

IN THE MATTER OF

the Resource Management Act
1991

AND

IN THE MATTER OF

of an application to vary the conditions of an existing land use consent that controls the use of Williamson Park, Whangamata for events and festivals.

**DECISION BY INDEPENDENT COMMISSIONER APPOINTED BY THE THAMES
COROMANDEL DISTRICT COUNCIL**

1. INTRODUCTION

I was appointed as an Independent Commissioner by the Thames Coromandel District Council, (“**TCDC**” or “**Council**”) to make the decision on an application by the Council (“**the applicant**”) to vary the conditions of an existing resource consent that allows, subject to conditions, the use of Williamson Park in Whangamata (“**the site**” or “**the park**”) for various festivals and events (“**the proposal**”).

The existing consent that the applicant seeks to vary was granted by Independent Commissioner Mr Paul Cooney in November 2018, following public notification and a public hearing. It is referred to as consent RMA/2018/203 in the Council files.

Williamson Park is 3.76 hectare in size and is surrounded on three sides by residential development and fronts the beach on the fourth side. The Whangamata Surf Lifesaving Club has its clubhouse and associated facilities within the park, which also accommodates a café, public toilets and a small covered stage. All these structures are located in the northwestern corner of the park. A road access through the park provides access to the surf club and the café.

By way of summary, the variation application seeks the following changes to the conditions of the existing consent :

- a) To allow one of the 6 annual night time events to start 3 hours earlier so that it can run between 1pm and 11pm, rather than between 4pm and 11pm – Condition 4; and
- b) To allow sound checks to be undertaken during a 2 hour window that commences no earlier than 10am on the day of the event, rather than in a 30 minute window between midday and 4pm, as is currently the case – Condition 13.

2. BACKGROUND

It is clear from Mr Cooney's decision that the 2018 application generated considerable community interest, as indicated by 191 submissions having been received, 96 of which were in opposition.

The existing consent, which expires on 1 December 2033, authorises, subject to conditions:

- 20 day-time events between 7am and 7pm (although the Anzac Dawn Service may commence earlier than 7am);
- Six night-time events between 4pm and 11 pm, including one fenced and ticketed event; and
- One New Years' Eve Event from 4pm (31 December) until 12.30am the following day (1 January).

Although not all the existing conditions are relevant to the variation proposal, they do assist in understanding the controls that Mr Cooney considered necessary in order to manage the adverse effects of the use of Williamson Park for festivals and events. In that regard, key conditions of the existing consent are as follows:

- a) Lighting is to be controlled so that it is not aimed at any residential properties and is shut down 30 minutes after an event finishes – Conditions 7 and 8;
- b) Any temporary fencing or structures are to be erected no more than 24 hours prior to an event commencing and removed by 4pm the following day – Conditions 10 and 11;
- c) Noise from all events is subject to specific limits, noise management and monitoring regimes, and reporting requirements – Conditions 12 – 18, including, amongst other things, limiting the frequency of noisy events and a requirement to give prior notice to residential neighbours within 250 metres whenever noise will be above 75dB LAeq;
- d) Only 1 ticketed event that restricts public access is allowed per year – Condition 19.
- e) The annual ticketed event must: cater for no more than 6,000 people; not occur between 25 December and 4 January; fence off no more than 2 hectares of the park; implement measures to manage public access, traffic, access for emergency services and site clean up – Conditions 19 – 27; and provide a monitoring report about noise compliance and any complaints / problems – Condition 28; and
- f) For non-ticketed events, measures must be taken to manage traffic and access for emergency services and the park is required to be clear of attendees 30 minutes after any night event concludes – Conditions 29 - 31.

Also for scene setting purposes, I reproduce below pertinent excerpts from Mr Cooney's assessment of the 2018 application [my emphasis].

19. Back in 1929 **Williamson Park was donated to Council's predecessor the Thames County Council by a Mr Philip Williamson ... as "a Public Park and Recreation Reserve for the use of the Public for ever".**
20. Later through an exchange of letters between Council and Mr Williamson, **Mr Williamson made it clear he did not want the park to become a commercial or residential area.**
21. [I]n the **1980's** Whangamata as a growing seaside resort began experiencing unruly behaviour from some visitors over the New Year period. In response, **a community group established the Whangamata Summer Festival to provide a focus for holiday makers over the Christmas/New Year period in the form of events and night concerts in Williamson Park.** Other events have followed such as Beach Hop and Whanga Week.
22. **In more recent times** and to give effect to Council's economic strategy to support tourism through the funding of major events, **Council sought and was granted consent to hold two concerts over the 2016/17 summer period and three concert events over the 2017/18 period.** These concerts were mainly successful in terms of public support except for an electronic music concert where local residents complained they had to put up with excessive noise and unruly behaviour from some attendees in a sell out crowd.
23. [Subsequently] Council decided to seek consent for both day events and night concerts with sufficient flexibility to hold events in the "shoulder seasons" in order to expand tourism beyond the peak holiday periods.
....
34. The importance of this proposal to residence [sic] in the area is reflected in the evidence presented to me at the hearing. Many of the submitters belonged to or supported the case presented by the Friends of Williamson Park Society or represented themselves at the Hearing.
35. **The Society made its position clear from the beginning that it supported the use of the park for the community activities and events that had previously taken place over many years but [sought] the exclusion of privately promoted commercial concerts with restricted access, and lower noise limits than sought by the applicant. Otherwise the Society did not object to the 20 day events of the 7 (unticketed) night events sought by the applicant.**
....
51. [T]he type of music to be allowed is not a relevant consideration in my view. The consenting process should not be used as a form of licencing to authorise music genres.
....
58. **Overall, I am satisfied that noise from festivals and events held in the park can be appropriately managed under the noise conditions** recommended by [the applicant's noise consultant] Mr Hegley.
....
70. I acknowledge the Applicant has sought to mitigate the effects of holding commercial events with restrictive access to 3 out of 7 night events in a defined area of the park, and that where a series of events is to occur over a 2 week period perimeter fencing would be relocated to secure the event assets only. Nevertheless **I consider the line should be drawn at 1 fenced and ticketed event per year rather than 3. My reasons for reaching that conclusion are that the holding of 3 such events, possibly over a 2 week period would place an unreasonable restriction on the ability of the public to access and utilise the park to its fullest extent.**

3. THE PROPOSAL

As stated in Section 1.2 of the Council's section 42A report, which I reproduce in full below, the specific changes to conditions sought by the applicant are as follows:

Condition 4

4. This consent authorises the following activities on Williamson Park per calendar year:
 - a. 20 day-time events between 7am and 7pm (although the Anzac Dawn Service may commence earlier than 7am);
 - b. ~~Six~~ Five night-time events between 4pm and 11pm, ~~including one fenced and ticketed event;~~
 - c. One event between 1 pm and 11 pm; and
 - d. One New Years' Eve Event from 4pm (31 December) until 12.30am the following day (1 January).

Note: One of the events under (b) and (c) may be fenced and ticketed in accordance with Condition 19.

The applicant requests that the one ticketed event permitted per calendar year allows for the activity to commence three (3) hours earlier, from 1.00pm rather than 4pm.

The request is made to allow more flexibility for providing a range of event opportunities, specifically by allowing an earlier start to provide for more family orientated events during the daytime as well as events more aligned to later in the day.

NOTE: The application was originally submitted to vary the duration of this one event from 11 am until 11pm. The applicant later confirmed that they requested the time to be moved forward to 1pm.

Condition 13

13. Noise measurement and assessment requirements:
 - a. Subject to the following, noise levels must be measured in accordance with the requirements of NZS 6801:2008 Acoustics- Measurement of Environmental Sound and assessed in accordance with the requirements of NZS 6802:2008 Acoustics - Environmental Noise;
 - b. No duration correction or adjustment for special audible characteristics will be applied;
 - c. Crowd noise is to be excluded from any assessment of compliance with these limits;
 - d. ~~The noise from the sound checks shall not exceed 30 minutes between 12 midday and 4:00pm on the day of the event~~ Sound checks may only be undertaken on the day of the event and must only take place within a two-hour period, commencing no earlier than 10am; and
 - e. Noise from sound checks shall not exceed a level of 80dB LAeq when measured at 35m from the stage.

The applicant requests that the condition is changed to allow sound checks to occur potentially two hours earlier (from midday to 10am)¹ and that any sound check shall not exceed more than two hours (up from 30 minutes).

The request is made to ensure that where there are multiple performers who require individual sound checks to be undertaken, that the timeframes provide for this so as to be able to reduce the adverse noise effects later in the event.

¹ This is a typographical error that should read "from 10am to midday"

4. SECTION 127 ASSESSMENT

Section 2.0 of the section 42A report addresses the matters that section 127 of the Resource Management Act 1991 (“**RMA**”) requires be addressed. I agree with and adopt the analysis in Section 2.0 of the section 42A report, and am satisfied that:

- The application is properly considered to be a variation, rather than a new application, because it does not materially alter the fundamental nature of the existing consent and only seeks to alter the timing and duration of some very specific activities;
- In terms of the (practically operative) Proposed Thames Coromandel District Plan (“**District Plan**”), Williamson Park is located in the Recreation Passive Zone and is also subject to provisions relating to the “Coastal Environment”, the “Current Coastal Erosion Line” and the “Future Coastal Erosion Line”; and
- The variation is to be assessed as a discretionary activity.

5. PUBLIC NOTIFICATION ASSESSMENT

Section 3.0 of the section 42A report has presented a careful and comprehensive assessment of the requirements of section 95A of the RMA to determine, in the author’s opinion, whether or not public notification of the application is required. The section 42A report recommends that the application not be publicly notified.

I am satisfied that:

- The existing environment for assessing the variation includes the existing consent, which has, and continues to be, given effect to;
- The proposed variation would not provide for a greater number of events to occur above what has already been approved, including the one gated and ticketed event per year that is allowed by Condition 19 of the consent granted by Mr Cooney. It would only serve to extend the duration of that one ticketed and fenced event per year by a further 3 hours during the day-time;
- The proposal would not alter the underlying noise restrictions or maximum number of permissible attendees, nor any other relevant condition associated with the (annual) ticketed event;
- Allowing an additional 1.5 hours for sound checks, which will occur during the day-time, will have less than minor adverse effects on neighbouring amenity, noting also that the existing noise limits are not being altered;
- The proposal would not further impede public access to the site as the existing conditions require that fencing not commence until 24 hours prior to the event

and a three hour extension would not significantly increase restrictions on public access beyond what the consent conditions already provide for;

- The permitted activity standards for festivals and events in the Recreation Passive Zone contemplate (amongst other things) them starting at 7am – i.e. earlier than the 1pm start proposed by the applicant;
- In terms of section 95A(8) of the RMA, the actual and potential adverse effects of the proposal on the environment are less than minor; and
- There are no “special circumstances” that apply under section 95A(9)(a) of the RMA.

My conclusion is that the application need not be publically notified.

6. LIMITED NOTIFICATION ASSESSMENT

Section 5.0 of the section 42A report has presented a thorough assessment of the requirements of section 95B of the RMA to determine, in the author’s opinion, whether or not limited notification of the application is required. The section 42A report recommends that the application not be limited notified.

I am satisfied that the effects of the proposal on adjacent properties and the wider environment, including those people who made submissions on the 2018 application (section 127(4) of the RMA), will be less than minor because:

- The variation does not provide for any additional events to occur;
- The existing noise conditions for the events would need to be complied with;
- No increase in the maximum allowable crowd size is being sought;
- No material additional restrictions on public access are being proposed;
- Although the duration of the single ticketed event that is allowed annually would increase by 3 hours, the maximum duration of the event would be 10 hours, which is less than the permitted activity standard of 12 hours for festivals and events in the Recreation Passive Zone;
- The additional 3 hour duration occurs during the day-time, and not at night , such that it would not materially affect residential amenity; and
- The additional time allowed for sound checks is practical and will not affect residential amenity to any material extent.

My conclusion is that the application need not be limited notified.

7. EVALUATION OF THE PROPOSAL

Section 7.0 of the section 42A report assesses the proposal against the requirements of sections 104 and 104B of the RMA.

Section 104 states:

104 Consideration of Applications

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part II, have regard to—
- (a) any actual and potential effects on the environment of allowing the activity; and
 - (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and
 - (b) any relevant provisions of—
 - (i) a national environmental standard;
 - (ii) other regulations;
 - (iii) a national policy statement;
 - (iv) a New Zealand coastal policy statement;
 - (v) a regional policy statement or proposed regional policy statement;
 - (vi) a plan or proposed plan; and
 - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

.....

Given the notification assessments contained in the section 42A report and my conclusions in Sections 5 and 6 above, I am satisfied that in terms of section 104(1)(a) the effects of the variation on the environment will be less than minor, and acceptable.

I also conclude that section 104(1)(ab) does not apply.

In terms of section 104(1)(b), I accept and adopt the reasoning set out in Section 7.2 of the section 42A report and am satisfied that the District Plan is not an impediment to the granting of the variation. Likewise, I am also satisfied, consistent with the reasoning in Section 7.3 of the section 42A report, that the higher order statutory planning documents referred to in section 104(1)(b)(i) – (iv) provide no impediment to granting the variation.

I further note that I have had no regard to the operative District Plan, as it has been superseded by the proposed District Plan which is practically operative.

I am satisfied that there are no “other matters” that need to be assessed under section 104(1)(c).

In terms of section 104B, I do not need to discuss it here, other than it states that applications for discretionary activities can either be granted or declined, and, if granted, conditions can be imposed.

There are two matters that I do wish to address, namely, the implications of my decision for any future applications to vary the conditions of this consent and the precise wording of one of the conditions that is sought to be varied. I deal with them both below.

Future applications

It is not appropriate for this decision to attempt to pre-judge or pre-determine any future applications that might be made to further amend the conditions of the Williamson Park resource consent. Any future application would need to be assessed on its merits, as and when any such application was made. What I can say here, is that my decision not to have this variation notified was heavily influenced by the fact that it only served to change, to a very limited extent, the conditions under which a confined number and type of events that were already authorised could be undertaken.

It suffices for me to record that any future proposal to increase the number of events would need to be carefully assessed, and it would be important to ensure that incrementally increasing the scope of the consent via future variation applications did not undermine the outcome reflected in Mr Cooney's 2018 decision, nor the public's confidence in it.

Conditions

The proposed amendment to Condition 4, as applied for reads [my emphasis]:

4. This consent authorises the following activities on Williamson Park per calendar year:
 - a. 20 day-time events between 7am and 7pm (although the Anzac Dawn Service may commence earlier than 7am);
 - b. Five night-time events between 4pm and 11pm;
 - c. One event between 1 pm and 11 pm; and
 - d. One New Years' Eve Event from 4pm (31 December) until 12.30am the following day (1 January).

Note: One of the events under (b) and (c) may be fenced and ticketed in accordance with Condition 19.

I am not satisfied that including the limitation on the number of events as a "note" is appropriate, given that it could be inferred as being an unenforceable "advice note".

I consider it important that there be no room for any ambiguity around the fact that only one fenced and ticketed event per annum can be undertaken under (varied) Condition 4 b) and c). I therefore consider the following wording to be appropriate [again my emphasis]:

4. This consent authorises the following activities on Williamson Park to be undertaken per calendar year:
 - a. 20 day-time events between 7am and 7pm (although the Anzac Dawn Service may commence earlier than 7am);
 - b. Five night-time events between 4pm and 11pm;
 - c. One event between 1 pm and 11 pm; and
 - d. One New Years' Eve Event from 4pm (31 December) until 12.30am the following day (1 January).

Of the events allowed under b) and c) above, only one in any year may be a fenced and ticketed event as specified in Condition 19.

8. DECISION

For the reasons set out above, consent to vary Conditions 4 and 13 of the existing resource consent authorising events and festivals at Williamson Park, Whangamata (RMA/2018/203) is **granted**, with the varied conditions to read as follows:

Condition 4

4. This consent authorises the following activities on Williamson Park to be undertaken per calendar year:
 - a. 20 day-time events between 7am and 7pm (although the Anzac Dawn Service may commence earlier than 7am);
 - b. Five night-time events between 4pm and 11pm;
 - c. One event between 1 pm and 11 pm; and
 - d. One New Years' Eve Event from 4pm (31 December) until 12.30am the following day (1 January).

Of the events allowed under b) and c) above, only one in any year may be a fenced and ticketed event as specified in Condition 19.

Condition 13

13. Noise measurement and assessment requirements:
 - a. Subject to the following, noise levels must be measured in accordance with the requirements of NZS 6801:2008 Acoustics- Measurement of Environmental Sound and assessed in accordance with the requirements of NZS 6802:2008 Acoustics - Environmental Noise;
 - b. No duration correction or adjustment for special audible characteristics will be applied;
 - c. Crowd noise is to be excluded from any assessment of compliance with these limits;
 - d. Sound checks may only be undertaken on the day of the event and must only take place within a two-hour period, commencing no earlier than 10am; and
 - e. Noise from sound checks shall not exceed a level of 80dB LAeq when measured at 35m from the stage.

DATED: 15 December 2023



Dr P H Mitchell
Independent Commissioner