

17 September 2020

File Ref: 204622-799

Waikato District Council
Private Bag 544
NGARUAWAHIA 3742

For: Katherine Overwater

Dear Katherine

NZ National Field Days Society Inc. Submission to the Waikato District Council Proposed District Plan

Introduction

1. You have asked for our advice in relation to NZ National Field Days Society Inc. Submission (“Submission”) to the Waikato District Council Proposed District Plan (“PDP”). The Submission seeks that Waikato District Council (“WDC”) modify the noise rules in the following chapters of the PDP to align with the provisions in the Waipa District Council’s Operative District Plan:
 - (a) Chapter 22: Rural Zone, 22.2 Land Use – Effects, 22.2.1: Noise; and
 - (b) Chapter 23: Country Living Zone, 23.2 Land Use – Effects, 23.2.1: Noise.

2. You have asked us to consider:
 - (a) Whether the Environment Court Consent Order dated 28 July 1997 (“Consent Order”) enabled NZ National Field Days Society Inc (“Field Days”) to operate with a resource consent including a condition specifying an operational noise limit of 55B on activity days, or whether the Consent Order simply recorded the Parties agreement to increase the noise limits in their respective plans to levels that Field Days considered it was capable of operating within; and
 - (b) Whether WDC is in breach of the Consent Order as asserted by Field Days; and
 - (c) Whether rules in one district plan can control activities in another (neighbouring) district. If the answer is yes, which territorial authority is responsible for enforcement action if the rule is breached.

Question (a): Environment Court Consent Order dated 28 July 1997

3. Under the Consent Order, the Environment Court ordered that Waipa District Council modify certain provisions of its proposed district plan. These provisions largely related to the Mystery Creek Exhibition Centre Zone, and noise generated from general activities and “Activity Days”.
4. The key rules to be inserted in Waipa District Council’s proposed district plan in accordance with the Consent Order were:

(a) New Rule 9.3.1.2:

In addition to the activities listed in Rule 1.4.2, any other activity which complies with all the conditions specified in Rule 9.4, **except 9.4.2**, and which complies with Rules 9.5.1 and 9.5.2, shall be a **controlled activity**.

(b) Amended Rule 9.3.1.2:

Any activity which does not comply with any one or more of the Conditions for Permitted Activities (specified in Rule 9.4) or Criteria and Conditions for Controlled Activities (specified in Rule 9.5) shall be a **Discretionary Activity or a Non-Complying Activity** in relation to the Rule with which it does not comply as it is specified in that Rule.

5. The Consent Order prescribed noise limits to apply generally to all activities within the Mystery Creek Exhibition Centre Zone (Rule 9.4.2), and noise limits to apply to “Activity Days” (Rule 9.5.2). These rules prescribed some noise limits for the area within the territorial boundaries of the WDC. The limits were:

(a) Rule 9.4.2 – Noise:

1. All activities within the Mystery Creek Exhibition Centre Zone shall be conducted and buildings located, designed and used to ensure that noise levels within the notional boundary of any dwelling:
- Existing at the date when this Plan becomes operative; and
 - Not located within the Mystery Creek Exhibition Centre Zone; and
 - Located within an area described below

Shall not, subject to Rule 9.5, exceed the following limits for that area:

a. That area within the territorial boundaries of the Waikato District Council:

Monday to Saturday 7:30am to 8:00pm	50dBA (L₁₀)
Sunday 8:00am to 8:00pm	50dBA (L₁₀)
All other times	40 dBA (L₁₀)

b. That area within the territorial boundaries of the Waipa District Council:

Monday to Saturday 7:30am to 8:00pm	55dBA (L ₁₀)
Sunday 8:00am to 8:00pm	55dBA (L ₁₀)
Monday to Sunday 8:00pm to 11:00pm	45dBA (L ₁₀)
All other times	40 dBA (L ₁₀)

Activities that do not comply with Rule 9.4.2 shall be discretionary activities.

(Emphasis added).

(b) Rule 9.5.2 – Noise on Activity Days:

1. All activities on activity days (whether MCEC Activity Days or otherwise) within the Mystery Creek Exhibition Centre Zone shall be conducted and buildings located, designed and used within the Mystery Creek Exhibition Centre Zone to ensure that noise levels within the notional boundary of any dwelling:

- Existing at the date when this Plan becomes operative; and
- Not located within the Mystery Creek Exhibition Centre Zone; and
- Located within an area described below

Shall not exceed the following limits for that area:

a. **That area within the territorial boundaries of the Waikato District Council:**

Monday to Saturday 7:30am to 8:00pm	50dBA (L₁₀)
Sunday 8:00am to 8:00pm	50dBA (L₁₀)
Monday to Sunday 8:00pm to 11:00pm	45dBA (L₁₀)
All other times	40 dBA (L₁₀)

b. Subject to subclause (c), all other areas -

Monday to Saturday 7:30am to 8:00pm	55dBA (L ₁₀)
Sunday 8:00am to 8:00pm	55dBA (L ₁₀)
Monday to Sunday 8:00pm to 11:00pm	45dBA (L ₁₀)
All other times	40 dBA (L ₁₀)

Activities which do not comply with Rule 9.5.2 shall be discretionary activities.

(Emphasis added)

6. You have asked whether the Consent Order enabled Field Days to operate with a resource consent (within the specified noise limits), or whether the Consent Order simply recorded the Parties agreement to increase the noise limits in their respective plans to levels that Field Days considered it was capable of operating within.
7. In our view, the Consent Order required Waipa District Council to include noise limits within its district plan that Field Days considered it could operate within (albeit with a resource consent). We note that the current Operative Waipa District Plan includes provisions relating to noise generated from “Non-Activity Days” and “Activity Days” in the Mystery Creek Events Zone that are similar but different to the rules as set out in the Consent Order.
8. While WDC was a party to the proceedings, the Consent Order did not require WDC to amend or include any provisions in its district plan.

Question (b): Is WDC in breach of the Consent Order?

9. In Field Days’ Submission, it is alleged that the Consent Order not only contemplated the introduction of noise provisions in the Waipa District Plan, but also contemplated the introduction of similar provisions in the Waikato District Plan. For completeness we record that the noise limits for the Waikato District were to apply to the areas on the other side of the Waikato River opposite the Mystery Creek Events Centre.
10. In the memorandum by counsel for the parties in respect of a proposed consent order, the parties agreed at paragraph (vi) that on activity days the noise controls are raised ...(A) The

daytime level **within** the territorial boundary of the Waikato District Council was to be raised to 55dBA (L₁₀).

11. There is nothing in the Consent Order that expressly requires or required Waikato District Council to incorporate those noise limits into its district plan.
12. WDC is not in breach of the Consent Order by not including in the PDP the same prescribed noise limits as are included in the Waipa District Plan. In our view, the noise limits for the Waikato District were included in the Waipa District Plan to address the concerns of residents in the Waikato District relating to noise emanating from activities in the Mystery Creek Exhibition Centre Zone, and to ensure that these residents could contact Waipa District Council if they considered the noise generated by "Activity Days" was unacceptable.

Question (c): Enforcement

13. Finally, you have asked whether rules in one district plan can control activities in another (neighbouring) district. The answer is no. WDC does not have jurisdiction to control activities within the Waipa District or vice versa.
14. We agree with the position taken in Council's s 42A Report for Hearing 12: Country Living Zone dated 20 April 2020 that noise generated is best managed in the district where it is being generated. To replicate the Waipa District Plan Rules relating to noise in the PDP confuses the issue as to how enforcement of the rule is undertaken. As it stands residents in the Waikato District can contact Waipa District Council if they believe the noise being generated from the Field Days/Activity Days is unacceptable. This means the onus is on Waipa District Council to investigate and manage in accordance with its district plan.

Please do not hesitate to contact us if you would like to discuss any of the above.

TOMPKINS WAKE



Bridget Parham / Kirsty Dibley
Partner / Senior Solicitor