

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2022] NZEnvC 121

IN THE MATTER OF an appeal under section 120 the Resource
Management Act 1991

BETWEEN PATRICK CULLINAN
(ENV-2022-AKL-00054)
Appellant/Applicant

AND KAIPARA DISTRICT COUNCIL
Respondent

Court: Environment Judge J A Smith sitting alone under s 279 of the Act

Date of Order: 1 July 2022

Date of Issue: 1 July 2022

CONSENT ORDER

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the amendments set out in Schedule 1;
- (2) the appeal is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

Cullinan v Kaipara District Council



REASONS

Introduction

[1] Mr Cullinan applied to the Kaipara District Council for land use consent under the Operative Kaipara District Plan to undertake a number of commercial activities on his property at 106 Moir Street, Mangawhai, which is zoned Rural land.

[2] In its decision dated 11 February 2022 the Council granted Mr Cullinan land use consent to operate a business processing and storing firewood for delivery and a workshop and storage facility for a local concrete foundation and fence hire business. However, the Council declined consent to a proposed commercial gymnasium on the site.

[3] Mr Cullinan appealed the Council's decision to the Environment Court seeking that consent to the commercial gymnasium on the property is granted, subject to appropriate conditions of consent.

[4] No other parties have given notice of an intention to become a party to the appeal under s274 of the Act.

Agreement reached

[5] Following direct discussions and Court-assisted mediation the parties have reached agreement on proposed conditions of consent for the gymnasium that the parties consider will ensure it is of appropriate size and scale and that adverse effects are properly managed such that the parties consider it would be appropriate for it to be granted consent. Key aspects of that agreement are:

- (a) the maximum membership of the gym shall be no more than 100 members and it shall not be occupied by any more than 25 members at one time;
- (b) no organised exercise classes are to held;
- (c) the roller door of the gym shall not be opened between 7pm to 7am;
- (d) there shall be no amplified music played other than a television set;
- (e) some traffic safety and upgrading work to the accessway (a jointly owned access lot) has already been completed by the Applicant and this is now

to be completed within two months of commencement of the consent, weather permitting;

- (f) provisions has been made for ongoing maintenance of the carparking area, by requiring the carparking area to be maintained in accordance with the Council's Engineering Standards 2011;
- (g) the s 128 review condition (condition 23) has been amended to improve its clarity and enforceability. It relates to all aspects of the consent, including the gymnasium; and
- (h) an advice note has been added recording that compliance with the Building Act 2004 is required. This is because a Certificate of Acceptance is currently being sought for the gym building.

[6] The parties have discussed condition 24 and consider it is unnecessary given the Council's ability to comprehensively review the conditions of consent under s 128 of the RMA, and should be deleted.

- [7] The parties consider the amendments proposed are appropriate because:
- (a) they clarify the nature of the gymnasium and its operation;
 - (b) they limit the membership and occupancy of the gym so that its intensity is controlled and any adverse effects from noise and traffic, on neighbouring amenity will be no more than minor;
 - (c) the upgrading works to the accessway, required of the consent holder, will improve traffic safety and the maintenance of the accessway; and
 - (d) the review condition gives the Council the ability to revisit aspects of the consent if considered necessary.

Consideration

[8] The Court has now read and considered the notice of appeal and consent memorandum of the parties dated 23 June 2022.

[9] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:


- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

Order

[10] Therefore, the Court orders, by consent, that:

- (a) resource consent RM190094 be granted, subject to the conditions of consent set out at Schedule 1;
- (b) the appeal is otherwise dismissed.

[11] There is no issue as to costs.



J A Smith
Environment Judge



Schedule 1

Additions shown in underlining and deletions in strikethrough

The following activities are granted resource consent subject to conditions:

- The processing and storing of firewood for delivery;
- The storage of a vehicle for event transport;
- A workshop and storage facility for a local concrete foundation and fence hire business; and
- A commercial gymnasium

Conditions of Consent

RM190094 – Patrick Cullinan

1. *The consented activities on site shall be carried out in accordance with the plans and all information submitted with the application formally received by the Kaipara District Council (“Council”) on 17 September 2018:*
 - *Application form, and assessment of environmental effects prepared by Pacific Coast Surveys, dated March 2019.*

Plan title and reference	Author	Rev	Dated
Site survey reference 2490	Pacific Coast Surveys	3	March 2021
Site survey proposed car park layout reference 2490	Pacific Coast Surveys	3	March 2019
Sediment retention pond reference 2490 sheets 1 to 2	Pacific Coast Surveys	2	August 2021
Shared access upgrading plans	Engineering Outcomes		15 March 2021
Report title and reference	Author	Rev	Dated
Traffic Effects Assessment	Engineering Outcomes	-	11 October 2017
Design of Access Upgrading Commentary	Engineering Outcomes	-	16 March 2021

Noise Assessment	Marshall Day	-	20 November 2019
Noise Monitoring and Assessment	Marshall Day	-	26 October 2021
Stormwater Assessment	Wiley Geotechnical	-	1 November 2021

Advice Note: Where there is any apparent conflict between the application and the consent conditions, the consent conditions shall prevail.

Charges

2. *The Consent Holder shall pay any subsequent further charges imposed under Section 36 of the Act relating to the receiving, processing, granting and monitoring of this resource consent within 20 days of receipt of notification of a requirement to pay the same, provided that, in the case of any additional charges under Section 36(5) of the Act that are subject to challenge, the Consent Holder shall pay such amount as is determined by that process to be due and owing, within 20 days of receipt of the relevant final invoice.*

Section 125 - Consent Lapse Date

3. *Under Section 125 of the Act, this consent lapses five years after the date it is granted unless:*
 - (a) An application under Section 125 of the Act is made to the Council before the consent lapses (five years) to extend the period after which the consent lapses and the Council grants an extension.

Pre-Commencement Conditions

4. *Prior to the commencement of any work authorised under this consent, the Consent Holder shall provide written verification that the person responsible for carrying out construction work holds public liability insurance to the value of \$1,000,000.00.*
5. *Prior to the commencement of any work authorised under this consent, the Consent Holder shall provide written verification that the Consent Holder's engineer responsible*

for design and supervision of the roading works holds professional indemnity insurance to the value of \$1,000,000.00.

Engineering Conditions

6. *Prior to commencement of construction works on the private access JOAL, a traffic management plan for user access shall be submitted to Council and approved by Council's Development Engineer.*
7. *The traffic management plan, approved under condition 6, shall apply for the duration of the construction works on the private access JOAL.*
8. *All works on the engineering plans approved under this consent and prepared by Engineering Outcomes dated 15 March 2021 are to be completed within two months of commencement of this consent, weather permitting, to the approval of the Council's Development Engineer, or their delegated representative. Compliance with this condition shall be determined by the following:*
 - i) *New passing bays on the shared access outside of the bends at the distance of 90m, 170, and 390-430m*
 - ii) *Two "shared space/speed advisory signs on the shared access one in each direction*
 - iii) *A convex mirror to address the visibility restriction to the North-west of the connection of the driveway connection onto the shared access 330m from Moir Street*
 - iv) *Vegetation trimming and removal north-west of the connection of the new internal site driveway to the shared access to the increase the sight distance in that direction to a minimum of 35 m*
 - v) *Upgrading of the passing bay on the internal driveway 40m form the shared access in accordance with Council Engineering Standards 2011*
 - vi) *An RG-7 sign "Keep Left" arrow on the internal driveway at the split on the approach to the crossing on the shared access.*
 - vii) *20km/hr speed limit signs in approved locations.*
 - viii) *Provision and approval of supporting documentation provided by the Consent Holder in support of the constructed works, including Producer Statements, completion certificates, works acceptance certificate, statement of compliance of as built works and as built plans, construction management plans, operation and maintenance plans and all other test*

certificates and statements and supporting information required to confirm compliance of the works as required by Section 3 of the Council Engineering Standards 2011.

9. *The Consent Holder shall ensure that the following works are constructed to the approval of the Council's Development Engineer, or their delegated representative:*

- i) *Upgrade the private access JOAL in accordance with approved engineering plans prepared by Engineering Outcomes dated 15 March 2021 and the Engineering Standards 2011.*
- ii) *Upgrade the car parking area in accordance with the approved proposed car park layout reference 2490 dated March 2019. The carpark is to be maintained in accordance with Council's Engineering Standards 2011 and a maintenance plan is to be provided including dust management measures, repair of potholes, clearing of swale drains and re-metalling of the carpark.*
- iii) *Upgrade the vehicle crossing to Moir Street to a sealed formation in accordance with sheet S03, S05 of the Engineering Standards 2011.*
- iv) *The consent holder shall ensure adequate construction monitoring of all construction works. The consent holder shall notify Council's Monitoring Engineer at key hold points for inspection. Council's engineers undertake suitable inspections during construction at key hold-points to enable them to confirm that the certification provided by the consent holder's engineer matches the design submitted.*

As a minimum, hold points shall include final inspection and approval of the vehicle crossing.

No work shall proceed beyond the above hold points until specifically approved by Council's engineers. Detailed supervision and certification upon completion as complying with the required standards by the consent holder's engineer shall be submitted to council for approval. The consent holder's engineer shall be a suitably qualified competent engineer, surveyor or contractor with recent and ongoing experience in road design and construction to the specific approval of Council.

10. *Within one month of the consent decision, the Consent Holder shall submit a maintenance plan for ongoing maintenance of the private access JOAL to the boundary of the site to Council and approved by Council's Development Engineer. The Consent*

Holder shall be responsible for ongoing implementation of the maintenance plan including all costs associated with JOAL maintenance.

11. *Prior to commencement of construction works for a stormwater management system, the Consent Holder shall obtain all necessary resource consents from Northland Regional Council and Kaipara District Council in respect of site earthworks and any discharges to land or water. Copies of resource consents and confirmation of permitted activity status shall be submitted to the Monitoring and Compliance Services Team Leader for approval.*
12. *The Consent Holder shall construct the stormwater management system in accordance with the design specified in the stormwater report by Wiley Geotechnical dated 1 November 2021 and the plans prepared by Pacific Coast Surveys reference 2490 rev 2 dated August 2021. The Consent Holder shall contact Council's Development Engineer on completion of the works to arrange an inspection to confirm compliance.*

Note: No part of the stormwater management system other than the discharge swale to Bob Creek shall be located on Council-administered esplanade reserve on Bob Creek.

12 A Gymnasium Conditions

- a. The maximum membership of the gym shall be no more than 100 members.
- b. The maximum occupancy of the gym shall be no more than 25 members at any one time.
- c. There shall be no organized exercise classes held at the gym.
- d. The roller door on the western façade of the gym shall not be opened between the hours of 7pm to 7am.
- e. There shall be no amplified music played at the gym, other than a television set.
- f. The consent holder will maintain, and provide to the Council, if required, records of the gym membership and attendance.

General Conditions

13. *Within one month of the consent decision, the Consent Holder shall submit approval from Fire Emergency NZ in respect of fire safety measures for the commercial activities for the approval of the Monitoring and Compliance Services Team Leader.*
14. *The Consent Holder shall submit written confirmation from Fire Emergency NZ that the fire safety measures approved under Condition 13 have been implemented in full.*
15. *The waterblaster equipment shall be stored and operated within the soundproofed shed located adjacent to the western workshop shed. Waterblaster machinery shall not be operated outside the shed.*

16. *The operating hours of all activities within the western workshop shed, other than staff meetings, and use of the waterblaster equipment within the soundproofed shed shall be restricted to 8.00am to 5.00pm Monday to Saturday, excluding public holidays.*
17. *The operating hours of all activities associated with the breaking down of logs for firewood shall be restricted to 8.00am to 5.00pm Monday to Saturday, excluding public holidays.*
18. *A total of fifteen car parks shall be maintained at all times on site to support the commercial activities.*
19. *No further commercial activities are permitted on site other than the gym, processing and storing firewood for delivery and the workshop and storage facility for a local concrete foundation and fence hire business. Should one or both of these commercial activities end and a new tenant sought, the Consent Holder shall submit information to Council's Monitoring and Compliance Services Team Leader to confirm that site activities would be the same or similar to the consented activities.*

Landscaping

20. *The consent holder shall submit a detailed planting plan for screening of the site from view from adjoining properties at 112, 106A and 106D Moir Street. The planting plan shall include:
 - i) *Prior to planting, the removal or management of all invasive weed species.*
 - ii) *Works undertaken for maintenance should include watering, weed control, cultivation, control of pests and diseases, removal of litter, checking of stakes and ties, trimming, pruning, topping up mulch and other works required to ensure planting maintains healthy growth and form.**
21. *The planting plan required under condition 20 of this consent shall be implemented within the first planting season following the granting of consent. The consent holder shall contact Council's Monitoring Team to arrange an inspection following completion to confirm compliance.*
22. *The amenity planting areas on the boundaries shall be maintained in perpetuity by the owner of the site. Any dead or dying plants within the screen planting area shall be replaced with equivalent plants at least 1m in height.*

Review and Duration

~~23.~~ *In accordance with Section 128 of the Resource Management Act 1991, the Council may undertake a review of the conditions of this consent relating to adverse effects on the environment arising from the intensity of the activities undertaken on the site, and noise of all activities authorized under this consent, two years after the commencement of this consent, and thereafter every five years. The review shall include use of gymnasium records required to be kept under condition 12A of this consent. ~~at any time during the duration of the consent in the event of an incident or significant change of circumstances under which the activity was consented.~~*

~~24.~~ *Resource Consent RM190094 shall expire on 1 March 2026 unless it has been surrendered or cancelled at an earlier date. This consent is granted with a limited duration of 5 years from the date of the decision, after which a new resource consent shall be applied for.*

Advice Notes

1. *The consent holder shall be required to pay to Kaipara District Council a Development Contribution under the Local Government Act 2002 of \$799.00 plus GST for each additional unit of demand for roading.*

A copy of Council's policy on Development and Financial Contributions included within the Long-Term Plan 2018/2028 can be obtained from Council offices in Dargaville and Mangawhai or downloaded from Council's website www.kaipara.govt.nz.

2. *The scope of this resource consent is defined by the application made to Council and all documentation supporting the application.*

3. *All archaeological sites are protected under the provisions of the Heritage New Zealand Pouhere Taonga Act 2014. It is an offence under that Act to modify, damage or destroy any archaeological site, whether the site is recorded or not. Application must be made to the Heritage New Zealand for an authority to modify, damage or destroy an archaeological site(s) where avoidance of effects cannot be practised.*

4. *If subsurface archaeological evidence (shell, midden, hangi, storage pits, etc) should be unearthed during construction, work should cease in the immediate vicinity of the remains and the Heritage New Zealand should be contacted.*

5. *In the event of koiwi (human remains) being uncovered, work should cease immediately and the tangata whenua of Te Uri O Hau shall be contacted so that*

appropriate arrangements can be made.

6. *The consent holder is required to comply with the requirements of the Building Act 2004.*