

Williamson Park resource consent

TO Whangamata Community Board
FROM Governance and Strategy Group Manager
DATE 29 October 2017
SUBJECT Williamson Park resource consent

1 Purpose of report

2 Background

The Council's new District Plan includes rules that require events in the recreation passive zone with over 500 people attending to apply for a resource consent to control the effects on the living environment. The Whangamata community has the following regular day-time community events that are located at Williamson Park:

- Brits at the Beach
- Triathlon Tri Series (1 day)
- Beach Hop
- Surf club events
- Whanga week
- Thundercats
- Whangamata Summer Festival events

The park also hosts regular night time events over late December/the New Year/January peak period (including Summertime Festival, Matariki Festival, Brits at the Beach and more recently promoted concerts eg Shapeshifter).

The Community Board agreed that these events were important to protect for the community and that each event should not have to secure its own resource consent.

On 14 June 2017 the Community Board resolved the following:

"That the Whangamata Community Board:

- 1. Receives the 'Williamson Park, Whangamata - resource consent' report, dated 3 June 2017.*
- 2. Approves the scope of the 15 year resource consent application for up to 30 events (500 attendees or more) per annum at Williamson Park as described in Attachment A in the agenda report.*
- 3. Approves up to \$15,000 of funding for the resource consent application for Williamson Park from the Whangamata reserve (neighbourhood reserves).*
- 4. Stipulates that community consultation must be undertaken prior to any lodgement of a resource consent application."*

The application was to seek consent for:

- 20 day time events which concluded by 8pm in summer and 6pm in winter and
- 10 night time events which, with the exception of New Year's Eve, would conclude before 11pm.
- 6 of the 10 night time events were proposed to be permitted to apply for a liquor licence.

The rationale for seeking consent for 30 events per year was to ensure that in the future there was capacity to cater for future events and enable public enjoyment or public demand without having to seek consent for individual events.

KTB Planning Consultants was contracted to prepare the resource consent application. During the preparation phase it was identified that the 15 year consent would require approximately six months which meant the January 2018 planned events would not gain consent in time. A three event resource consent application for New Year's Eve and early January was lodged and was granted.

The expenditure incurred to date to prepare the three event application and the 15 year consent application is \$13,266.70.

Community consultation was completed over June and July 2017 with 205 submissions received. Support was indicated in 130 submissions with 68 opposed, 7 did not make any indication.

The Community Board recently requested more information on the background to the rule changes in the new District Plan. A summary of the history of the change in rules for the District Plan is included in **Attachment A**.

3 Issue

Budget approval is required from the Community Board and Council to complete the resource consent process for the 15 year resource consent.

4 Discussion

District Plan provisions

The District Plan review process provided two specific avenues for public feedback - comment on a draft plan and the formal public notification process with submissions and further submissions. At both of these opportunities members of the public, community organisations and the Community Boards put forward their views on the controls required for events and festivals. The District Plan rules at the time (in the Operative DP) were relatively permissive including limits on noise, parking and duration (5 days).

Existing use rights

Existing use rights for the annual events at Williamson Park have been queried as an alternative to applying for resource consent. Section 10(1) of the RMA addresses existing use rights for land use. Under this section, land may be used in a manner that contravenes a rule in a district plan or proposed district plan if both:

- the use was lawfully established before the rule became operative or the proposed plan was notified
- the effects of the use are the same or similar in character, intensity and scale.

Section 10 of the RMA does not apply to activities that have been discontinued for a continuous period of more than 12 months after the new rule became operative or the proposed plan was notified.

The rules prior to the new District Plan were more permissive and did not include a cap on the number of attendees. One of the conditions in the operative plan was that all noise rules for the zone would be met. The Proposed District Plan has no limits on noise between 7am and 10pm at the notional boundary of adjacent properties but after 10pm any event that includes music is unlikely to meet these conditions.

Another condition was that all vehicle parking associated with the activity shall be contained on the site. If the attendees' cars were to be accommodated on Williamson Park then the number of attendees would be severely restricted.

On this basis existing use rights are not considered a practical alternative to seeking a resource consent.

Notified or non-notified application

The Commissioner for the recent 3 event resource consent application had to decide if the application should be notified or non-notified. The Commissioner considered the main issues arising from that application were noise, amenity effects and traffic effects on the surrounding neighbourhood. Given other festivals/events had been taking place on the reserve with similar effects the Commissioner noted that the staging of three further musical events over the summer period was not inconsistent with the purpose and use of the reserve and considered the predicted noise levels experience on neighbouring properties to be reasonable given that there was a general expectation that higher noise levels would occur at and around the park over the height of the festival season and the proposed events were of relatively short duration.

For similar reasons the Commissioner was satisfied that the limited number of three concerts at that time of the year would have little impact on the amenity values of the area. Due to a lack of onsite parking a temporary traffic management plan was a condition of the consent which the Commissioner was satisfied if properly managed would mean the concert's traffic effects would have minimal impacts on traffic, pedestrian safety and the wider roading network.

Overall the Commissioner noted that the proposed application for three concerts would have less than a minor impact on the environment and decided public notification was not required. Limited notification was not pursued because the Commissioner considered the adverse effects on persons living in the neighbourhood and those who use the Park) would be minimal due to the temporary nature of the events and because noise would be kept to a reasonable level through the conditions of the consent.

The 15 year consent encompasses far more than 3 distinct concerts so is not of the same temporary nature as the first consent. During the informal consultation undertaken in June the Community Board made it known that the 15 year consent would be publicly notified and the Council's website still notes this intent.

The proposed application

In the preparation of the application staff and the planning consultants have been considering the viability of a consent application that covers up to 30 events. The primary purpose of the resource consent is to protect the existing events. The night time concerts are intended to be kept to quality performances that relate to a range of the demographic resident and visiting Whangamata.

Staff propose that the consent application be for up to four night events and up to 15 daytime events. Each night event would be permitted to apply for a special liquor licence.

Costs and budget

The estimated costs for the fully notified consent process is in the vicinity of \$25,000. If submissions received to the application range between 50-100 another \$5,000 is estimated to be required. A budget of \$30,000 is requested.

If the consent was then granted and appealed then Environment Court costs have been estimated at \$100,000. Approval to defend or appeal the consent would be required from the Community Board and Council.

The work to date has been funded from the Whangamata reserve contributions. Further staff advice sought on the suitability of this funding source has advised against using any more of the reserve contributions. Options available to the Whangamata Community Board include the Whangamata Retained Earnings Reserve. However the Chief Executive has requested that staff propose to Council that the resource consent application costs be funded as a district activity since this is just the first application and each Community Board will likely make a similar application to protect their existing community events and festivals. A report with this proposal is being scheduled

for the 12 December 2017 Council meeting. In the event that the Council declines to fund the resource consent application processes through district funding then the Community Board is recommended to utilise the Retained Earnings Reserve.

5 Suggested recommendation(s)

That the Whangamata Community Board:

1. Receives the 'Williamson Park resource consent' report, dated 29 October 2017; and
2. Recommends to the Council that the resource consenting costs associated with local reserves for existing community events and concerts be funded from the district on the basis that the District Plan rule changes brought about the need for the expenditure; and
3. Recommends a budget of \$30,000 for the Williamson Park notified 15 year event resource consent application process to be funded from a district budget but in the event that district funding is declined from the Whangamata Retained Earnings Reserve; and
4. Approves the content of the Williamson Park 15 year event resource consent application to include provision on an annual basis for:
 - 4 night time events
 - 15 day time events
 - Each of the four night event is permitted to apply for a liquor licence.

Attachment A Summary of the history of District Plan rules for festivals and events in the Recreation Passive Zone

Summary of the history of District Plan rules for festivals and events in the
Recreation Passive Zone

A draft District Plan was prepared over several years and was made available to the public in 2012 for 3 months for comments to help shape the notified plan. The rules on festivals and events in the draft DP were very permissive, they were strengthened in the Notified Plan and then tightened more following the formal consultation process.

The changes made after the draft plan were signed off by the District Plan Review Committee; its membership was made up of 2 councillors, a CB Chairperson and three non-elected members (one being Ian Munro).

The notified plan was signed off by the District Plan Review Committee and the Council.

The decisions plan was signed off by the District Plan Hearing Panel (comprising Councillor Fox and two independent commissioners - Ian Munro and Mark Farnsworth) and the Council.

The rules for festivals and events in the new District Plan vary across the zones. This summary includes the details for the recreation passive zone which is the zone that applies to Williamson Park.

RULES IN OPERATIVE DISTRICT PLAN (ODP) - (the plan before the review began, some parts where there are appeals are still considered for resource consent applications along with the new provisions).

The ODP provides for festivals and events as permitted activities provided they meet the requirements set out below from Rule 523.4.

Festivals and events (other than temporary military training activities) which comply with the following:

- (a) *The duration of the festival or event shall not be longer than five consecutive days during the period commencing 1 July in any one year and ending on 30 June in the year following;*
- (b) *The prior written consent of the property owner being obtained;*
- (c) *No permanent structures being erected;*
- (d) *All vehicle parking associated with the activity shall be contained on the site;*
- (e) *All the noise standards of the zone are met;*
- (f) *No significant earthworks being required (i.e. no mechanical excavation required).*

RULES IN DRAFT DISTRICT PLAN 1/10/2012 - RECREATION PASSIVE ZONE

RULE 4 *Festival, event and associated temporary buildings*

1. *A festival, event and associated temporary buildings is a permitted activity provided:

 - a) *No buildings are erected under this Rule that remain after the festival, event finishes; and*
 - b) *The noise of any helicopter associated with the festival, event complies with the standards in NZS 6807:1994 Noise management and land use planning for helicopter landing areas (excluding Section 5: Land Use Planning); and*
 - c) *It lasts no longer than 72 consecutive hours.**
2. *A festival, event and associated temporary buildings that does not comply with Rule 4.1 a) or b) is a restricted discretionary activity.*
3. *The Council restricts its discretion to matter 1 in Table 4 at the end of Section 57.*
4. *A festival, event and associated temporary buildings that is not permitted under Rule 4.1 and is not a restricted discretionary activity under Rule 4.2 is a discretionary activity.*
5. *Rule 8 (Noise) does not apply to a festival, event.*

Note

1. A festival, event and associated temporary buildings must also get approval from the Council.

Excerpt from staff report to the District Plan Review Committee on the festivals/events comments received on draft District Plan in 2012:

2 Festivals, events

Festivals, events generated a lot of comment and controversy, mainly because the draft rule was too permissive for local residents. The festival, event rule covers a lot of different activities, not just large loud festivals. The key is being permissive enough for the small school galas, while controlling the festivals with major events.

Some people wanted to see noise restrictions at night. This is difficult for the Council to enforce. The Council only has one noise monitoring equipment set, and it is expensive to find a person to operate it. While that could change, festivals/events are occasional and do not always have advance warning. It is more practical to include a note saying that the Council will apply excessive noise provisions under sections 326 - 328 of the RMA. This is something that the Council's monitoring officers can judge on the spot, based on the location, time, frequency, and other variables of the event. The effect of noise at night is made reasonable by the reduced frequency of festivals and events compared to the Draft Plan.

Changes to Draft provisions

The following standards are proposed:

- Frequency set at 1 per [time period] rather than [frequency] per year, to avoid all annual 'events' happening over the New Year period, and reduce the actual frequency.
- Discouraging excessive noise after 10 pm.
- Restrict overnight events even further - to one per year, as this has much greater effects than an event that finishes at the end of the day.
- Apply the standard separating "large" and "small" events to apply to evening/overnight events only, and reduce the attendee split from 1200 attendees to 250.
- For "large" events, include discretion over accommodation locations and transport to/from/within the site.

Staff recommendation: Amend the rule similar to the following:

Festival, event

1. A festival, event is a **permitted activity** provided:
 - a) Electronically amplified noise and vehicle noise at the notional boundary of adjacent sites between 10 pm and is no louder than 40 dB LAeq (15 min). [40 dB is like a library, a refrigerator hum, a suburban bedroom].
 - b) The noise of any helicopter associated with the festival, event complies with the standards in NZS 6807:1994 Noise management and land use planning for helicopter landing areas (excluding Section 5: Land Use Planning); and
 - c) [Rural Area Only] All vehicle parking and manoeuvring associated with the activity is contained on the site; and
 - d) It lasts no longer than 24 consecutive hours; and
 - e) The site meets the standards in Table 1.

Table 1 - Maximum frequency of festivals, events per site [Rural Area, Residential Area]

Occurs overnight (10 pm to 7 am)?	Less than 250 people	More than 250 people
Yes	1 per calendar month	1 per calendar year
No	1 per fortnight	

3. A festival, event and associated temporary buildings that is not permitted under Rule 1.1 a), b) or c) is a **restricted discretionary activity**.
4. The Council restricts its discretion to matters x in Table y at the end of Section z.
5. A festival, event and associated temporary buildings that is not permitted under Rule 1.1 d) or e) is a **discretionary activity**.
6. Rule 12 (Noise) does not apply to a festival, event.

RULES IN PROPOSED DISTRICT PLAN (PDP) - RECREATION PASSIVE ZONE

RULE 5 Festival, event

1. A festival, event is a **permitted activity** provided:
 - a) Electronically amplified noise and vehicle noise at the notional boundary of adjacent sites from 10 pm to 7 am the following day is no louder than 40 dB LAeq (15 min) and 70 dB LAF max; and
 - b) The noise of any helicopter associated with the festival, event complies with the standards in NZS 6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas (excluding Section 5: Land Use Planning); and
 - c) No buildings are erected (under this rule) that remain after the festival, event finishes; and
 - d) It lasts no longer than 24 consecutive hours; and
 - e) The reserve meets the frequency standard in Table 1.

Table 1 Maximum frequency of festivals, events per reserve per calendar year

Occurs overnight (10 pm to 7 am)	Less than 250 people	More than 250 people
Yes	1 per calendar month	1 per calendar year
No	1 per fortnight	

2. A festival, event that is not permitted under Rule 5.1 a), b) or c) is a **restricted discretionary activity**.
3. The Council restricts its discretion to matters 1, 3, 6, 7 and 9 in Table 7 at the end of Section 53.
4. A festival, event that is not permitted under Rule 5.1 d) or e) is a **discretionary activity**.

NOTE

1. After 10 pm, the Council may apply excessive noise provisions under sections 326 328 of the RMA if noise, particularly electronically amplified noise, is excessive for the location and event.

Excerpt from the Decision report from District Plan Hearings Panel - April 2016

Summary of evidence - Festival, event

- 5.9 The Section 42A Report/Section 32AA Further Evaluation Report reminded⁴ the Panel that festivals and events are a topical issue in this District and the activity received substantial interest through submissions. The Reporting Officer observed that submissions generally relate to people's personal experience with festivals and events in the District and the effects of these on their living environment.
- 5.10 The Panel recognises that while controls are required, at the same time the Panel concur with the submissions that festivals and events form an important social and economic opportunity for the District. The Plan has attempted to achieve a balanced, acceptable approach that provides for economic development while ensuring that the effects that potentially flow from a festival or event are contained. The Panel are of the viewpoint that the proposed amended provisions establish an appropriate framework for the regulation of festivals and events in the District.

- 5.11 *At the conclusion of the Hearing the Panel came to the viewpoint that for 'Festival, event', the Section 42A Report/Section 32AA Further Evaluation Report adequately addresses the submissions, further submissions and the substance of the representations made. The amendments recommended will ensure that the Plan clearly identifies the zones where festivals and events are considered appropriate to occur and puts some clearly defined limits in terms of numbers attending, duration and hours of the festival or event.*
- 5.12 *The Panel have adopted the Reporting Officer's discussion and recommendations as outlined in the Section 42A Report/Section 32AA Further Evaluation Report.*

CURRENT RULES IN THE APPEALS VERSION DISTRICT PLAN FOR RECREATION PASSIVE ZONE

RULE 7 Festival, event

(A62)

1. A festival, event, and any noise from it, is a permitted activity provided:
 - a) Electronically amplified noise and vehicle noise at the notional boundary of adjacent sites from 10 pm is no louder than 40 dB $L_{Aeq(15\ min)}$ and 70 dB $L_{AF\ max}$; and
 - b) It occurs between the hours of 7 am-10 pm Sunday-Thursday and 7 am-12 midnight Friday and Saturday; and
 - c) The noise of any helicopter associated with the festival, event complies with the standards in NZS 6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas (excluding Section 5: Land Use Planning); and
 - d) No buildings are erected (under this rule) that remain after the festival, event finishes; and
 - e) It lasts no longer than 12 consecutive hours; and
 - f) There are no more than 500 people on the site.
2. A festival, event that is not permitted under Rule 7.1 is a restricted discretionary activity.
3. The Council restricts its discretion to matters 1-3, 6-7, 12 and 13 in Table 6 at the end of Section 53.

NOTE

1. After 10 pm, the Council may apply excessive noise provisions under sections 326 - 328 of the RMA if noise, particularly electronically amplified noise, is excessive for the location and event.
2. The Council recommends event planners contact the Area Manager prior to the festival, event.