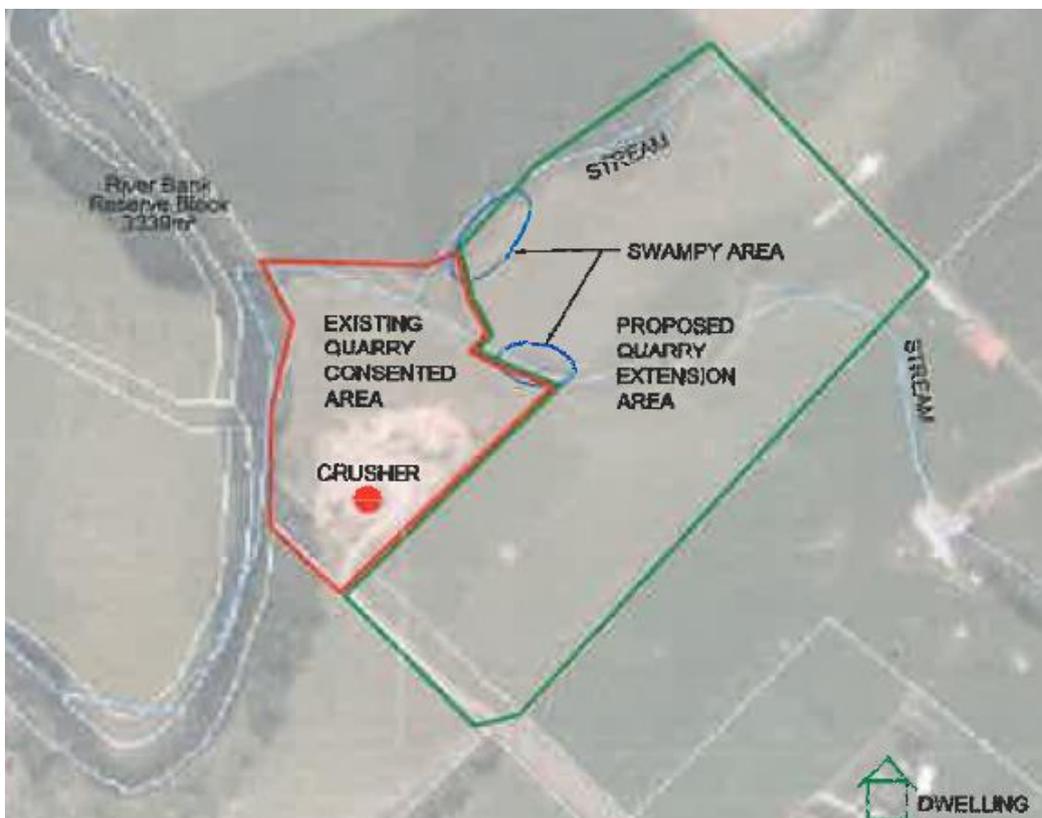
## BACKGROUND

In 2011, consent was granted to Grant Cudby Contracting Ltd to develop and operate a quarry on the property for a period of 15 years (RML11031). The site had previously been quarried, but not for some 40-50 years prior to the current commercial operation. The land had been reinstated for grazing in the intervening period.

The consent provided for 125,000m<sup>3</sup> to be extracted from a 1.9ha portion of the property in 3 stages, with up to 20,000m<sup>2</sup> to be extracted annually, and with each stage to be progressively reinstated. In addition, the conditions of consent specifically limited the number of heavy vehicle movements to 8 truck movements per day. They also imposed a maximum speed of 50kph and restricted engine braking in that portion of Whenuku Road between Katene Road and the quarry. A log of traffic movements was to be provided and a road maintenance agreement agreed with the Council.

In 2013, application was made to amend the existing conditions of consent (RML13110). The application sought to amend the level of heavy traffic to 16 movements (this was on the basis that it was always intended to have up to 8 trucks per day, with each truck to and from the site constituting 2 movements). The applicant also sought to amend the shut-down period (25 December to 30 January) to apply only from 25 December through to the last national statutory holiday in January the following year. As a result of the application, the Council also included a condition requiring review of the road maintenance agreement within one month of the consent being granted.

It was noted in that application that the demand for metal had been greater than expected and that it was anticipated that the area consented to in 2011 would be fully quarried by 2015. Accordingly, in 2014, an application was made to add an additional area to that consented to previously – essentially adding a further 5.8ha to the quarry area (RML14076):



*Figure 2: Existing consented area for quarrying (red and green areas) – RML14076*

In the application it was stated that the machinery required, rate of extraction, the area open for excavation at any one time, and the heavy vehicle movements would remain the same.

The applicant also applied to allow excavation to a lower depth (previously no lower than 3m above the average river flow in the adjoining Waingongoro River). The consent was granted in August 2015, enabling quarrying into the extended area to a depth no greater than the site's naturally occurring water table.

Horizon Trust Management Limited (the applicant) took over the quarry from the original applicant and is currently operating the quarry under this consent.

## **EXISTING CONSENT**

As noted above, the existing consent extended the area that was able to be quarried, as shown in Figure 2. This area was to be mined in a specific order (A-D), per Appendix II of the Quarry Management Plan prepared as part of the application for/conditions of consent. The quarry operator estimated that at the rate of extraction allowed by strict conditions imposed by the property owners on the number of truck movements per date, the quarry would have a life of between 11 and 15 years.

The existing consent allows for up to 20,000m<sup>3</sup> of material to be extracted per annum, with up to 16 heavy vehicle movements (8 trucks to and from the site) per day, during working hours. The quarry's hours of operation are Monday-Friday 7am-7pm and Saturday 7am-12pm; with no works on Sundays or public holidays, unless emergency work is required.

## **CURRENT APPLICATION**

As a result of demand for material from the quarry, the applicant has been exceeding the annual extraction rate allowed by the consent – currently extracting in the region of 55,000m<sup>3</sup> per annum. As the annual extraction rate has increased, the anticipated life of the quarry has decreased, and the applicant is looking to expand the quarry area in future.

In the interim, as a result of the increased level of heavy traffic associated with the current operation of the quarry, concerns have been raised about the ability of Whenuku Road to cater for the quarry traffic, the effect of the traffic on the road surface, the safety of other road users (including cyclists and pedestrians), and effects on residents in the area. It has been identified that these matters need to be addressed with some urgency.

Accordingly, at the request of the Council, in August 2019 the applicant applied to vary the conditions of consent RML14076 to increase the level of heavy traffic that may be generated by the quarry. This application was returned as incomplete in September 2019 as the application did not include a full assessment of the effects of the proposed increase in heavy movements, and was not supported by a report prepared by a suitably qualified and independent traffic engineer.

The applicant subsequently engaged WSP, an engineering and environmental consultancy, to provide the necessary technical assessment and amend the application accordingly. A working draft was prepared and submitted to the Council in December 2019 and was provided to the Council's Rooding Team for review and feedback. The Rooding Team had for some time been in discussions with the applicant regarding the nature of Whenuku Road, the traffic safety issues, and the standard of upgrading required. A number of meetings and discussions were held in this regard over the following months.

Following the constraints imposed by the COVID-19 situation, an amended application was lodged with Council on 11 May 2020. The application is to vary condition 17 of RML14076 to:

- Increase the number of heavy vehicle movements from 16 heavy vehicle movements (8 trucks to and from the site) to 80 heavy vehicle movements (40 trucks to and from the site) per day; and
- Allow up to 120 heavy vehicle movements (60 trucks to and from the site) per day for a maximum of 10 days of the year (being the financial year from 1 July to 30 June).

The latter is to cater for variable periods when the weather affects the ability to extract metal or to assist with delivering on major contract work at peak times.

The operational hours for heavy vehicle movements would be Monday-Friday 7.00am-5.30pm and Saturdays 8.00am-12noon, excluding public holidays (except for emergency work, as is currently provided for). The quarry would continue to operate within its consented hours as outlined previously.

This level of traffic would provide for the operation of the quarry at its current levels and is expected to accommodate any future changes.

It is noted that there are other areas where the operator is not complying with the conditions of consent; however, these are being addressed through the Council's compliance monitoring process and through a separate review of the conditions of consent under section 128 of the Act.

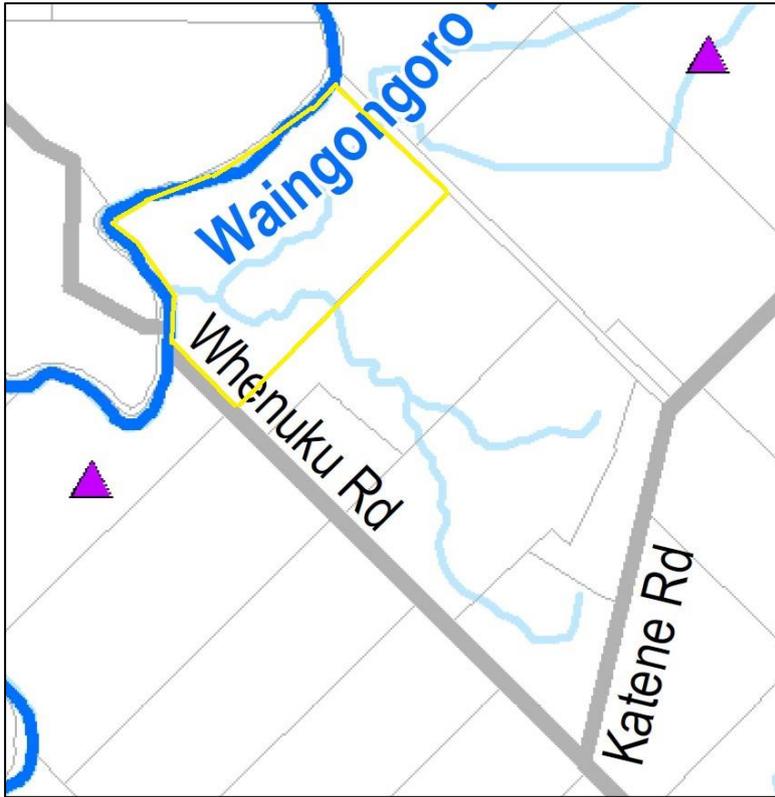
It is also noted in the application that a new consent will be required to expand the quarry area to provide for the continued operation of the quarry. The applicant has engaged WSP to scope the requirements for such consent and undertake any technical investigations necessary including effects on the ecological and cultural values of the Waingongoro River, hydrological (groundwater and water quality) effects, stormwater management and natural hazard/erosion effects, amenity values (noise and dust), hours of operation, and reinstatement of the site. WSP have advised that this work is currently being undertaken with a view to lodging an application for new consents (District and Regional) to enable the quarry area to be expanded.

## **EVALUATION**

### **Status of the application under the Proposed District Plan**

This application for land use consent has been assessed under the provisions of the Proposed South Taranaki District Plan, publicly notified on 15 August 2015, with decisions on submissions publicly notified on 5 November 2016. As the provisions pertaining to this application have progressed beyond the point of being subject to appeal, the rules in the Proposed District Plan must be treated as operative (section 86F of the Resource Management Act 1991 (RMA or "the Act").

The property is located within the Rural Zone (Rural Map 9); it adjoins the Waingongoro River which is identified as a Significant River (Natural/Conservation Values, Natural Hazards, Recreational/Access, Heritage/Cultural and Water Quality). Whenuku Road is identified as an 'other road' and has a temporary posted speed limit of 50kph.



*Figure 3: Proposed District Plan Map – Rural 09*

Section 127 of the Act specifies the requirements for applications for changes to or cancellation of consent conditions. Such an application is considered as a Discretionary Activity, with sections 88-121 of the Act being applied (with all necessary modifications) as if the references in those sections were to the change or cancellation and the effects thereof only.

## **Notification**

There are three pathways set out in the Resource Management Act 1991 through which a resource consent application could proceed: non-notification, public notification, or limited notification (whereby affected parties who have not given their written approval to a project are notified with the general public excluded). Section 95 of the RMA requires the consent authority to decide whether to notify a resource consent application (either publicly or limited) within 20 days of it being lodged, if it is not a fast-track application. Once the decision to notify has been made, the consenting authority must then notify the application to those persons or the public. Sections 95A to 95E outline the process to determine the applicable notification pathway.

The applicant has been undertaking consultation with parties considered to be affected by the proposed changes but has been unable (with the exception of one party) to obtain written approval. Accordingly, the applicant requested that the application proceed by way of limited notification.

Following receipt of the application, the applicant was requested on 2 June 2020 to provide further information under section 92 of the Act. The further information request included the following:

- Clarification as to whether the applicant intended to continue to extract material at a rate greater than consented to;

- Further information with regard to the traffic assessment, including how the traffic environment would change from that consented to and the effects of that change on the rural character and amenity and residents;
- Any adverse effects from dust as a result of the increased traffic levels and proposed mitigation measures; and
- Whether condition 26 (pertaining to noise generated from the quarry) would be achieved given the increased traffic levels.

Under Section 92A of the Act, the applicant has 15 working days in which to provide, agree to provide, or refuse to provide the further information. Where the applicant agrees to provide the further information, the consent authority must set a reasonable time in which the applicant must provide the information.

In an email sent on 17 June 2020, the agent for the applicant agreed to provide the information but requested the statutory timeframe (23 June 2020) be extended in order to enable the preparation of a noise report to address part of the further information request. This request was considered by the Council's Group Manager Environmental services and on 26 June 2020, the Council's Planning Manager advised the agent that the timeframe for providing the information would be extended to 3 July 2020.

The agent for the applicant requested this deadline be extended further due to issues in obtaining the services of a noise consultant; in addition, the agent considered that a further extension would allow the comprehensive application currently being prepared - which would supercede the current application for a variation – to be lodged. However, given the need for the effects of the increased traffic to be addressed with some urgency, and the Council's duty to avoid unreasonable delay, the application for a further extension to the timeframe was declined.

Section 95C(1) of the Act specifies that a consent authority must publicly notify an application for resource consent if the consent authority requests further information under section 92(1) but the applicant does not provided the information before the deadline concerned.

Accordingly, the application is required to be publicly notified under section 95A(3)(b) of the Act.

Section 2AA(2) of the Act defines public notification as:

*public notification means giving public notice by—*

- giving notice of the application or matter in the manner required by [section 2AB](#); and*
- giving that notice within the time limit specified by [section 95](#), [169\(1\)](#), or [190\(1\)](#); and*
- serving notice of the application or matter on every prescribed person.*

Section 2AB of the Act specifies the requirements for giving public notice. Section 10(2) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 sets out the requirements for serving notice to prescribed persons; of those, the following are considered relevant to this application:

*The consent authority must serve that notice on—*

- every person who the consent authority decides is an affected person under [section 95B](#) of the Act in relation to the activity that is the subject of the application or review;*
- every person, other than the applicant, who the consent authority knows is an owner or occupier of land to which the application or review relates;*
- the regional council or territorial authority for the region or district to which the application or review relates:*

(d) any other iwi authorities, local authorities, persons with a relevant statutory acknowledgement, persons, or bodies that the consent authority considers should have notice of the application or review:

Under Section 127(4) of the Act, 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.

Appendix 2 sets out the parties who are considered affected. In addition to those parties who would have been notified by way of limited notification (that is, the owners and occupiers of land adjoining and/or obtaining access from Whenuku Road), the Taranaki Regional Council and the Iwi organisations within this rohe - Te Korowai o Ngāruahine Trust and Te Runanga o Ngāti Ruanui Trust (both of whom submitted on RML14076) - would be notified.

## RECOMMENDATION

THAT the application by Horizon Trust Management Limited to amend condition 17 of resource consent RML14076 to allow increased levels of heavy traffic from the operation of the quarry at Whenuku Road, Hawera (land legal described as Section 38 Patea District) be publicly notified pursuant to Section 95A of the Resource Management Act 1991.

### For the following reasons:

1. Under section 127 of the Act, the proposal is considered as a Discretionary Activity.
2. Full public notification of the application is required under section 95A(3)(b).
3. The proposal has the potential to adversely affect persons who have been identified as affected by the proposed changes.

Report prepared by



Helen Johnson  
Consultant Planner

Seen by



Jessica Sorensen  
Planning Manager

**[Approved/Not Approved]**



Liam Dagg  
Group Manager Environmental Services

Date: 10/07/2020

## **APPENDIX 1 – NOTIFICATION ASSESSMENT**

### **1.1 Public Notification**

Section 95A specifies the steps that a consent authority must follow to determine whether to publicly notify an application for resource consent:

*Step 1: mandatory public notification in certain circumstances*

3(a)	Has the applicant requested public notification?	No
3(b)	Is public notification required under section 95C ( <i>public notification of consent application after request for further information or report</i> )?	Yes
3(c)	Is the application made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?	No

Assessment: The applicant has not provided further information requested within the timeframe specified by the consent authority; accordingly, public notification is required under step 1.

### **1.2 Identification of Affected Parties**

*Step 1: certain affected groups and affected persons must be notified*

2(a)	Are there any affected customary rights groups?	No
2(b)	Are there any affected customary marine title groups (in the case of an application for a resource consent for an accommodated activity)?	No
3(a)	Is the proposed activity on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in <a href="#">Schedule 11</a> ; and	Yes
(b)	Is the person to whom the statutory acknowledgement made an affected person under <a href="#">section 95E</a> ?	no

The application must be notified to each affected person under subsection (2) and to each affected person identified under subsection (3).

Section 95E(1) specifies that, for the purposes of giving limited notification of an application for resource consent, a person is an affected person if the consent authority decides that the adverse effects on the person are minor or more than minor (but not less than minor), unless:

- that person has given and not withdrawn approval for the proposed activity in a written notice received by the consent authority before the authority has decided whether there are any affected persons or
- the consent authority considers it unreasonable in the circumstances for the applicant to seek the persons written approval.

In assessing an activities adverse effects on a person, the consent authority:

- may disregard an adverse effect if a rule or national environmental standard permits an activity with that effect and
- must disregard an adverse effect if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion (controlled and restricted discretionary activities) and
- must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.

Assessment: The land being quarried is adjoining the Waingongoro River, which is identified as a Statutory Acknowledgement Area for recognition in the Ngāruahine Claims Settlement Act 2016 (OTS-023-33). The purposes of statutory acknowledgements are:

- (a) to require relevant consent authorities, the Environment Court, and Heritage New Zealand Pouhere Taonga to have regard to the statutory acknowledgement, in accordance with [sections 32 to 34](#); and
- (b) to require relevant consent authorities to record the statutory acknowledgement on statutory plans that relate to the statutory areas and to provide summaries of resource consent applications or copies of notices of applications to the trustees, in accordance with [sections 35 and 36](#); and
- (c) to enable the trustees and any member of Ngāruahine Iwi to cite the statutory acknowledgement as evidence of the association of Ngāruahine Iwi with a statutory area, in accordance with [section 37](#).

In accordance with the requirements of section 36 of the Settlement Act, a copy of the application was forwarded to the Te Korowai o Ngāruahine Trust for their consideration. The Trust noted that, having read the application, the only change proposed was to the number of vehicle movements to the site. Accordingly, they considered this would not result in any change to the interests of Te Korowai and accordingly the Trust had no comments to make.

Given the above, I consider the effects of the proposed changes on the values of the Waingongoro River would be less than minor, and as such the Trust is not considered to be an affected party.

Step 2: *if not required by step 1, limited notification precluded in certain circumstances*

Where the application meets either of the criteria below, proceed to step 4 (step 3 does not apply).

6(a)	Is the application for a resource consent for 1 or more activities, each activity subject to a rule or national environmental standard that precludes limited notification?	No
6(b)	Is the application for a resource consent for either or both of the following, but no other, activities: (i) a controlled activity that requires consent under a district plan (other than a subdivision of land)? (ii) a prescribed activity (see <a href="#">section 360H(1)(a)(i)</a> )?	No No

Assessment: none of the above criteria apply; therefore, we proceed to step 3.

Step 3: *if not precluded by step 2, certain other affected persons must be notified*

Where it is determined, in accordance with section 95E, that the following are affected persons, each such affected person must be notified of the application.

7(a)	In the case of a boundary activity, the owner of an allotment with an infringed boundary.	n/a
7(b)	In the case of any activity prescribed under section 360H(1)(b), a prescribed person in respect of the proposed activity.	n/a
8	In the case of any other activity, an affected person in accordance with section 95E:	Yes

Assessment: The proposed change to the conditions of consent RML14076 would result in an increase in the level of heavy traffic associated with the operation of the quarry utilising Whenuku Road. This has potential effects in terms of the safe and efficient operation of the roading network, and effects on rural character and amenity. Accordingly, the owners and occupiers of those properties adjoining Whenuku Road and/or obtaining access from it, are considered to be affected by the proposed changes. The affected properties are identified in the table below.

Step 4: further notification in special circumstances

10(a)	Do special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under section 95E as not being an affected person)?	No
-------	---	----

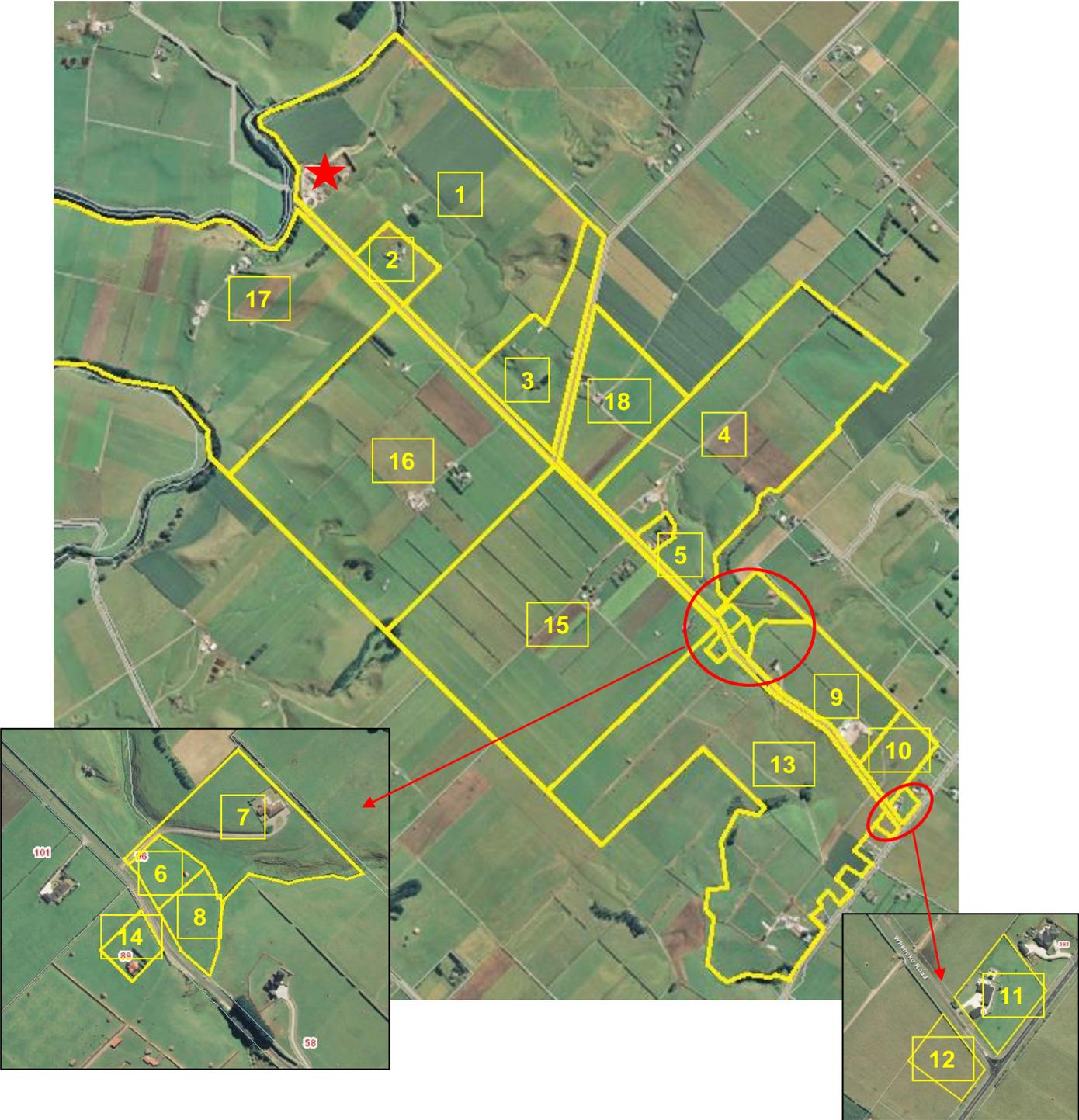
Where the answer is yes, those persons must be notified. Where the answer is no, do not notify anyone else.

Assessment: It has been determined that special circumstances do not exist in regard to this application.

**Affected Parties:**

No	Name1	property
1 16	Bill & Maria Schrader	owners of 278 Whenuku Road (Lot 1 DP 14695, Sec 38 Patea District and Lot 2 DP 403722) and 173-221 Whenuku Road (Lots 32-34 DP 2543) and as occupiers of No. 173 Whenuku Road.
16	Victoria & Roger Schrader	occupiers of No. 193 Whenuku Road
16	Wendy Foreman	occupier of No. 221 Whenuku Road
2	William & Carol Galliers	owners and occupiers of No. 262 Whenuku Road (Lot 1 DP 403772)
3 4 15	Christine & Richard Johnson	owners of No. 35 Katene Road (Lot 1 DP 15931 and Pt Lot 2 DP 14695), Lots 2 and 4 DP 317202 (Whenuku Road) and No.'s 101-131 Whenuku Road (Lots 35-37 DP 2543) and as occupiers of No. 131 Whenuku Road
3	Occupiers	
15	Kurt & Dayna Johnson	occupiers of No. 101 Whenuku Road
18	Shirley, Stuart & Melissa Williamson James Edmonston	owners of No. 30 Katene Road (Lot 28 DP 2543)
18	Occupiers	occupiers of No. 30 Katene Road (Lot 28 DP 2543)
5	Martin & Rita Buhler Hendrik Mansveld	owners and occupiers of 126 Whenuku Road (Lot 3 DP 317202)
5	Occupiers	2 <sup>nd</sup> house – 126 Whenuku Road
5	Occupiers	3 <sup>rd</sup> house – 126 Whenuku Road
7 6 8	Scott & Tracey Gyde	owners and occupiers of No. 96 Whenuku Road (Lot 3 DP 412294) and owners of Lots 1 and 2 DP 412294 (Whenuku Road)
9	Terese & Damian Orchard	owners and occupiers of No. 58 Whenuku Road (Lot 2 DP 402142)
10	Ebony Barry & Hayden Fowlie Parker and Marriner Trustees Ltd	owners of Lot 1 DP 415362 (Whenuku Road)
11	Mark Hughson & Huia Dwyer	owners of No. 8 Whenuku Road (Lot 2 DP 415362)
11	Teresa Dwyer	occupier of No. 8 Whenuku Road (Lot 2 DP 415362)
12	Susanne & Tobias Hipp Dean Arthur	owners of No. 365 Ketemarae Road (Lot 3 DP 504736)
13	Daniel & Jacqueline Meier	owners and occupiers of No. 325 Ketemarae Road (Lot 2 DP 504736, Lots 10-11 DP 533533)
14	Jarad & Paula Chittenden	owners of No. 89 Whenuku Road (Lot 1 DP 504736)
14	Occupiers	occupiers of No. 89 Whenuku Road (Lot 1 DP 504736)
17	Gary Ward & Caroline Schrader	owners and occupiers of No. 277 Whenuku Road (Secs 56 & 57 Patea District, Lot 31 DP 2543)

**Location of Affected Parties**



**Statutory Notification Requirements** (per section 10(2) of the Resource Management (Forms, Fees, and Procedure) Regulations 2003:

- The Taranaki Regional Council
- Te Korowai o Ngāruahine Trust; Te Runanga o Ngāti Ruanui Trust (as Tangata Whenua)