

HAURAKI DISTRICT COUNCIL

HEARINGS AND JUDICIAL COMMITTEE

MINUTES OF A MEETING OF THE HEARINGS AND JUDICIAL COMMITTEE HELD IN THE COUNCIL CHAMBERS, WILLIAM STREET, PAEROA ON MONDAY, 13 MAY 2019 COMMENCING AT 9.15AM

PRESENT Cr P A Milner (Chairperson), Cr G R Leonard (Deputy Chairperson) and Cr A Spicer

IN ATTENDANCE Messrs P Thom (Group Manager - Planning & Environmental Services), Mrs W Harris (Manager, Regulatory Services), Ms Louise Cowan (Resource Consents Team Leader), Christina Walker (Consultant Planner) and Ms C Black (Council Secretary)

APOLOGIES

There were no apologies.

LATE ITEMS

There were no late items.

DECLARATIONS OF CONFLICTS OF INTEREST

There were no declarations.

CONFIRMATION OF MINUTES

RESOLVED

THAT the minutes of the Hearings and Judicial Committee meeting held on Monday, 29 April 2019 be confirmed and are true and correct record.

HJC19/15

Leonard/Spicer

CARRIED

The Chairperson opened the hearing at 9.30am.

LIMITED NOTIFIED LAND USE VARIATION: MILLY'S EDUCARE, 437 HAURAKI ROAD, TURUA (2567615)

Report #2563992

Appendix A: #1088173 – Site Plan

Appendix B: # 1056438 – Original Plan

Appendix C: #2410373 – Current Application

Appendix D: # 2427954 and 2506690 – Further Information provided.

Appendix E: Notification Report

Appendix F: Written Approval

Appendix G: Submissions received

Appendix H: Hegley Acoustic Consultants Report

In attendance:

(On behalf of Applicant) Lyn Williams

Applicant - Amelia Loudon (owner/operator Milly's Educare Centre)

Consultant Planner – Christina Walker

Acoustic Engineer - Neville Hegley

Submitters – Freya van der Linden and Blair Fowlie

Mea Rapata and Simon Marr

Statement of Evidence – Applicant: Lyn Williams (on behalf of Amelia and Adam Louden) (doc#2591363)

Lyn Williams tabled a copy of her written evidence on behalf of Adam and Amelia Louden and read out.

At the conclusion of Mrs Williams's evidence, Committee members were invited to ask questions for clarification on any points Mrs Williams had made.

Cr Spicer asked for clarification of the rules as regards to noise levels and the hours of operation.

Lyn Williams stated that 50 decibels is the noise level allowed between the hours of 7.00am - 10.00pm. She advised that they are licensed to operate from 7.30am – 5.30pm but currently operate from 8.00am – 4.30pm. Children mainly attend between the hours of 9.00am - 1.00pm and then number drops off after that time.

Cr Spicer asked would the children have an 'inside' and 'outside' time.

Lyn Williams stated the children have inside and outside time. The programme they operate is based on free play so they can be anywhere but they do encourage children to use their words and not screaming behaviour.

Cr Leonard asked Mrs Williams for clarification in relation to the consented hours 7.30am – 5.30pm.

Mrs Williams stated that they are consented to operate from 7.30am-5.30pm.

In response to the Chairman's question of what Mrs Williams's qualifications were in relation to planning, Mrs Williams stated that she is not qualified in the planning field but has held management roles within the DoC and that she is the mother of Ms Louden.

Cr Leonard stated that in the original consent, the clause required that a 10m wide buffer zone was acceptable, what has changed now. Why does there have to be a fence now.

Lyn Williams stated that a double paled fence was to enable use of the area within the buffer, a garden area. The buffer zone was a recommendation by the acoustic consultant.

They could make changes down the track, the acoustic report was done on projected noise. Now it has been monitored on the actual noise emitting when the centre is in operation, and they now know they can comply so have sought an amendment to this condition.

Statement of Evidence - Submitter – Blair Fowlie (as affected party)

Mr Fowlie presented his submission.

He advised that the correct address of their property is 441A Hauraki Road, Turua due to an error noted in documentation.

Two adults and three children reside at the address.

When viewing the property with the real estate agent, he stated they were not told about the proposed change applied for by the childcare facility.

He stated that they are first home owners.

Removing the buffer zone means that the activity will be 7m from his bedroom.

If the buffer zone was going to be removed, he and his partner would not have bought it.

He stated that he works in the forestry industry which is shift work and he needs to sleep during the day.

Close proximity to the boundary is where the buffer zone will be.

He advised that they own 4 dogs. This activity will disrupt the dogs causing them to bark.

He believed they have been bullied and that the Loudens have misled them. They are prepared to take legal action if the buffer zone is removed.

He stated that the real estate agent told them the buffer zone would stay and now it is not.

Cr Milner asked if Mr Fowlie was agreeable with the number of children increasing from 25-30 if the buffer zone stayed.

Mr Fowlie responded that he was agreeable to the increase in the number of children if the buffer zone stayed.

Cr Leonard asked Mr Fowlie with reference to the noise issue and the existing buffer with the 25 children, had he been woken up by children screaming.

Mr Fowlie stated he had sometimes been woken. He stressed that the fence right up to the boundary is not fair. There would be a big difference with noise level.

Leonard asked Mr Fowlie if he believed the height level of the fence will make a difference.

Mr Fowlie responded that he believed the difference would be minimal.

Cr Spicer asked Mr Fowlie if he considered that a 2m high, double paled fence would make a difference.

Mr Fowlie responded that if he believed it would not, the sound will still travel right up to the boundary. His major concern was that with broken sleep he would be fatigued which may cause him to have an accident in his workplace.

Mr Fowlie stated that he has been working in the forestry sector for almost one year.

Statement of Evidence - Mea Rapata (as affected party)

Ms Rapata stated that she misunderstood what was involved in the process today. She referred to the original application.

Ms Rapata stated that Brian Day (Ms Rapata's father), Queenie Mana, Ms Rapata's partner – Simon Marr and herself plus their two daughters aged 7 and 3 all reside at 441B Hauraki Road, Turua. It is a communal type dwelling.

Original statement – removing the fence and reducing buffer. Ms Rapata stated that this is detrimental to the amenity of their property and an inconvenience to their life.

Level of disturbance would be similar to a second storey dwelling.

She believed that the sound will travel.

Ms Rapata had calculated that the duration of operation would be approximately 239 days out of 365 days of the year (excluding public holidays).

She stated that their primary living areas and sleeping areas are on the same side as the day care centre building.

They use the outside grass area on that side of the building. She believed their health and wellbeing is compromised.

Two residents of their home have chronic illnesses. Ms Rapata stated her partner is unwell and her father has a diagnosis of emphysema.

She stated that they are unconventional. Simon's diagnosis has led them to live a different life. Their children are home schooled so they are at home much of the time and also two of the residents are elderly.

- The amenity will be compromised.
- The buffer zone is the main issue.
- This will impact on them in the foreseeable future.

Ms Rapata raised the point that her main concern is that her partner would struggle to live comfortably due to the noise.

She stated she was sceptical that the noise will be addressed adequately.

She stated that the noise level was found to be 48 and 49 decibels at the living room and kitchen window, therefore the likelihood of a breach is quite high.

Ms Rapata referred to issues identified around NZ such as this. She had found a number of cases in her research which revealed there is good reason for a buffer zone.

She stated she wished to be amicable with her neighbour. She did not want to be the person standing there monitoring the noise and reporting to Council. This is a commercial activity and she wanted to see Amelia Loudon's business do well.

Ms Rapata stated that her family have had the property for 32 years. Extenuating circumstances have caused them to oppose this application due to illnesses in the family.

The permissible levels of noise are just not suitable to them.

Ms Rapata referred to 7.10.1 – summary of environmental factors – being less than minor.

Ms Rapata stated she found this insulting. Reports are subjective. There is an effect on her family.

In conclusion, she requested that the condition of a buffer zone remain.

Cr Spicer asked what Ms Rapata's opinion was on the 2m double paling fence and screen plantings.

Ms Rapata stated that it looks good, well utilised but will not stop the noise. Children can still make noise as they are unpredictable.

Cr Leonard asked Ms Rapata if the buffer zone goes, do you believe there will be more noise, lesser amenity and that noise levels will be breached.

Ms Rapata referred to Mr Hegley's report. A breach of 50 decibels is almost certain but they would accept 25-30 decibels.

Consultant Planner – Christine Walker

Ms Walker presented her planning report and asked that the report be taken as read and summarised key issues.

The site is zoned residential and has been operating as a childcare facility since consent was approved in 2016. The Committee is only able to consider the effects associated with the proposed changes to the activity and cannot revisit the effects associated with the activity as a whole.

Environmental effects are considered less than a minor and explained key factors to consider.

- Section 127 – only consider effects of ‘changes’ e.g. removing buffer area.
- Permitted baseline –where an effect is permitted can only consider times when it goes above the required level.
- Existing environment is also relevant to the assessment of effects of the proposal on the environment under section 104(1) (a).
- Noise up to 50 decibels – is permitted within the Residential Zone.
- Considering the breach is minor (less than minor) as regards to noise effects, it has been recommended for approval.

Mr Hegley (Acoustic Engineer)

Mr Hegley presented his noise assessment.

He stated that the 50 decibels reading is related to ‘noise energy’. Mr Hegley explained how the calculation is made.

No single value should be more than 55.

It is the ‘control’ of noise not the elimination of noise.

A level of 50 decibels is a relatively stringent level. National health regulations state 50 decibels is classified as ‘reasonable’. This level is designed for the typical person who would find it noisy.

Mr Hegley explained the acoustic assessment process in more detail.

This childcare centre is based on the philosophy of free play and this would assist with maintaining relatively peak free incidents of noise, unlike structured care facilities or schools with set intervals, where there is an explosion of noise produced as children are released from class on break. Lunchtime is likely to be the noisiest time, based on the current operating procedures of the facility.

He advised that he has undertaken assessments of many other childcare centres over the years. He has taken the measurements of noise of this centre and has used the noise of a typical centre that is run reasonably well in assessing the noise levels.

Section 16 – referred as best practical option on whether an activity is compliant or not.

The operator is required to quieten children down in any case if they are unruly.

Noise is measured 1 metre from the boundary in the case of a two storeyed house.

This application has been modelled on taking measurements from other day care centres.

The buffer zone will remain as a garden area and will have flower plots in this area. Half the area will be a quiet zone. This will remain a garden not a play area.

It may need to be part of a condition of consent that children not play in this area.

Mr Hegley explained using the layout on the GIS map of the site and where in relation to the neighbour's properties he had tested the noise level, being inside the neighbour's boundary and outside the boundary.

Mr Hegley stated that there is only an increase of 3 decibels if readings are taken further back on the neighbour's property.

There will never be 30 children playing outside at any one time. This would be very unusual.

There would be minimal vehicle movements.

In assessing the affects of noise level, acoustic engineers over-predict i.e. take the worst case scenario to be sure.

Mr Hegley concluded his evidence.

Cr Leonard asked with an extra 5 children what would be the decibel increase. She commented that this technology was not used for the first application of consent.

Mr Hegley responded that an extra 5 children would lead to an increase of about 0.1 decibel which is not a noticeable change.

Readings have been taken on the buffer zone without gardens in place.

Cr Leonard asked Mr Hegley if a fence is a good buffer.

Mr Hegley stated that an appropriately designed and constructed acoustic fence will give a 15 decibels reduction.

Cr Leonard queried if acoustic fencing timber was used in construction and buffer battens were installed on the joints, would this reduce a 50 decibel reading at all.

Mr Hegley replied that it would reduce the decibel reading.

Further gardens will deter children from playing there close to the fence.

Ms Van der Linden asked what difference a 10m setback would make. The noise would go up 2 decibels.

Mr Hegley stated that he has visited centres unannounced. He measures the noise for half an hour. Children generally cannot consistently keep making noise for very long.

Cr Milner asked Mr Hegley how many childcare centres has he monitored?

Mr Hegley responded that he had monitored 500 childcare centres over 40 years and that he had a qualification MSC of South Hampton University in acoustics.

Working in acoustics for civil engineering and acoustics for 40 years. District Court and High Court hearings and 2,000 Council hearings.

Cr Spicer asked if the current fence on 441B will change a lot. What difference will it make on the noise?

Mr Hegley stated that a pool style fence - no attenuation; 50% open - 3 decibels.

Butted and not battened 6-7 decibels.

No gaps and overlapped - a 15 decibel reduction.

Cr Spicer asked if the buffer zone and fence were removed what would be the difference in decibels.

Mr Hegley replied up to 2 decibels difference on the neighbour's side because the children would be closer.

Council Staff Planner Christina Walker

Ms Walker identified that the key consideration in this instance relates to noise. It appears to be the consensus that traffic, visual and amenity effects are not the most concerning matters. Ms Walker suggested that in order to provide a compromise for Submitters, the Applicant may wish to agree to a condition being included to restrict active play within the 10m setback area, and this could be achieved by not allowing play equipment or similar to be positioned in this location.

Ms Walker stated that in her opinion the proposal was consistent with the objectives and policies of the Hauraki District Plan and Part II of the RMA.

Ms Walker reiterated her conclusion that based on the advice provided by Hegley Acoustic Consultants and in her own professional assessment, the proposed changes to conditions will result in less than minor effects on the environment and the adjoining neighbours.

There is no new evidence presented to change recommendation. Issues can be mitigated and are considered as being no more than minor.

Applicants Right of Reply

Mrs Williams referred members to the site plan showing northern boundary sandpit, water play and paint area. Children are generally attracted to this area. The lunch area is within an archgola structure with drop down curtains. The children are supervised in that area.

The relocation to move the fence to the actual boundary. Relocation of fence is important. Double paled fencing is needed to reduce noise.

55 decibel – green line – pool fence – sounds travels through this fence.

Mrs Williams acknowledged and appreciated Ms Rapata for her submission.

Mrs Williams stated that any upset children will be automatically be quietened and calmed.

Mrs Williams conveyed her empathy for Ms Rapata's partner.

She stated that she supported Ms Rapata's philosophy.

There are plans to plant some native plantings in the bog area and use it as a shade area for the children to enjoy bird song.

Cr Milner referred to the condition (10m buffer area) that there is no active play in this area.

Ms Louden gave her support of this condition. She noted it was not a great play space anyway as the area is rather wet.

Mrs Williams stated that the areas for car parking and the service area will remain the same.

Mrs Williams thanked the Committee for hearing their application.

Cr Leonard asked the applicant if the fence will carry on along the whole boundary.

Ms Louden stated that the fence will go up to the service area.

Cr Leonard concluded that she believed that the decision made today would protect all parties into the future.

The Chairperson closed the hearing at 11.00am and advised that Council's decision was reserved until it had considered the evidence presented and all other relevant matters.

The Chairperson adjourned the meeting at 11.00am for a tea break.
The meeting reconvened for deliberations at 11.13am.

DECISION

LIMITED NOTIFIED LAND USE VARIATION – MILLY'S EDUCARE, 437 HAURAKI ROAD, TURUA

RESOLVED

THAT the report be received, and

THAT pursuant to Sections 104, 104B and 127 of the Resource Management Act 1991, Hauraki District Council grant consent to change conditions 2 and 14 and cancel condition 15 of Land Use Consent LUSE-202.2016.00000456.001 originally granted on the 12th February 2016.

The recommended changes to conditions are shown below, with deletions shown ~~struck through~~ and additions shown underlined

2. The childcare facility shall accommodate a maximum of ~~25~~ 30 children at any one time.

14.
 - a. No play structures or equipment to be constructed/located within the 10m setback area from the southern boundary of the site as shown on the attached plan titled "Figure 1: Site plan showing location of Acoustic Fence and the 10m set back area for LUSE-202.2016.00000456.002 – 437 Hauraki Road, Turua, Adam and Amelia Louden".
 - b. That the southern boundary of the site be fenced with a 2m high acoustic fence, constructed with a material that has a minimum surface mass of 10kg/m² with no gaps in the fence construction as shown in "Figure 2 – Close Boarded Timber Fence" attached to this decision.
 - c. The acoustic fence shall be constructed in the location identified on the attached plan titled "Figure 1: Site plan showing location of Acoustic Fence and the 10m set back area for LUSE-202.2016.00000456.002 – 437 Hauraki Road, Turua, Adam and Amelia Louden".

Reasons

The reasons for this recommendation are as follows:

- 1 Any adverse environmental effects resulting from the proposal are deemed to be less than minor in accordance with the statutory requirements of the RMA. Specifically, the proposed changes to conditions will not result in any unacceptable noise effects or changes to the character and amenity of the site.
- 2 Expert evidence has been provided from a qualified acoustic engineer that has confirmed that, subject to conditions, the operation of the childcare facility will comply with the permitted Residential Zone noise standards.
- 3 The effects of the change to the activity will be less than minor when consideration is given to the permitted baseline and the existing environment against which the proposal has been considered.
- 4 Perceived loss of amenity for the adjoining sites to the south can be mitigated by the combination of the installation of the 2m high close boarded fence on the boundary and a restriction on the location of play structures or equipment within the 10m setback area.
- 5 That additional conditions have been imposed as offered and agreed to by the applicant.
- 6 The proposal is not contrary to Section 5, 6 or 7 of the Resource Management Act 1991 (RMA). There is nothing in the proposal that would conflict with the principles of the Treaty of Waitangi (Section 8). Overall, the application would not offend any of the matters contained within Part 2 of the RMA.
- 7 The application is not contrary to the relevant objectives and policies of the Hauraki District Plan.

HJC19/16

Milner/Spicer

CARRIED

The meeting closed at 12.05pm

CONFIRMED

P A Milner
Chairperson

29 July 2019