

**BEFORE THE THAMES-COROMANDEL DISTRICT COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an Application by Thames-Coromandel District Council for Land Use Consent to hold 3 music events on 31 December 2017, 4 January 2018 and 6 January 2018 at Williamson Park, 418 Ocean Road, Whangamata

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**DECISION OF HEARING COMMISSIONER**

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## DECISION OF HEARING COMMISSIONER

### Introduction

1. Thames-Coromandel District Council ("TCDC") is applying for a Land Use Consent to hold three music events at Williamson Park on Sunday the 31<sup>st</sup> of December 2017, the 4<sup>th</sup> of January 2018, and Saturday the 6<sup>th</sup> of January 2018.
2. I have been appointed as Commissioner under s.34A of the RMA to make a Decision whether the Application should be notified either publicly or by limited notification, or dealt with non-notified. If the latter, I must then decide whether the Application should be granted.
3. As Commissioner I have read the following documents;
  - i. The Consent Application and the accompanying AEE; and
  - ii. The Independent Consultant's Acoustic Report accompanying the Application;
  - iii. The letter of support from the NZ Police;
  - iv. The Reporting Consultant's S42A Report;
  - v. The relevant provisions of the Operative and Proposed District Plans and the Williamson Park Reserve Management Plan.
4. I am also familiar with Williamson Park having visited the area in December 2016.
5. A description of the Proposal and a comprehensive planning analysis has been provided in the Applicant's AEE and the Reporting Consultant's s.42A Report. For this decision I do not intend to repeat that information except to provide an overview or cross refer to parts of information which I am entitled to do that under s.113(3) of the RMA.
6. For completeness, I should mention that as Commissioner I considered and granted a similar application for two music events at Williamson Park on the 28<sup>th</sup> of January 2017 and the 4<sup>th</sup> of February 2017 subject to a number of conditions. I have been informed that only one music event was held which

attracted a crowd of about 4,200 people but no complaints were received by Council.

7. Although similar issues arise from the two applications I am obliged to consider this current application separately and on its own merits

### **The Proposal**

8. The three music events for which consent is being sort are to take place over the 2017/2018 Christmas holiday period at Williamson Park, more particularly on;
  - Sunday, 31<sup>st</sup> December 2017 and into 1<sup>st</sup> January 2018/ New Years Eve. Music starts at 7pm and finishes at 12.15am. The event finishes at 12.30am.
  - Thursday, 4<sup>th</sup> of January 2018 with music starting at 5.30pm and finishing at 10.45pm and the event closing down at 11pm.
  - Saturday, 6<sup>th</sup> of January 2018 with music starting at 5.30pm and finishing at 10.45pm and the event closing down at 11pm.
9. It is intended no alcohol will be allowed for the New Years concert but a liquor licence may be sought for the other two events. It is proposed that up to 6000 people may attend each event. A full description of how the events are to be managed is set out in the application documents.
10. Williamson Park is a popular Reserve during the summer holiday period when a number of summer festival events take place and it is where the Surf Club Kiosk, public toilets and a stage are located, with available access and car parking.

### **Activity Status**

11. Although festivals and events are permitted on Williamson Park under both the Operative and Proposed District Plans subject to specific performance standards, this proposal will not meet the noise limits in both plans, or the time limit and restriction on patron numbers in the Proposed Plan.
12. The Proposal is to be considered as a discretionary activity under the Operative Plan and a restricted discretionary activity under the Proposed Plan

which means overall the application is to be assessed as a discretionary activity.

13. In terms of which Plan is to be given greater weight when assessing this Application, I consider the Proposed Plan is to be given the greater weight. An appeal against the Proposed Plan is in relation to an unrelated traffic management issue.

### **Legal Considerations**

14. In order to decide whether the Application should be publicly notified or be limited notified on affected persons, I am obliged to consider the requirements of s.95A to 95E of the RMA.
15. If I decide the Application can be considered non-notified, I must then consider whether I should grant the Application under s.104 and s.104B of the RMA.
16. Under s.104, I must have regard to the actual and potential effects the three festival events will have on the surrounding environment, the relevant provisions in planning documents and any other relevant matters, all of which are to be evaluated against the Act's sustainable management principles in Part II of the Act.
17. I intend to make an overall assessment of this proposal before deciding whether the Application can be granted on a non-notified basis.

### **Key Issues**

18. I consider the main issues arising from this Application are noise, amenity effects and traffic effects on the surrounding neighbourhood. I will deal with each of those issues in turn.

### **Assessment of Effects**

19. In order to gauge the level of actual and potential effects of this proposal on the environment, which includes the people living around the area and users of the Park, I need to consider what effects are permitted under the District Plans and the nature of the receiving environment.
20. Here, both the Operative and Proposed District Plans allow music festivals as a Permitted Activity on Williamson Park but subject to meeting noise limits and, in the case of the Proposed Plan, a limitation of 500 people attending.

21. I also need to take into account that, under the Proposed Plan to which I am giving greater weight, there is no limit on noise between 7am to 10pm at the notional boundary of adjacent properties.
22. As to the receiving environment, I acknowledge that Williamson Park has a high level of use over the peak holiday season, including having other music events and Surf Club activities.
23. The Reserve Management Plan for the Park allows for festival events to take place in the Park for six days over the Christmas to New Year holiday period, subject to meeting defined noise limits.
24. Overall, the staging of three further musical events over the summer period is not inconsistent with the purpose and use of the reserve.
25. It is against this background I will now assess the main effects arising from the activities that are the subject of this Applications.

### **Noise Effects**

26. Under the Proposed Plan, the noise limit after 10pm to 7am is to be no louder than 40 dB LA<sub>eq</sub> (15 min) and 70 dB LAF max at the notional boundary of adjacent sites.
27. For the New Years Eve concert the Applicant is seeking music to finish at 12.15am, so the noise limit is to be exceed by 2 hours 15 minutes. For the other two concerts the noise limit is to be exceed by 45 minutes with the concerts due to finish playing music at 10.45pm.
28. According to the Hegley Acoustic Report filed with the Application, noise levels from music events in the park are predict to reach 85 dB LA<sub>eq</sub> at the nearest adjacent properties and for other properties in the immediate area between 75 dB LA<sub>eq</sub> to 85 dB LA<sub>eq</sub>. Here I am referring to the predicted noise contour levels shown on figure 3 in the Report.
29. Mr Hegley acknowledges in his Report that the noise from concerts in the park will be loud but will be within a reasonable level for the neighbours when proposed noise management conditions are taken into account. A key condition is to limit amplified music to 95 dB LA<sub>eq</sub> when measured at 35 meters from the stage.

30. I agree with Mr Hegley's opinion which relates to an assessment of up to 20 day and 10 night events at the park and which are to be subject to a separate consent application.
31. Here it is proposed to have only three events at the park over the busy Christmas period. It is generally recognised that the park attracts a high level of use during the peak holiday seasons and this includes the holding of summer festivals and other events in the park.
32. As the three proposed concerts will take place at the height of the festival season when there is a general expectation that higher noise levels will occur at and around the park, and given the relatively short duration of the events, I consider the predicted noised levels that may be experienced on neighbouring properties to be reasonable and of a temporary nature.

### **Amenity Effects**

33. The issue is whether the expected 6000 people who might attend any of the three events with associated noise effects are likely to have an unacceptable impact on the amenity values of the area.
34. Given the park has long been recognised as a central venue for entertainment and events over the peak Christmas holiday season at Whangamata, and that there would be a general expectation by nearby property owners that the park would be used from time to time for musical events, I am satisfied that the limited number of 3 concerts at this time of the year would have little impact on the amenity values of the area.

### **Traffic**

35. No onsite parking is provided for the events. Instead it is expected that people will walk to the park or use street parking. A proposed condition of consent will require the consent holder to submit a temporary traffic management plan for approval by Councils Roding Manger prior to commencement of the first event. The plan will address a number of traffic related matters including whether public buses and pick up areas are proposed and how this traffic aspect is to be managed.
36. Having regard to these factors I am satisfied the traffic effects will be properly managed and will have minimal impact in terms of traffic and pedestrian safety and on the wider roading network.

**Other Effects**

37. I have considered other effects from this proposal, such as security, public access to the park and refuse management. I am satisfied that none of these matters give rise to any particular concerns of any significance.

**Statutory Planning Documents**

38. Under s.104, I am obliged to consider the relevant provisions of applicable planning documents. I consider the only planning documents that are relevant to this Application are:

- The Operative and Proposed District Plans.

39. A comprehensive planning analysis has been undertaken in the AEE accompanying the Application and by Council's Consultant Planner in the s42A Report. They have both concluded that granting this Application would not be inconsistent with any of the provisions in those Plans relevant to this application.

40. Having considered the relevant planning documents myself, I agree with their opinions. I find that the Proposal will not offend any planning provisions and is generally consistent with the Policy intent in both the Operative and Proposed District Plans for managing recreation reserves.

41. As to any other matters I should have regard to, I considered the Proposal will be generally consistent with the Williamson Park Reserve Management Plan.

**Notification Decision**

42. Having carefully considered the potential effects that may arise from this proposal, and having previously visited the site, I am satisfied that overall the Proposal will have less than a minor impact on the environment. Therefore, public notification is not required.

43. I am also satisfied that any adverse effects on persons living in the neighbourhood or who use the Park will be minimal due to the temporary nature of the events which are to take place on a Reserve that holds various festivals and events, and because the noise level to a reasonable level through the conditions of consent. Taking these matters into account, I do not

consider the Application requires limited notification and because the noise level will be managed to a reasonable level.

44. For these reasons, I believe the Application can be dealt with on a non-notified basis in accordance with s.95A, s.95B, s.95D and s.95E of the RMA.

45. I am also satisfied that there are no special circumstances that exist that would warrant public notification.

1. **Part II Evaluation**

46. Taking into account my assessment of effects and the Proposed Conditions of Consent, particularly the restriction on the finishing time of the events and the other noise conditions, as well as the requirement for a Traffic Management Plan to be approved by Council, I am satisfied that granting consent will achieve the purpose and principles of Part II of the Act and is consistent with the relevant planning provisions in both the Operative and Proposed District Plans.

2. **Decisions**

- (i) That the Application be non-notified in accordance with s.95A to 95E of the RMA;
- (ii) That the Application be granted under s.104 and 104B of the RMA, subject to the Conditions **attached**.

**Date:** 30 August 2017



**P H Cooney**

Independent Commissioner



## ATTACHMENT 1

### CONDITIONS OF CONSENT

The consent holder/landowner shall comply with the following conditions:

1. This consent holder shall not give effect to this consent (or any part thereof) until such time as the following charges, have been paid in full:
  - (a) All fixed charges relating to the receiving, processing and granting of this resource consent under section 36(1) of the Resource Management Act 1991 (RMA) including a consent compliance monitoring fee of \$190 (inclusive of GST); and
  - (b) All additional charges imposed under section 36(3) of the RMA to enable the council to recover its actual and reasonable costs in respect of this application.
  - (c) All development contributions relating to the development authorised by this consent, which will be invoiced separately. Please refer to the advice notes for further information.

The Council's administrative charges for receiving and processing this application in accordance with Section 36 of the Act, must be paid in full within 15 working days of receipt of the invoice for this decision, unless otherwise agreed in writing with the Development Planning Manager. The consent compliance monitoring fee shall be paid as part of the resource consent fee and the consent holder/landowner will be advised of any further monitoring charge or charges as they fall due. Such further charges are to be paid within one month of the date of invoice.

2. Prior to works commencing the consent holder/landowner is to notify Council, in writing, of their intention to begin works a minimum of three days prior to the commencement of the proposed works by completing the "Notice of Commencement of Works", attached to this decision and post, fax or email it to the Council's Monitoring Officer.
3. That a copy of this consent is to be held on site at all times that the works which the consent relates to are being carried out.
4. That the development proceeds in accordance with the plans and information provided with the application, namely:
  - Resource consent application and supporting attachments prepared by KTB Planning Limited dated July 2017;
  - Site Plans, signed and dated by Council 29 August 2017.
5. Amplified music associated with the concerts are restricted to the hours between 7pm to 12.15am on 31 December 2017 (New Year's Eve) and 5.30pm and 10.45pm on 4 and 6 January 2018.
6. Williamson Park is to be clear of concert attendees and staff 30 minutes after the finishing of the music or as soon as practical.
7. Following the first concert on 31 December 2017, the security fencing shall be relocated to secure temporary structures and the concert stage to enable public use

of the reserve. The relocation of the security fencing shall occur the following day before 12pm (midday).

8. At the conclusion of the third concert on 6 January 2018, the consent holder shall ensure all security fencing and temporary structures established to accommodate the concert are removed from the reserve the following day (12pm midday).
9. The consent holder shall ensure Williamson Park reserve is to be left in a clean and tidy state. Within 200 metres of the reserve all litter and any broken bottles/glass within the road reserve; the beach reserve; footpaths; and pedestrian reserves that will be used by the public the following day should be in a clean and tidy state. All rubbish collection shall be undertaken and streets tidy by 10am the following day at the latest following both concerts.
10. A suitably qualified person shall prepare a temporary traffic management plan that shall be submitted for approval to the Council's Roading Department 4 weeks prior to the first event occurring. The traffic management plan shall address but not be limited to the following:
  - Expected vehicle movements;
  - How car parks will be allocated and by who (i.e. on-site staff numbers);
  - Timeframes for vehicles to be removed from the reserve and how the timeframes will be implemented;
  - Ability to accommodate any overflow car parking in the local streets;
  - Whether public buses and pick up areas are proposed and how this traffic aspect is to be managed;
  - Any other traffic matter considered appropriate such as access to the surf club and other activities that utilise the reserve.

The recommendations of the traffic management plan shall be implemented for all three concerts and any recommendations associated with monitoring condition 14.

11. The consent holder shall liaise with Council staff in the development of a Management Plan for waste management; emergency services; set up and pack up details; and a security plan. The final Management Plan shall be submitted to the Council's Planning Manager for approval no later than 4 weeks prior to the first concert event. The recommendations of the Management Plan shall be implemented.
12. The following acoustic conditions shall be met:
  - (i) Amplified music during an event shall not exceed a level of 95dB  $L_{Aeq}$  when measured at 35 metres from the stage;
  - (ii) Noise from the sound checks shall not exceed 30 minutes on the day of the event and a maximum level of 85dB  $L_{Aeq}$  when measured at 35 metres from the stage;
  - (iii) No event shall commence before 5pm and shall not exceed 12 consecutive hours;
  - (iv) The noise shall be measured in accordance with the requirements of NZS6801:2008 Acoustics – Measurement of Environmental Sound; and
  - (v) Residents with properties within the 70dB  $L_{Aeq}$  noise contour shall be advised of the event via a letter box drop (or to their physical address if the property owners reside outside the District), a minimum of 7 days before the event. As a minimum, this letter shall include the date and time of the events and an emergency contact number in case there are any concerns.

13. Within 2 working days (i.e. 2 January 2018) after the first concert, the consent holder shall prepare a monitoring report detailing any complaints and/or problems (if any) relating to the first concert and any recommendations that are required to mitigate these potential effects (if feasible) prior to the second and third concerts. The monitoring report shall be submitted to the Council's Monitoring Manager.
14. Pursuant to Section 128 of the Resource Management Act 1991, the Council may serve notice on the consent holder of its intention to review the noise, traffic management and public access conditions of this consent for the purpose of ensuring the adverse effects on amenity values on surrounding residential properties are adequately mitigated. All costs associated with any review shall be met by the consent holder.

### **Advice Notes**

1. Should the applicant wish to formally object to this decision please advise the Development Planning Manager in writing within 15 working days of the receipt of this letter, stating reasons for the objection and the preferred outcomes.

If no response is received within 15 working days it will be assumed that the applicant accepts this decision and it will be regarded as final.

2. Pursuant to section 125 of the Resource Management Act 1991, this consent lapses 3 months after the date it is granted unless:
  - (a) The consent is given effect to; or
  - (b) The council extends the period after which the consent lapses.

### **Development Contributions Advice Note**

The proposal has been assessed against the requirements of the Development Contributions Policy and we confirm that no development contributions are payable.

A copy of the decision report is attached for your information.

If you have any questions or concerns about any aspect of the decision or consent conditions, please contact me on (07) 868 0200.

For and on behalf of the Thames-Coromandel District Council:

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Paul Cooney  
**Independent Commissioner**  
**PLANNING GROUP**

Dated this 30th day of August 2017