

# Decision following the hearing of an application for resource consent under the Resource Management Act 1991

## Proposal

To hold up to 12 concert events at Eden Park in any calendar year, performed by no more than six different artists or acts (excluding supporting acts).

This resource consent is **GRANTED, subject to conditions**. The reasons are set out below:

<b>Application number:</b>	LUC60434909
<b>Site address:</b>	42 Reimers Ave, Mt Eden (Eden Park)
<b>Applicant:</b>	The Eden Park Trust
<b>Hearing commenced:</b>	16 October 2024
<b>Hearing panel:</b>	Richard Blakey (Chairperson) Justine Bray Kitt Littlejohn
<b>Appearances:</b>	<p><u>For the Applicant:</u> Russell Bartlett KC (Legal) Jade McGrath (Legal)</p> <p>Witnesses: Nick Sautner (CEO) Brett Winstanley (CFO) Bronwynne Howse (Engagement) Chris Mintern (Operations) Claire Baxter-Cardy (Fringe District) Geoff Jones (Promoter) (15 mins) (MS-Teams) Ren Blair (Board / Ngāti Whātua) (MS-Teams) Josie Katene (Cleaning and Maintenance) Jaz Kapow (Site Management) Cara Maria (Resident) Sandra Khouri (Resident) Kathryn Marshall (Resident) Shelley Lomas (Resident) Todd Langwell (Traffic) Chris Day (Noise) Dr Peter Phillips (Social) Mark Vinall (Planning)</p>

Tabled Statements

Ben Skelton  
Bruce & Deidre Wild  
Samantha Jukes  
Ministry of Education  
Auckland RSA

Albert-Eden Local Board

Represented by Kendyl Smith

For the Submitters:

Susie Ballantyne with Andrew Short appearing as witness  
(MS-Teams)

Jose Fowler

Hospitality NZ represented by Steve Armitage (CEO)

David French

Sally Petersen

Anthony McGivern

The CarbonCycle Company Limited represented by  
Richard Wallis

Eccles Entertainment Ltd represented by Brent Eccles

Graeme Hodgson

William Reginald Barnes

Paddy Callesen speaking to joint submission with Alex  
Callesen and own submission

Live Nation represented by Mark Kneebone (MS-Teams)

Holly Gooch

The Eden Park Neighbours Association (EPNA)  
represented by Colin Lucas

Colin Lucas speaking to his own submission

Sir Bryan Williams

Dominion Road Business Association represented by Gary  
Holmes

Eden Park Residents Association represented by Anthony  
(Tony) Wright, Shona Tagg & Jeremy Todd

Victoria Toon

Dr David Gilbert

Amanda (Mandy) McMullin

Lambert Hoogeveen

For the Council:

Warwick Pascoe, Principal Project Lead

Brooke Dales, Planner (consultant)

	Ian Clark, Traffic Engineer (consultant – also speaking on behalf of Auckland Transport) Jon Styles, Acoustic Specialist (Consultant) Randy Leung, Council Team Leader - Environmental Monitoring (MS-Teams) Scott McArthur (consultant planner – Auckland Transport) Todd Hurley (Event Planning Lead – Auckland Transport) Bevan Donovan, Hearings Advisor
<b>Hearing adjourned</b>	18 October 2024
<b>Commissioners' site visit</b>	2 October 2024
<b>Hearing Closed:</b>	8 November 2024

## INTRODUCTION

1. This decision is made on behalf of the Auckland Council (**the Council**) by Independent Hearing Commissioners Richard Blakey (Chairperson), Justine Bray and Kitt Littlejohn appointed and acting under delegated authority under s.34A of the Resource Management Act 1991 (**RMA**).
2. This decision contains the findings from our deliberations on the application for resource consent made by The Eden Park Trust (**EPT**, or **Applicant**) and has been prepared in accordance with s.113 of the RMA.
3. The application was publicly notified on 5 August 2024 at the request of the Applicant, and following the Council's determination on notification dated 23 July 2024. By the end of the submission period (2 September 2024) a total of 2,140 submissions were received, with 2,001 in support, 10 neutral and 129 in opposition. These totals exclude five submissions (five in support and one in opposition) that were withdrawn following the close of submissions.
4. Two late submissions were received (in support of the application). As noted at the commencement of the hearing, the Panel adopted the recommendation in the agenda report to accept these submissions.

## SUMMARY OF PROPOSAL AND ACTIVITY STATUS

5. This Applicant seeks an increase in the number of concerts that can be held in a calendar year, from six to 12 where these events are performed by up to a total of six different artists/acts within the same time-period. The Assessment of Environmental Effects report (**AEE**) prepared in support of the application advised that this will provide the opportunity for EPT to offer promoters the ability to confirm multiple night concert events and provide certainty in terms of securing artists, and for organising and marketing the events. It goes on to say that the cap on artists/acts will ensure there are no additional pack-in and pack-out activities over and above the six concert events per year that are already consented.

6. In this manner the application represents a change from the consent that EPT obtained in January 2021 (**Concert Consent**) that enabled it to hold up to six concerts per 12-month period. This consent was subject to 59 conditions relating to number and frequency and timing of concert events, noise limits and monitoring, management plans and pack-in and pack-out limitations. Some of these conditions have since been subject to amendment through variations made under s.127 of the RMA, primarily on a one-off basis, but also involving a permanent change to define the number of concerts on a calendar-year basis, rather than being defined over a 12-month period. The background to the Concert Consent and the subsequent variations obtained are described in the AEE at sections 2 and 4.
7. The application therefore seeks the following changes to the operational parameters for concert events:<sup>1</sup>
  - (a) To allow up to 12 concert events in a calendar year where these events are performed by up to a total of six different artists/acts. This provides flexibility for an artist/act to perform multiple concert nights. Placing a cap on the total number of artists/acts limits the number of pack-in and pack-out activities in a calendar year to six (noting that the Concert Consent conditions limit the number of concerts that can be held in a 28-day period to four concert events and this will be maintained).
  - (b) To provide for concert events on a Sunday evening. The Concert Consent presently only provides for concerts on a Sunday preceding a Public Holiday.
  - (c) To increase the concert duration during weekdays to 5 hours and have a finish time of 11pm for all concerts.
  - (d) Adjust the noise monitoring conditions to provide for measurements from the mixing desk and a night-time noise limit of 45dB L<sub>Aeq</sub> and allow unrestricted pack-in and pack-out activities to occur over night within the stadium.
  - (e) Allow sound checks to occur during the weekday and be finished by 8pm.
  - (f) Update the stadium lighting condition(s) to reflect the capabilities of the upgraded LED lighting installed within the stadium.
  - (g) Provide for truck movements from Gate Q (and onto Sandringham Road) for pack-out following the completion of a concert event.
8. The application and the Council's Agenda report were in agreement that resource consent is required for the proposal because the application to provide for up to 12 concert events in a calendar year is a **non-complying activity** pursuant to I310.4.1(A15) of the AUP.

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<sup>1</sup> As described in the AEE at section 5.2. Although expressed as changes to the Concert Consent, the application in fact seeks a new consent for concerts at Eden Park, one of the conditions of which is that the Concert Consent will be surrendered via s.138 of the RMA, and thus effectively replaced by any new consent granted.

9. Through the hearing other operational aspects of the proposal were clarified, and we set out later in this decision why we conclude that consent under I310.4.1(A12) is also required, as a restricted discretionary activity. However, this does not change the overall activity status as described above.

## PROCEDURAL MATTERS

10. A number of procedural matters arose at the pre-hearing stage and through the hearing itself. These are detailed as follows:
- (a) The Panel issued Minute 1 on 7 October 2024 to request the applicant to confirm whether any additional consents were required under I310.4.1 in respect of the activity categories for fireworks and helicopter standards (as noted above). This was responded to by Mark Vinall, the Applicant's planning consultant, by way of a Memorandum dated 1 October 2024. This explained the nature of typical fireworks and the way in which these were subject to conditions of consent, as well as the incidence (or otherwise) of helicopters associated with concerts. Further to the comment at paragraph 9 above, we address this matter in more detail later in this decision.
  - (b) The Panel issued Minute 2 on 9 October 2024 in respect of correspondence provided by Auckland Transport (**AT**) to the Council and which was forwarded to the Panel for a response. In particular, this correspondence invited the Panel to issue a further minute to request that the Applicant provide a response to the issues of concern to AT. Minute 2 noted that AT was not a submitter, and that its concerns were known to the Applicant and the Panel through its original memorandum (as part of the hearing agenda). The information submitted through the Council was therefore not formally received, with Minute 2 advising that AT would have the opportunity to respond to the Applicant and submitter evidence as part of the Council response during the hearing.
  - (c) Minute 3 was issued on 22 October 2024 following the adjournment of the hearing to confirm receipt of tabled statements from Ben Skelton and Graham Gibson (the latter being on behalf of the Auckland RSA).
  - (d) Following consideration of the Applicant's Reply, Minute 4 was issued on 24 October 2024 to allow for the receipt of comments from the Council and submitters in respect of the updated proposed conditions attached to the Reply, along with provision for a supplementary reply from the Applicant. Comments from five submitters and from the Council were received on 5 November 2024, and the Applicant's response (via an email from Mr Vinall on behalf of the EPT) was received on 7 November 2024.
11. Following receipt of comments on the conditions, the Panel determined that the hearing could be closed and Minute 5 was issued to this effect on 8 November 2024.

## RELEVANT STATUTORY PROVISIONS CONSIDERED

12. In accordance with s.104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and ss.104, 104B, 104D and 108.

## RELEVANT STANDARDS, POLICY STATEMENTS AND PLAN PROVISIONS CONSIDERED

13. In accordance s.104(1)(b)(i)-(vi) of the RMA, the Panel has had regard to the relevant policy statements and plan provisions of the AUP, as identified at section 14 of the s.42A report, being:
- The National Policy Statement on Urban Development 2020;
  - The Regional Policy Statement (Chapter B of the AUP);
  - 1310 Eden Park Precinct;
  - Chapter H26 Special Purpose – Major Recreation Facility Zone;
  - Chapter E24 Lighting;
  - Chapter E25 Noise and vibration;
  - Chapter E27 Transport; and
  - Chapter E40 Temporary Activities.
14. The Panel also considered the following other matters to be relevant and reasonably necessary to determine the application in accordance with s.104(1)(c) of the RMA:
- The submissions on the application; and
  - The comments from the Albert-Eden Local Board;<sup>2</sup> and
  - The Auckland Plan 2050.
15. All s.104 considerations are “*subject to Part 2*” and the Court of Appeal<sup>2</sup> has held that consent authorities “*must have regard to the provisions of Part 2 when it is appropriate to do so*”. The Court of Appeal went on to find that there may be situations where it would be “*appropriate and necessary*” to refer to Part 2 when considering consent applications, including where there is doubt that a plan has been “*competently prepared*” under the RMA.
16. The Panel finds that the AUP, in relation to this proposal, has addressed the relevant Part 2 matters and there are no identified issues with the competence of its preparation. Nevertheless, we accept the legal submissions made in respect of Part 2 and the manner by which it should inform our overall statutory discretion in respect of the application. We discuss this aspect in more detail later in this decision.
17. We also find that the relevant provisions of the district plan provisions of the AUP have “*given effect*” to those of the Regional Policy Statement contained within Chapter B of the AUP. Accordingly, we have relied primarily on the relevant zone and Auckland-wide provisions of the AUP in our consideration of this application.

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<sup>2</sup> Noting their mandate to be involved in resource consent matters via s.15 of the Local Government (Auckland Council) Act 2009.

## LOCAL BOARD COMMENTS

18. The Council received comments on the application on 9 September 2024 from Rex Smith, the Alternate Resource Consent Delegate for the Albert-Eden Local Board (**Local Board**). The Local Board's comments were included within the Council's agenda report and were generally in support of the application, but made reference to a number of points that it considered required further attention. Because a representative of the Local Board subsequently spoke at the hearing, we summarise its position later in this decision as part of the summary of submissions.
19. The Panel has taken the Local Board's comments into consideration as part of its overall findings.

## SUMMARY OF EVIDENCE HEARD

### Agenda report

20. The Agenda report for the hearing was prepared by Brooke Dales, the Council's Consultant Planner, in accordance with s.42A of the RMA. Mr Dales' Agenda report provided an overview of the application, and an assessment against the relevant provisions of the AUP and RMA, with reference to the expert assessments provided by the Council's specialists, the submissions and the aforementioned comments received from the Local Board.
21. The Agenda report also noted that the proposal would generate both positive and adverse effects, and in respect of the latter Mr Dales noted that there would be adverse effects that cannot be fully internalised or avoided, remedied or mitigated, and would be most pronounced on the day/night of the concert(s). Overall, however, it was his conclusion that:<sup>3</sup>

*"...the identified adverse effects of the proposal are able to be adequately avoided/remedied/mitigated to be minor overall from a resource management perspective, subject to conditions of consent. This also leads to a finding on balance that the actual and potential effects of the proposal are acceptable overall. The proposal is also considered to be consistent overall with the objectives and policies of the relevant statutory documents including the [NPS-UD], the [RPS] and the [AUP]."*
22. In this regard, Mr Dales advised that in his view, the proposal would pass both gateway tests of s.104D(1) and is therefore able to be assessed on its merits under s.104. He went on to conclude that the proposal is worthy of consent, subject to proposed conditions (that were set out at Attachment 8 to the Agenda).
23. Further reasons were set out in Mr Dales' 'reasons for the recommendation' at pages 53-54 of the Agenda. We will refer to those reasons where relevant later in this decision.

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<sup>3</sup> Agenda, at p.10

24. Mr Dales' Agenda report drew on the advice and recommendations of the Council's specialists who had reviewed the proposal, being Jon Styles (Acoustic Consultant), Ian Clark (Transportation Consultant), and Dr Gillian Stewart (Social Effects Specialist). Mr Clark's assessment was informed by input from Neil Stone, a Principal Development Planner at AT.
25. The legal submissions and evidence presented at the hearing responded to the matters identified in the Agenda report, the application itself and the submissions made on the application. The submissions and evidence presented at the hearing from all parties is set out in summary form below. Further particular points included in submissions and evidence are addressed within our subsequent assessment of the matters in contention where applicable.

### **Applicant's evidence**

26. **Russell Bartlett KC** provided legal submissions on behalf of EPT and described the overall nature of the application. His submissions provided an overview of the relevant policy framework and statutory considerations, including 'The Auckland Plan 2050' as a relevant "other matter" (per s.104(1)(c) of the RMA), and also spoke to the applicability of Part 2 considerations to our overall decision. It was his submission that the proposal meets the s.104D(1) gateway test, and in this regard acknowledged that while adverse effects are not minor, they would be acceptable. Mr Bartlett submitted that the objectives and policies were 'tailor-made' for the proposal, which contemplate the need to manage adverse effects, and the proposal would be consistent with, and give effect to, the relevant provisions.
27. Mr Bartlett also highlighted the funding challenges faced by the EPT, and this is a key difference to other parks and stadia that are owned and operated by the Council. He noted that the potential income from an increased number of concerts will be applied to the maintenance and development of Eden Park, all for community benefit.
28. **Nick Sautner** is the Chief Executive Officer of EPT and he presented evidence to describe the proposal and explain the EPT's experience of hosting concerts at Eden Park since 2021; the need for greater utilisation of Eden Park; how more concerts can be hosted without displacing cricket and rugby; and the benefits that the proposal will deliver for the local area and more widely. His evidence also explained the features, facilities and amenities at Eden Park that make it suitable for additional concerts; the feedback that EPT has received on concerts to date; Eden Park's broader community role; and the rationale for the changes sought to achieve more consistent parameters for attracting concert events.
29. Mr Sautner also clarified in response to questions the work underway in respect of a 'traffic summit'; the EPT's position with respect to integrated ticketing; and the changing nature of sports crowds in the past few years.
30. **Renata Blair** is one of the Trustees of the EPT, appointed by the Crown under cl.20.2(a) of the EPT's Trust Deed (**Deed**) in 2018 as a representative of Māori and the local iwi. His evidence described the EPT and the Deed, and the significance of



the site to Māori and the way in which additional concerts would provide for the expression of Māori culture and to assist the Māori economy. Mr Blair attended the hearing remotely and provided an overview of the EPT Board's input as to further consultative work underway in respect of transport matters.

31. **Brett Winstanley** is the Chief Financial Officer for EPT, and he provided evidence that explained the importance of hosting concerts for Eden Park's financial sustainability and described the positive effect that increasing the number of concerts, and securing the Park's financial sustainability, would have on the wider community.
32. **Bronwynne Howse** is EPT's Communications Manager. Ms Howse's evidence explained the communications and engagement that EPT has undertaken as part of this consenting process, and what it does before, during and after events at Eden Park. She also described the EPT's experiences associated with hosting concerts at Eden Park to-date, and the positive feedback that it has received in respect of these events. In particular, she described the engagement undertaken at the pre-lodgement stage and the efforts made to encourage people to have their say during the consenting process. Ms Howse also clarified the engagement undertaken with the Local Board, the Eden Park Neighbours Association and consultative aspects of the traffic summit.
33. **Chris Mintern** is the General Manager of Operations at EPT and is responsible for all planning to ensure that the venue is fit for purpose and processes are in place to mitigate risk on the day or night of an event at Eden Park. His evidence described how concerts are currently run at Eden Park and explained the use and role of the Operations Management Plan – Concerts (**OMP-C**)<sup>4</sup> and EPT's event-management approach, as well as the feedback loops in place to enable plans to adapt and improve. He also explained the rationale for some of the changes sought to the current operational requirements placed on concerts at Eden Park.
34. **Claire Baxter-Cardy**: As representative of 'The 'Fringe District', Ms Baxter-Cardy stated that the increased frequency of concerts would enable Eden Park to develop *"an even deeper connection to Auckland and its people, on a global, cultural, environmental, and financial level, all of which are critical in responsible economic growth, stability, and sustainability of town centres and small business, which is the back bone of Auckland's economy"*.<sup>5</sup>
35. **Josie Katene** is the Cleaning Services Manager of Total Property Services (**TPS**) based at Eden Park. Her evidence outlined the steps that TPS take to clean up the area around Eden Park before, during, and after concert events, as well as TPS's sustainability practices in undertaking that work. Her evidence also described the changes that have been made by TPS since concerts have commenced at Eden Park, and the broadening of its rubbish clean-up area and new certification procedures.

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<sup>4</sup> We adopt hereon the abbreviation OMP-C as used in the revised conditions attached to the Applicant's Reply.

<sup>5</sup> EV7, at [3.9]

36. **Jasmine Powell** is the owner of several event management companies which undertake the building of stage shows, including the entire pack-in and pack-out process, for Eden Park and other stadiums around the country. She was called by EPT to provide evidence that explained how Eden Park has operated as a concert venue since 2021 and described some of the challenges posed by the current conditions relating to concerts at Eden Park.
37. **Cara Maria** lives in Reimers Avenue opposite Gates F and G, and also undertakes some casual work at Eden Park's corporate suites. She noted some of the benefits of living near Eden Park, including the numerous community events. She commented that while her property is significantly affected by events at Eden Park, her experience of concerts since 2021, including with Eden Park staff (relating to responses to noise complaints associated with pack-up activities), meant that she was supportive of the application to increase the number of events. Ms Maria considered that it makes sense to maximise the use of the stadium, rather than build a new stadium elsewhere in Auckland, while also recognising the need for Eden Park to diversify its income streams to allow the continuation of benefits for the local community and attract additional income for local businesses. It would also allow employees like herself to be offered more shifts and increase a source of income for many families.
38. **Kathryn Marshall** lives in Walters Road, approximately 150m from Gate D. She was supportive of the proposal for more concerts, noting that the concerts to-date have had no detrimental effect on their life. She considered that additional concerts "*would prove valuable for the community, the businesses that thrive as a result of the concerts, and for the longer term viability of the park*",<sup>6</sup> and in her view, Eden Park can be described as the perfect neighbour.
39. **Geoff Jones** is the CEO of TEG Pty Ltd, which owns the Ticketek ticketing business, and was called by EPT to describe those factors that make Eden Park a desirable venue for concerts and the range of acts that would be attracted to Eden Park. He also described the factors that need to be taken into account in establishing tour schedules, and why an increase in concert fixtures and venue flexibility will increase Eden Park's desirability as a concert destination. This included top-tier artists that require the ability to roll into two, three or more shows at all venues of a tour.
40. **John Reilly**: As the band manager for Six60, the first artist to perform a concert at Eden Park, Mr Reilly was supportive of the proposal to increase the number of concerts at Eden Park and remove some of the current restrictions on how and when such concerts are run.
41. **Todd Langwell** is a traffic engineer who has prepared the Assessment of Traffic Effects (ATE) for the application, and prepared evidence on this topic on behalf of EPT. His evidence summarised the key conclusions of the ATE and addressed the submissions relating to traffic/transportation matters, and the specialist input from

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<sup>6</sup> EV13, at [2.5]

Mr Clark provided for the agenda report. We refer to the matters addressed in Mr Langwell's evidence in more detail later in this decision.

42. **Chris Day** is an acoustician who had prepared the Assessment of Noise Effects (**ANE**) for the application, and prepared evidence in respect of noise effects on behalf of the EPT. In a similar manner to Mr Langwell, his evidence summarised the key conclusions contained in the ANE, addressed the submissions relating to noise effects and responded to the noise issues discussed by Mr Styles for the agenda report. We refer to the matters addressed in Mr Day's evidence in more detail later in this decision.
43. **Dr Peter Phillips** is a social effects expert who had prepared an Assessment of Social Effects (**ASE**) in support of the application. His evidence summarised the main findings of the ASE and responded to submissions related to social impacts, and the assessment of Dr Stewart provided for the agenda report. In summary, Dr Phillips considered that the eight concerts to date have not resulted in the identification of any social effects not previously considered and the level of effects that have been experienced are largely as anticipated. He highlighted that resident surveys undertaken by the Eden Park Residents Association (**EPRA**) had identified that while noise was a concern for some, the key issue in terms of residential amenity is the management of effects driven by access, transport and parking (as applicable to all events at Eden Park).
44. Dr Phillips described the new initiative in this regard that was also referred to by Mr Langwell that would seek to further mitigate the effects of concerts under both the existing consent and for the additional concerts now proposed. This has been commenced through the first of a series of 'transport summits' (held on 18 September 2024) and in reference to the evidence of Mr Mintern, he noted that the EPT are now looking to undertake a formal review of traffic management in response to the first summit.
45. Overall, it was Dr Phillips' view that "*with appropriate mitigation of the access, transport and parking issues, as addressed in the evidence of Mr Langwell, and on-going attention to the management of concert noise, as addressed in the evidence of Mr Day, the balance of social effects will continue to be positive*".<sup>7</sup> He also stated that the social effects associated with other condition changes, such as later finish times and night-time work within the stadium, would need to be addressed and mitigated through effective communication, and such communications "*could go a long way to alleviating the concerns of those submitting on this issue*".<sup>8</sup>
46. Dr Phillips also clarified his recommendation in terms of changes to the conditions, which he suggested should emphasise the need to be able to replicate future surveys so that the information being sought would be consistent.
47. **Mark Vinall** is a consultant planner who had prepared the AEE and provided planning evidence on behalf of EPT. His evidence described the site and

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<sup>7</sup> EV17, at [2.7]

<sup>8</sup> Ibid, at [8.8]

surrounding environment, the proposal and associated consent requirements, the planning framework and the existing consents. He addressed the issue themes arising from submissions, the relevant statutory provisions and provided a response to the matters arising from the agenda report and changes to the conditions as recommended therein. We refer to the matters addressed in Mr Vinall's evidence in more detail later in this decision, including in respect of the EPT's proposed conditions of consent.

#### **Other witnesses in support of EPT**

48. The Panel had also received evidence submitted on behalf of EPT by a number of residents, hospitality operators, education facilities and other interested groups, as listed below with a brief outline of their evidence statements.
49. **Phil Clark** is the operator of Kingsland Social, a restaurant in Kingsland. His statement noted his support for more concerts to be enabled at Eden Park and highlighted the positive effect of concerts to-date on his business. In his view, the proposal would result in *“another potentially six very busy nights for the hospitality sector within walking distance of the Park”*.<sup>9</sup>
50. **Louise Broad** is the Principal of Kōwhai Intermediate School and her statement outlined her support for the proposal, emphasising the collaborative and mutually beneficial relationship between EPT and Kōwhai School. In particular, she noted that sound checks have not been an issue on school days, and these have been well communicated to enable the school to plan around them. Ms Broad also stated that this communication also avoids traffic impacts on the school, consistent with experiences associated with sports and cultural events.
51. **Steve Gillett** is the owner of the Kingslander bar and is also the founder and Chairman of The Fringe District (the former Kingsland Business Association). His statement noted the positive impact that concerts to-date have had for his business and for Kingsland more generally, and throughout Morningside and Dominion Road, during a period of difficulties for the hospitality sector. He was therefore supportive of the proposal for increased concert events, as *“[h]olding more concerts will greatly increase sales and foot traffic to our business, and to other hospitality operators, enabling the area to prosper”*.<sup>10</sup>
52. **Rory Clarke** is one of the proprietors of St Leonards Brewing Co., located in Kingsland. His statement advised that although his business has only been in the area for a short period (since December 2023), it is clear that events at Eden Park have a positive economic impact, with many customers being attracted to the area including those who visit St Leonards both before and after events.

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<sup>9</sup> EV47, at [2.8]

<sup>10</sup> EV48, at [2.8]

53. **Sophia Malthus** is a disability advocate and works for EPT as a disability consultant. Her statement advised of her support for the application on the basis that additional concerts will be fully accessible and will provide more opportunities for disabled people “*to enjoy live music from artists they love, and socialise with their friends and others in their community*”.<sup>11</sup>
54. **Dave Letele** is a social activist who undertakes a number of community-related projects, including through his organisation ‘Buttabean Motivation’ that seeks to address health-related issues through fitness programmes. His statement noted that these programmes have been supported by Eden Park, with large bootcamp events hosted there for free. He was supportive of additional concert events which would enable EPT to give back to the community through its charitable and community-oriented events and fundraisers. Mr Letele also highlighted the employment opportunities for staff and their families at Eden Park that would be provided through additional concert events and would assist people to make a living in a period of increased unemployment.
55. **Doug Cochrane** is the owner of the Flagstaff Gallery in Devonport and his statement described the way in which his wife, Cary, had established ‘Art in the Park’ in 2021 at Eden Park, with the support of Mr Sautner. He noted that attendance at this event has grown over the years and is now Australasia’s largest, curated, artist-led show, and has also now included a Sculpture Walk. Mr Cochrane advised of his support for Eden Park to be a key cultural and arts venue, which demonstrates the venue’s versatility for the whole community. He welcomed any changes that increase Eden Park’s flexibility to host events that bring more people into the venue to support the arts.
56. **Sandra Khouri** is a local resident who has resided in the neighbourhood for many years. It was her observation that concerts are working well, and she could see no reason not to allow for more events at Eden Park. She noted her own attendance at a number of concerts that she considered were well organised and executed. Ms Khouri is also a member of the EPRA, and as such she has attended every community meeting hosted by Eden Park since the granting of the Concert Consent and which she has found to be useful and informative. In her view, the impacts of concerts on residents were clearly communicated and managed well.
57. **Shelley Lomas** lives on Cricket Avenue, between Gates D and E and behind the East Stand. She described Eden Park as the heart of the community and expressed her satisfaction with the traffic and event management for large events, which in her view is consistently implemented and provides an event ‘routine’. She also considered from her own experience of attending concerts that the internal event management was professionally-run, and the wind-down was generally quick and relatively unobtrusive. Ms Lomas noted that any issues have been responded to quickly and efficiently (such as berm parking by Eden Park visitors). In her view, Eden Park would provide a venue that offers capacity for more concerts, and these will be managed safely for the local community.

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<sup>11</sup> EV41, at [1.3]

58. **James McKee** is the General Manager for Ticketek New Zealand, and lives in Bellwood Avenue, approximately 70m behind the East Stand. He noted the transition by Eden Park to accommodate concerts has been impressive and has added value to the surrounding area and for residents, as well as the wider benefits to Auckland and the region. He also considered that there were broader intangible benefits of hosting events in Auckland, and that financial benefits were probably understated. His evidence also addressed the effects of current consent conditions on promoters returns from tours, and that reducing the costs of events will help to make the venue more attractive to overseas acts. Mr McKee also addressed the way in which concerts at Eden Park do not affect him or his family's quality of life beyond some minor inconveniences. He considered that if an artist can justify a second or third event that happened to be on a Sunday, or a Monday, it should be encouraged.
59. As the Panel did not have questions for these witnesses, we advised that they did not need to attend the hearing. However, we acknowledge the overall tenor of these submissions as being supportive of the application as a result of their experiences associated with the concerts undertaken to-date at Eden Park.

### **Local Board presentation**

60. **Kendyl Smith**, the Chair of the Local Board, provided a brief presentation that advised of the Local Board's overall support for the application, noting that more concerts are good for business, both local and regional, and that there is support for diversification beyond sporting events. Ms Smith acknowledged the overwhelming support for the application, but in reflecting the views of the community as a whole, considered that there were other matters that should be determined by the Panel. These matters related to the potential for differing finish times, depending on the day of the week; changes to the TMP; retaining restrictions in respect of pack-down noise; extension of the litter clean area; and avoidance of bus parking on local reserves.

### **Submitter evidence**

61. The evidence from submitters is summarised below.
62. **Jose Fowler** advised that he has lived next to Eden Park for 25 years, in close proximity to Gate E, and was supportive of Eden Park becoming a multi-functional stadium. Mr Fowler noted that he had not been affected by litter or noise effects and emphasised that businesses in the area rely on events at Eden Park to survive. In his view it is important to allow the venue to be what it can be.
63. **Anthony McGivern** spoke to his presentation that highlighted his proximity to the stadium and his overall support for the proposal. He advised that he enjoyed seeing people visiting events at Eden Park, as well as the proximity of those events. He noted his support for the way in which Eden Park is operated by EPT, and the proposal would allow for a greater level of utilisation and thereby delivering more value to the region and the country. In his view, the price of occasional and minor disruption is small, and disproportionately outweighed by the benefits.

64. **Susie Ballantyne**, with Andrew Short appearing as a witness, lives in Te Atatu and expressed support for the proposal, referring in particular to the facilities that are provided by EPT for disabled persons, including those affected by deafness. She highlighted the way in which Eden Park caters for her community and provides greater opportunities to feel less lonely, less isolated and able to enjoy the types of events provided for at Eden Park. She noted that these opportunities will be truly appreciated by the disabled community, and “*while it may not seem an obvious benefit to some, believe me, for those people to have that means a great deal*”.<sup>12</sup> Mr Short, the Country Manager from Permobil NZ, also spoke in support of Eden Park’s role in providing for disabled persons and the positive involvement that Permobil has had with the EPT.
65. **David French** spoke to his submission in unequivocal support of the application. He noted the availability of public transport and the proximity of bars and restaurants, with the present concert conditions unduly hindering New Zealand’s largest stadium. In his view, the Women’s World Cup (hosted earlier this year) presented the most difficulty in terms of traffic restrictions, but for him the personal inconvenience encountered was nothing compared to the broader benefits to the region provided by hosting an event of this significance. However, he considered that there was a better need for accountability between EPT and AT in terms of traffic management late at night.
66. **Sally Peterson** was supportive of the application and considered that the noise of concerts up to 12 times a year would not be a hardship and that any inconveniences of the events can be easily mitigated, and that she has been impressed with management of events by EPT. She stated that Eden Park was a much more suitable venue for large concerts than Mt Smart and has confidence that “*any additional concerts will be managed in the same professional and neighbour-friendly manner*” as those to date.
67. **Steve Armitage** spoke on behalf of Hospitality NZ (**HNZ**), who advised of HNZ’s strong support for the application. He advised that in HNZ’s view it was crucial to enhance Eden Park’s ability to attract major international artists and to build its reputation as a premier venue for world-class entertainment and a top destination for concerts in New Zealand. Mr Armitage highlighted that the hosting of major events is vital for driving economic activity within Auckland and pointed to the \$4.26 million contributed to the regional economy by the recent P!nk concerts, including a significant increase in accommodation occupancy rates and the hospitality sector more generally.
68. **Graeme Hodgson** spoke in opposition to the application and described his concern that a grant of consent would result in a further precedent being established, with Eden Park becoming more of a concert venue than a sports stadium. He considered that this would be at the cost of nearby residents, given the sound levels from the venue, particularly the effects of the sub-bass range. He highlighted in this regard that most of the affected dwellings are of an older style and not sound-proofed and urged that the Panel’s decision take into account the health (including the mental health) of impacted residents.

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<sup>12</sup> EV21, at p.4

69. **Paddy Callesen** spoke to his statement that incorporated the provisions of the Eden Park Precinct and stated that the proposed number of concerts were not contemplated by the Precinct or the AUP, and would be contrary to Policies I310.3(3) – (5). He did not consider that Eden Park is set up for the proposal and was not designed to be a major concert or entertainment facility. He was concerned that allowing more concerts would reduce the economic drivers for the development of a new purpose-built complex in a CBD location.
70. Mr Callesen requested that if consent was granted, that it be limited in time (to three to five years) to allow for a more permanent solution to be found; that concerts remain limited to 10.30pm; and the imposition of financial penalties if consented limits are exceeded. However, it remained his preference that consent be declined due to adverse effects on the amenity of the surrounding residential area.
71. **Richard Wallis** spoke to his statement of evidence on behalf of the CarbonCycle Company Ltd and described the waste-management service that this company provided, including to Eden Park. While his evidence was focused on the environmental benefits from adoption of waste-management processes developed by CarbonCycle, he also confirmed that he supported the application, noting that noise effects are part of living in a city, and considered that Eden Park is an iconic and rich part of New Zealand's history.
72. **Brent Eccles** spoke to his submission on behalf of Eccles Entertainment. He noted the suitability of Eden Park as a concert venue that has been demonstrated to date, and has superior acoustic qualities compared to many other stadiums. He highlighted that at present it is difficult from a financial perspective to see how improved facilities for promoters, artists and the concert-buying public would be provided. He expressed the view that easing the current restrictions applying to concert events would present an opportunity for further investment in making Eden Park the first choice of contemporary music promoters who want a first-class concert venue with a high capacity and audience satisfaction.
73. **William Barnes** spoke to his submission, noting also his support for the statement tabled by Ms Jukes in respect of noise issues, and disagreed with particular aspects of Mr Day's evidence. He highlighted the noise effects experienced from his property (in close proximity to Eden Park) associated with the concerts themselves, as well as the noise of pack-in and pack-out activities and noise testing, as well as the noise and anti-social activity associated with crowd dispersal. In respect of the latter he considered that rugby and cricket crowds tend to clear more quickly than concert crowds.
74. Mr Barnes also noted the need in the conditions to include a limitation in the number of artists/concerts, in the event that a same artist may undertake a return concert in the relevant period which might otherwise be compliant with the terms of the condition.
75. **Mark Kneebone** spoke to the submission on behalf of Live Nation, which is a global network that includes New Zealand and promotes concert events of all sizes. He advised of current trends in concert events and the size of such events. He noted



that globally there is a growing preference for stadiums over smaller venues, which increases the number of potential acts that could perform at a stadium such as Eden Park.

76. **Holly Gooch** spoke to her submission, as a researcher and practitioner in educational psychology, with her work focusing and advocating for older teenagers. She referred to the benefits of concerts as an opportunity for young people to come together and collaborate on the practical planning requirements about attending such events. They also provide a positive event for young people to look forward to, as well as opportunities for additional part-time work, and a way of obtaining work experience. Ms Gooch also highlighted the neurodivergent-friendly approach of Eden Park and its support for persons with hidden disabilities. These measures were noted by Ms Gooch to increase Eden Park's inclusivity for all young people and its attraction as a concert venue.
77. **Colin Lucas** is a nearby resident of Eden Park and explained some of the impacts that concerts have on his amenity in terms of the implementation of the Traffic Management Plans and the associated restrictions that he and his family face in terms of accessing their home when events are on. He also described the way in which Leslie Avenue is used to drop-off and pick-up event-attendees and the associated anti-social behaviour experienced in the vicinity of his home. He referred to the noise impacts of concerts, as well as the associated effects of crowd noise and of buses waiting to pick up concert attendees. Mr Lucas provided an overview of his experiences of each of the concerts held to-date, and the nature of crowds attracted to each event.
78. Mr Lucas was concerned at the potential for multiple concerts over 3-4 days by a single performer which he considered would have "*a significant and exponentially compounding impact on the amenities of the area*", and the suggestion that "*the effects of concerts and now 6 more can be mitigated or are no more than minor is some sort of peculiar joke*".<sup>13</sup> He acknowledged that his views or those of the EPNA are not popular with the majority of submitters, but he noted that the issue is not a numbers game, and he considered that the main question for the Panel was "*the extent to which the residential community surrounding Eden Park should be expected to continue living adjacent to the facility with the increased level of noise and disruption and impact on amenities as proposed in the application*".<sup>14</sup> In his view, that limit has been reached, and the application should be declined.
79. **Eden Park Neighbours Association (EPNA)** was also represented by Mr Lucas as its Chairperson. He provided a background to the organisation and the scope of its interest, including other planning-related matters such as Plan Change 78 (to the AUP). He described the consent history around Eden Park and earlier efforts to host concerts and noted the character and particular attributes of the receiving environment, including the nature of the older housing stock within the area

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<sup>13</sup> EV28, at [39]

<sup>14</sup> Ibid, at [71]

surrounding Eden Park, as well as some of the more intensive developments planned for the area.

80. Mr Lucas also highlighted key aspects of the Eden Park Precinct provisions within the AUP and described the concerns of EPNA as to the increased scale of concerts that are sought to be enabled and the later finish times, and the increased level of effects associated with the departure of larger crowds later into the night. He considered that the proposal would have adverse effects that are more than minor and would not be compatible with the stated purpose of the Precinct. He noted particular concerns with respect to various aspects of the proposal, relating to the noise of concerts and associated impacts of pack-in and pack-out, crowd noise, and monitoring and enforcement; the number of people affected; traffic management; cumulative effects; the displacement of sports events; and effects of concerts on Sundays.
81. Mr Lucas considered that the various proposals that he described as weakening the existing conditions would result in major negative impacts for local residents and that the changes should be resisted by the Panel due to the effects on amenity “*over and above those experienced with events complying with concerts*”.<sup>15</sup> He stated that maintaining the existing conditions, should the Panel consider approving an additional six concerts, “*would go some way to enabling the [EPT] to retain its social licence to operate in an urban residential environment*”.<sup>16</sup>
82. **Sir Bryan Williams** spoke to his evidence in support of the application. He outlined his connection to Eden Park over many years (since 1960), including as an All Black and as Past President and Life Member of the NZ Rugby Union, and having watched many sports events held at the ground since then. He also advised of his attendance at concerts since 2021 and noted the way in which these have been well organised and managed, and the benefits for local businesses. He further highlighted his impressions of the extent to which the EPT has gone to engage with its neighbours and to increase the offerings provided for the community, and that it has been heartening to see concerts and other events siting alongside rugby and cricket events. In his view, “*Auckland deserves to have this iconic venue to see and hear all the world stars and they in turn, deserve to have such a venue to perform at*”.<sup>17</sup>
83. **Gary Holmes** spoke on behalf of the Dominion Road Business Association (**DRBA**), who were supportive of the application. He noted that Eden Park is a key part of the Dominion Road business community and that DRBA has a close working relationship with EPT over more than a decade. He highlighted the positive economic impacts that concerts have for Dominion Road businesses (estimated at half a million dollars per event) and spoke to the efforts that EPT go to in order to address any issues of concern that arise through the Eden Park Community Liaison Group and to ensure that both the residents and business areas are not negatively impacted by events. He also advised that the concerts and the support of EPT management has been a key factor in Dominion Road achieving on-going

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<sup>15</sup> EV29, at [89]

<sup>16</sup> Ibid, at [90]

<sup>17</sup> EV30, at p.3

accreditation as a Purple Flag area.<sup>18</sup> He concluded by saying that the DRBA “wholeheartedly endorse the application by Eden Park to expand the number of concerts held at the park each year”.<sup>19</sup>

84. **Shona Tagg, Jeremy Todd and Tony Wright** spoke on behalf of the Eden Park Residents Association (EPRA). Their presentation described the background to the EPRA and its membership arrangements and its overall ambit. This included a description of the survey of EPRA members undertaken in advance of the current application being submitted. They highlighted that this resulted in 91% support from respondents for the application, which was consistent with that measured for the 2020 application (95%). It also provided details of the levels of support for individual elements of the proposal. The presentation also described the overall levels of support by EPRA members for Eden Park, including in respect of such positions as ‘concerts adding to the vibrancy of the city’, ‘enabling Eden Park to operate in a way that reduces its reliance on public funds’, and ‘the merits of Eden Park as a concert venue’ (85-91%).
85. **Victoria Toon** spoke to her submission, and including in respect of her role with the EPT. She was very supportive of the application, noting the successful hosting of concerts to date and three women’s world tournaments over the past few years. She stated that Eden Park needs the flexibility to host consecutive concert event nights to be able to attract international acts, as otherwise promoters will simply pass New Zealand by. The revenue from concerts will also enable the EPT to maintain the stadium facilities, and in this regard she outlined some of the costs associated with these facilities, as well as for fixed outgoings such as utilities and insurance. She also noted that Eden Park is a community asset and she would like it to be used more.
86. **Mandy McMullin** spoke to her submission in opposition to the application and referred to several videos taken from outside her property in Cromwell Street related to parking and traffic effects, which she said demonstrated that the traffic management measures for this street were ineffective. Amongst the various issues that she documented was the extent of illegally parked cars; the inability for tow-trucks, or emergency vehicles, to access the street; the extent of berm-parking associated with daytime events (not subject to a traffic management plan); and the lack of responses to phone calls to the Eden Park hotline. She was also concerned about local air quality effects associated with the extent of idling vehicles waiting for passengers. In her view, additional concerts should not be considered when the current conditions are not being monitored or enforced.
87. **Dr David Gilbert** (who appeared in support of Ms McMullin) spoke to his submission and advised that while he was supportive of sports events at Eden Park, concerts were a different matter, with neighbourhood effects that EPT cannot effectively mitigate. He highlighted that traffic management measures create noise impacts and the current TMP is a complete failure and is not enforced, with AT officers not

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<sup>18</sup> ‘Purple Flag’ was explained by Mr Holmes as a UK-based accreditation process granted for excellence in managing the night time economy.

<sup>19</sup> Submissions Volume 2, at p.1445

available after 10pm due to past threats to their officers (as referenced in the submission by way of correspondence with AT). His submission noted that although Cromwell Street is designated as residents'-only parking, "[t]raffic enters the area from Dominion Road, street closure is in place just to the West of Cromwell Street, drivers who are not allowed through have a choice of making a U turn and going back to heavily congested Dominion Road or turning into Cromwell Street" and that "[t]he easy choice is Cromwell Street which then becomes both a rat run and a free parking street".<sup>20</sup>

88. Mr Gilbert noted that in his view, the extra time sought by EPT will exacerbate existing noise and traffic issues experienced in the neighbourhood.
89. **Lambert Hoogeveen** spoke to his statement of evidence via MS-Teams, and referred to issues relating to the bass frequency sound that is experienced in his home; the noise of sound-checks that are as loud as the concerts themselves; the pack-in and pack-out noise effects experienced for up to ten days for just one concert; anti-social behaviour of intoxicated patrons; noise from the stadium itself and its carparks until late at night; light spill; litter; traffic chaos; loss of parking in the street; disrupted public transport and closed-off roads. He also referred to correspondence with the Council's monitoring team, and advice received that Council's monitoring officers were not allowed access through the traffic cordon to undertake noise measurements during the Ed Sheerin concerts in February 2023.
90. Mr Hoogeveen queried why Eden Park should be given preferential treatment compared to Mt Smart or Western Springs, and that the shifting of more concerts to Eden Park would impact the viability of these other publicly owned stadia. He was also critical of the efforts by EPT to reduce the mitigation measures previously put in place, while "*completely ignoring what we as residents actually experience*".<sup>21</sup>
91. In Mr Hoogeveen's view, concerts have not improved or benefitted the residential neighbourhood, rather the opposite, and the proposed additional concerts would make things worse.

#### **Tabled statements from submitters**

92. Four statements from submitters were entered into the evidence:
- (a) **Bruce and Deirdre Wild** advised of their opposition to the proposal. While they value Eden Park as a neighbour and venue for significant activity, they considered that the proposal represented 'scope creep' without anything additional being offered to the community. They sought that EPT demonstrate to better management of the off-site effects of litter, antisocial behaviour, more policing, better lighting and signage. They also noted the need for improved methods to move people to and from the venue more quickly and were concerned that use of the west stage area would result in more noise to the north and east of Eden Park associated with the prevailing south-west wind direction.

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<sup>20</sup> Submissions Volume 6, at p.4465

<sup>21</sup> EV33, at p.9

- (b) **Samantha Jukes** provided a statement that responded to and asked questions related to the acoustic evidence of Mr Day. In particular, she queried the more qualitative assessments as to the reasonableness of noise effects, and the characterisation of opposing submitters as being ‘against concerts’, whereas she advised of her enjoyment of them, in non-residential locations. Ms Jukes also queried the relevance of noise exposure from other stadia, and the temporary activity rules, which lacked context. She was also opposed to reliance on sound checks to establish appropriate levels within the venue in lieu of continual monitoring, as well as the exclusion of noise gaps of over 15 minutes. She noted the significance of the additional half hour being sought and disagreed with Mr Day’s comment that this was only “*12 half hour periods over a twelve-month period*”. She also disagreed with the interpretation of the additional noise effect associated with doubling the number of concerts, which overlap with sleep times in households, including for their children.
- (c) **Ben Skelton** had made a submission in support of the application, but for the hearing provided a statement that focused on the standing of EPNA with respect to the Incorporated Societies Act 1908. He acknowledged that these issues were not within the jurisdiction of the Council, but nevertheless commented that it was inappropriate for the Council to have accepted a submission from a party that may not have met its statutory obligations. We note at this juncture that the Panel makes no findings in respect of this matter and has accepted the comments received from EPNA (referred to above), and records that no objection to the EPNA submission or the hearing evidence presented on its behalf was raised by EPT.
- (d) **Graham Gibson**, on behalf of the Auckland RSA (**ARSA**), provided a statement that expressed support for the application. Mr Gibson highlighted that Eden Park is a very special place to the ARSA, with many All Blacks who played at Eden Park having served for New Zealand in the two World Wars (shown in attachments to the statement), and subsequently Eden Park has also had a long history of supporting veterans and serving personnel. Also attached to his statement were photographs of some of the important moments where ARSA collaborated with Eden Park to commemorate key occasions, such as ANZAC Day, and noted that Eden Park also shows its ongoing support for ARSA through their annual Poppy Day Appeal and its offer of complimentary tickets to some events for ARSA veterans.

Mr Gibson also advised that the ARSA would have no issue with concerts being held on ANZAC Day, and indeed, was hopeful that in the future ARSA might have the opportunity to host a concert on this day. Overall, he noted appreciation of the relationship with EPT, and sought that consent be granted so as to recognise “*the valuable opportunities for our members to come together and share experiences at Eden Park events, and the profound cultural, economic and inclusive benefits it will bring to our city*”.

### Applicant's Supplementary Evidence

93. Following the completion of the submitter presentations prior to the Council's responses, the Applicant sought leave to introduce supplementary traffic evidence from Mr Langwell in response to questions raised by the Panel during the hearing arising from issues raised by Mr Clark in his memorandum appended to the Agenda report, and the further conferencing between EPT witnesses and the Council, as encouraged within the Panel's Minute 1. It is also included recommended amendments to the proposed conditions. We refer to the detail of matters addressed in Mr Langwell's supplementary evidence later in this decision.

### Council Responses

94. The Council provided responses at the hearing and subsequently by memoranda from Mr Styles (acoustic), Mr Clark (transport) and Mr Dales (planning). In summary:
- (a) Mr Styles' memorandum advised that his overall position had not changed from what he had expressed in his original memorandum, but he commented on some noise-related matters arising during the hearing;
  - (b) Mr Clark addressed a number of matters that had arisen in respect of transportation matters, and in particular on topics related to stadium capacity, mode split, Sunday concerts, pedestrian safety, integrated ticketing, later finishes and proposed conditions; and
  - (c) Mr Dales' memorandum confirmed that his original assessment remained valid and his recommendation stood, albeit subject to some amended conditions. He noted some points of clarification.

### Applicant's Reply

95. The Applicant's right of reply (dated 23 October 2024, the **Reply**) was provided by Mr Bartlett. The Reply stated that the overall issue that needs to be addressed remains as "*what are the appropriate measures needed to manage the adverse effects of the operation of Eden Park concerts having regard to the amenity of surrounding properties*",<sup>22</sup> as directed by Policy I310.3. For concerts, Mr Bartlett stated that "*managing adverse effects*" embraces the numbers, timing, spacing, management and standards to be met, with particular reference to noise and traffic effects".<sup>23</sup>
96. We refer to the legal submissions provided within the Reply later in this decision as relevant to the various issues in contention.
97. As outlined above, the Reply included an updated set of proposed conditions that were advised to have been developed in conjunction with Council officers in response to matters arising during the hearing. It was noted that the Reply version had been forwarded to the Council for comment, and that "[b]efore closing the hearing the Panel may be open to receiving from Auckland Council and submitters

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<sup>22</sup> EV55, at [10]

<sup>23</sup> Ibid, at [11]

*their comments*".<sup>24</sup> The Panel adopted that approach, and Minute 4, as referred to earlier, this was issued on 24 October 2024 establishing a timetable for the receipt of comments, and a supplementary reply from the Applicant.

98. In response to Minute 4, the Panel received comments from five submitters and the Council in respect of the Applicant's proposed conditions (by 5 November 2024), and a response from the Applicant on 7 November 2024, which included a further edited version of the proposed conditions. These comments are referred to in detail later in this decision.

## **PRINCIPAL ISSUES IN CONTENTION**

99. After an analysis of the application and evidence (including proposed mitigation measures), undertaking a site visit, reviewing the Council planning officer's recommendation report, reviewing the submissions and concluding the hearing process, we find that the proposed activity raises a number of principal issues for our consideration. In respect of those raised by the Council and submitters, we consider these to be:

- Noise effects;
- Traffic and transport-related effects;
- General amenity effects and patron behaviour issues;
- Displacement of primary activities;
- Extent of adverse effects generally;
- Alignment with the relevant objectives and policies; and
- Precedent.

100. We also note additional matters raised during the hearing in respect of ancillary aspects of fireworks and helicopters, and comparisons with the operational constraints of other stadia, and for temporary events more generally.

101. Our findings on the issues that were in contention are discussed in the following section of this decision, and incorporate these into our findings under ss.104D, 104 and Part 2.

## **MAIN FINDINGS ON THE PRINCIPAL ISSUES IN CONTENTION**

### **Introduction**

102. Before we address our consideration and findings on the principal issues in contention, we discuss our understanding of the application and the parameters of the proposed concert events, as well as the basis on which adverse effects are to be assessed.

103. We note that while the proposal seeks consent for up to 12 concerts per calendar year, this is also tied to a limitation of six individual "acts" or artists, in order to ensure

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<sup>24</sup> Ibid, at [27]

that pack-in and pack-out activity remains consistent with the present limit allowed by the Concert Consent.

104. The rationale for the application is described in Mr Sautner’s evidence, which highlights the need for additional flexibility in terms of potential concert event numbers per year, and for increased numbers and dates during the week. In essence, “[t]he current conditions of consent have prevented us from maximising the stadium’s true potential as a concert venue”.<sup>25</sup>
105. However, while the application has sought consent for 12 concerts per calendar year, Mr Sautner noted that based on his experience at Etihad Stadium in Melbourne, he would not expect to attract 12 concerts every summer to Eden Park (with a range of 0-8 at Etihad). He emphasised that the real benefit of the proposal “is that it will provide certainty and flexibility to artists and promoters, making Eden Park a more attractive venue”.<sup>26</sup> This was also referred to by Geoffrey Jones (Promoter), who noted that in practice Eden Park has not booked six concert days each year since consent was first granted (except for 2024). In Mr Jones’ view, “12 concerts will be very much an upper limit rather than the norm, and the Park is unlikely to consistently attract more than six artists/12 events in a year”.<sup>27</sup> Relevant to this point is the fact that at the time the application was submitted, only eight concerts had been held since the grant of consent in early 2021, although the present six concert quota for the 2024 calendar year had been reached.
106. Also relevant to this issue was Mr Sautner’s evidence that concerts will generally be held in the summer period, being the five months between November – March.<sup>28</sup> He also advised that provision for concerts on Sundays would “provide further flexibility, for example should there be a weather event that limits our ability to hold a concert on a Friday or Saturday”.<sup>29</sup> This ‘contingency’ basis in respect of Sundays was also a matter relied upon in part by Mr Langwell, whose transport evidence noted that the likelihood of Sunday concerts was low, “as promoters generally prefer Fridays, Saturdays or weeknights”.<sup>30</sup>
107. The proposed 11pm finish time is also intended to provide flexibility in the event of disruptions during shows and allow for artists to play longer sets and to accommodate more pre-acts (including New Zealand artists). In this regard, Mr Sautner advised that this change would allow for predictability and uniformity in the operational management in terms of traffic management, personnel rostering and resourcing. As with the number of concerts, however, he went on to say that “we do not anticipate that every (or even most) concerts will run until 11pm”.<sup>31</sup> In this respect he highlighted that, despite the existing mandated 10.30pm finish time, recent

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<sup>25</sup> EV2, at [8.8]

<sup>26</sup> Ibid, at [8.13]

<sup>27</sup> EV16, at [4.12]

<sup>28</sup> EV2, at [7.2]

<sup>29</sup> EV02, at [3.24]

<sup>30</sup> EV14, at [9(c)]

<sup>31</sup> Ibid, at [8.16]



concerts such as the P!nk shows finished much earlier. The Panel understands that this was also the case with the recent Travis Scott concert held on 30 October 2024.

108. A similar picture emerges from the evidence in terms of concert attendees. While the Concert Consent prescribes a limit of 50,000 (weekdays) and 60,000 (Saturdays and Sundays preceding a public holiday), the record from the eight concerts to-date (as at the time of the hearing) shows that patron numbers have ranged from 25,000 to 50,000, with an average of 39,438, based on the information provided in the AEE. A similar average figure of 38,800 was cited by Mr Clark, based on AT records.<sup>32</sup> The Panel understands, however, that the 50,000 weekday limit has been reached in terms of the recent Travis Scott concert, and for the three recent Coldplay concerts. The latter is consistent with the evidence of Mr Kneebone as regards the trend towards greater numbers of music acts attracting larger crowd sizes, albeit that between 3 – 9% of people do not turn up on the day (as referred to by Mr Clark).<sup>33</sup>
109. Overall, however, the Panel understands that the application has been advanced on the basis that 12 concert events per calendar year are proposed, to 11pm and for between 50-60,000 attendees, and no conditions have been proposed by EPT to modify these parameters to match the actual expectations as to frequency, duration and attendance referred to by the above witnesses. We have therefore considered the proposal and the evidence on the basis of its maximum potential extent as presented in the application.

## **Noise effects**

### **Introduction**

110. The noise effects associated with concert events was a particular issue of concern for opposing submitters. These effects are subject to some variability for different residential receivers depending on which stage configuration is used (and potentially the meteorological conditions occurring at the time of the event). There are a number of changes associated with the application that have the potential to increase actual noise, or the incidence of it, and while these are somewhat intertwined, for the sake of clarity we have addressed them as separate sub-themes below, before drawing together our overall conclusions and findings by way of a summary at the end.
111. In undertaking this analysis we have primarily referenced the expert acoustic evidence provided by Mr Day for the Applicant and Mr Styles for the Council. We have done so, while being cognisant of the evidence presented by local residents both for and against concerts, but in particular by those who consider themselves impacted by noise effects of concerts as well as the various activities associated with them. We highlight that we have not discounted those concerns because they happen to live in close proximity to Eden Park, especially for those persons who have lived in the vicinity for many years (and pre-dating the gradual changes and expansion of activities accommodated at Eden Park). We have not therefore accepted comments from some submitters and witnesses that such persons should

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<sup>32</sup> EV38, at [4]

<sup>33</sup> Ibid

have an expectation of the adverse effects inherent in the proposal. At the same time, however, we also recognise the significant level of support for concert events by people living in the vicinity, as evidenced through the submission process, and surveys undertaken by EPRA.

### Baseline considerations

112. We address here the concept of the 'baseline' approach to considering the potential adverse noise effects of the proposal. This is applied in two ways, being considerations related to:
- (a) the existing environment, as defined by the existing consent(s) for Eden Park including the Concert Consent and relevant variation(s); and
  - (b) the effects of an activity 'permitted by the plan' (i.e., the AUP), per s.104(2) of the RMA.
113. Addressing the first matter, we note that the Concert Consent (as amended by variation LUC60351212-F) has provided for the lawful establishment of concert events at Eden Park, and enables up to six concerts per calendar year, for up to 50,000 or 60,000 persons and to 10.30pm (subject to variances relating to specific days of the week). Associated parameters include noise limits for concert noise as well as further limits for associated pack-in and pack-out activities. The Panel has not been advised of other consented activities within the receiving environment that would have a bearing on the consideration of effects beyond (or in conjunction with) the established consented activities. It may be relevant to note, however, the recent public announcement that Speedway events at Western Springs, which some submitters noted were audible from the vicinity of Eden Park, will cease after the upcoming 2024/25 summer period.
114. In terms of the permitted baseline, it appeared to be generally accepted that there were no relevant permitted activities provided for in the Eden Park Precinct. However, reference was made by Mr Day to the Temporary Activity Rules (**TAR**) under the AUP, and to the annual noise exposure allowances for other large stadia in Auckland. He stated in this regard that:<sup>34</sup>
- "... the 'annual noise exposure' from the proposed 12 concerts per year at Eden Park is less than some other large stadia in Auckland (Western Springs and North Harbour) and similar to the [AUP] [TAR]. The TAR allow for 15 high noise events per annum up till 11pm including Sundays at any park in Auckland".*
115. On this basis (and with reference to the figures shown in his Table 4), Mr Day considered that the annual noise exposure from the proposed 12 concerts at Eden Park would be less than some other large stadia (Western Springs and North Harbour) and be similar to the AUP TAR.

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<sup>34</sup> EV15, at [3.4]

116. The Panel acknowledges the provisions that apply to other relevant stadia and that they provide a useful comparison of potential noise effects. However, we consider that they should be treated as a baseline with some caution. This is because these provisions reflect the characteristics of the particular context of those venues, including the industrial land surrounding Mt Smart Stadium, and the significant separation of North Harbour Stadium from its closest residential neighbours. In particular, and in terms of the TAR, we accept Mr Styles' observation as to the lack of any occurrence "*where the maximum noise levels, frequency and duration of events has been approached or reached in Auckland*",<sup>35</sup> and that the level of noise effects that they authorise is excessive. While he nevertheless acknowledged that the TAR provisions do provide something of an expectation as to noise allowances for various Auckland parks, we find them to be of limited applicability in the present situation, where specific provisions have been established to reflect the Eden Park context. No evidence was presented that the TAR provisions are utilised within any Auckland park anywhere near a level that would provide a relevant or useful comparison.
117. Therefore, while we refer to aspects of Mr Day's evidence below that highlights the TAR standards, we exercise the discretion afforded to us under s.104(2) to not apply considerations of the TAR 'baseline' as a relevant adverse effects comparator.

#### **Noise measurements and monitoring**

118. An issue that arose during the hearing was the way in which the prescribed noise limit would be measured, and the concern raised by some submitters as to the breach of the existing limit that occurred during one of the Ed Sheeran concerts in February 2023.
119. Addressing the latter issue first, this breach was described by Mr Day as a 1-2dB exceedance, and that "*[t]his small (indiscernible) infringement was due to a lower-than-expected transfer function (the inside to outside the stadium noise difference) for the centre stage location and some technical difficulties with the sound equipment*".<sup>36</sup> Mr Styles noted in his response memorandum that "*the 1-2dB margin of exceedance is very small and subjectively it would not be noticeable to any person*", and further, that "*[i]t is also within the margin of uncertainty for measurement instrumentation and procedures set out in NZS6801:2008*".<sup>37</sup> Notwithstanding those comments, the Panel considers that when assessing noise limits, which the noise experts agreed are at the upper bounds of acceptability, it is important that those limits are complied with, and are able to be subject to careful and regular measurement and verification. This general approach informs our findings in respect of the more substantive issue of measurement and the proposed change to the noise measurement conditions.
120. In this regard, the proposal also includes an amendment to the conditions to provide for noise monitoring from the mixing for the three representative stage locations

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<sup>35</sup> Agenda, at p.69

<sup>36</sup> EV15, at [4.4]

<sup>37</sup> EV40, at [9]

based on an established 'transfer function' (with the Council's agreement). This term is described in the AEE as "*the difference between the sound level at the mixing console and the sound level at the 'most affected' residentially zoned house*".<sup>38</sup> The overall intent and purpose of the change to these conditions were described in the AEE as follows:<sup>39</sup>

*"Modifications to the monitoring procedures are proposed based on the consistency of monitoring results for an East and West Stage to reduce the time and cost of monitoring while maintaining confidence the concert noise limits are being complied with. Changes are proposed to Conditions 17 and 24 to provide for the measurement of noise at the mixing desk based on the established Transfer Function for an East and West Stage. Similarly, monitoring of the sound check at the mixing console is also proposed, using the established Transfer Functions. For a Centre Stage, noise monitoring at the mixing console and most effected [sic] residential interface is required due to the variability in the Transfer Function"*.

121. Mr Day's evidence noted that notwithstanding the exceedance issue arising in respect of one of the Ed Sheeran concerts, the six concerts using the east and west stage locations have complied with the noise limits with a margin of safety of 3-7dB. This arose from "*a combination of the noise modelling being approximately 3 dB conservative and because the measured noise level inside the stadium were slightly lower than originally anticipated*".<sup>40</sup> In terms of the revised condition approach, he stated that:<sup>41</sup>

*"The monitoring has shown that we can have both confidence in the noise modelling procedures and confidence that concerts using the East and West stage arrangements can consistently comply with the noise limits. If a centre stage concert is proposed in the future, noise management procedures for the event will need to be examined in more detail to ensure compliance will be achieved"*.

122. The Panel notes that Mr Styles' review generally agreed with the assessments provided in the application, stating that the noise modelling process is sufficiently accurate and would provide "*a high level of confidence that performances on the different stage arrangements will not exceed the relevant noise limits*".<sup>42</sup> Mr Styles advised that noise monitoring to date had improved confidence in the modelling and prediction process for the various stage locations, and this has allowed noise limits to be set at the 'mixing console' for east-facing and west-facing stage configurations by accurately determining the 'transfer function'.
123. However, although Mr Styles considered the modelling and prediction process to be robust, there is a high level of flexibility for the configuration of a central stage position, and "*a comparatively low degree of certainty that compliance with a limit at*

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<sup>38</sup> AEE, at [7.4]

<sup>39</sup> AEE, at [7.4.3], noting that these conditions are now numbered as Conditions 15 and 21-24.

<sup>40</sup> EV15, at [4.3]

<sup>41</sup> Ibid, at [4.6]

<sup>42</sup> Agenda, at p.67

*the mixing console will ensure compliance with the noise limits that apply outside the stadium*".<sup>43</sup> Mr Styles therefore proposed that the condition require noise monitoring at the mixing console and at the most affected residential interface simultaneously for any stage configuration that is not east or west-facing (refer condition 22(f)).

124. The evidence of Mr Day did not respond to this issue. We agree on this particular point that there is a need to maintain continued monitoring at both the mixing console and the nearest residential interface for any stage configuration that is not east or west-facing, until such time as an agreed 'transfer function' is able to be derived with confidence for non east or west-facing events.
125. The Panel accepts the expert evidence in respect of the effectiveness of the 'transfer function' method for setting noise limits within the stadium for the east and west-facing stage arrangements. We therefore also accept the proposal to allow the requirement for real-time monitoring to be set aside subject to the Council's approval (condition 25). However, we have some concern that this approach may not provide sufficient verification in response to potential noise complaints, including in the event of technical issues, and so we would expect the Council to apply an appropriate level of caution in any future decisions to dispense with real-time monitoring, including in instances of prior artist-related issues or where fireworks displays are proposed.
126. We have also changed the phrasing of the end of condition 24 to "will comply" (with the relevant noise limits) to emphasise the need for a higher level of certainty than is implied by "is likely to comply". The same wording has been applied to condition 25 relating to pack-in and pack-out noise, which is discussed later.
127. We also emphasise our understanding that any agreement of the Council in this respect is to be made on an individual concert event basis, and that agreement for one concert artist will not necessarily allow the same dispensation for a future separate artist concert event. We consider that our amendments to the relevant condition (no.24) make this sufficiently clear.

### **Increased concert events and duration**

128. Mr Styles report noted that the increase in the number of concerts from a maximum of six per year to 12 has the potential for the greatest increase in noise effects of all noise-related aspects of the application. He agreed with the ANE as to the magnitude of the increase by reference to the  $L_{Aeq(year)}$  descriptor (in part to compare with other stadia as described above, and the TAR), and that even when including sporting events to this analysis, the  $L_{Aeq(year)}$  levels for Eden Park are realistic, but slightly conservative.
129. However, Mr Styles commented that for those persons who do not enjoy concert noise (and/or are annoyed by particular concert events), "*the noise of a concert will be experienced in the receiving environment as being loud, intrusive, dominant and*

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<sup>43</sup> Ibid

*difficult or impossible to avoid without leaving home*".<sup>44</sup> He did not agree with the statement in the ANE that "[t]he overall noise effects from 12 concerts per annum (max of 6 artists) is slightly greater than 6 per annum". In his view, doubling the number of concerts per year "is a considerable additional effect".<sup>45</sup> Nevertheless, he did agree with the ANE that 12 concerts per year is "approaching the upper limit of acceptability", albeit noting his view that the proposal was 'at' the upper limit, rather than 'approaching' the limit.

130. Mr Day's evidence was that the overall noise effects from 12 concerts per annum would be slightly greater than six concerts, and again, "approaching the upper limit of acceptability".<sup>46</sup> He therefore did not agree with Mr Styles' characterisation of these noise effects and stated that:<sup>47</sup>

*"If the effects were [widespread] and as significant as described, there would have been significant complaints following concerts and there would be a large number of submissions against this application from the residents closest to the stadium. This is not the case, as explained earlier"*.

131. Mr Day further highlighted that the proposal would represent a lower annual noise exposure than some other major venues in Auckland (and here he also referred to what is enabled by the TAR, an aspect that we have commented on previously). He also observed that while surveys and submissions show that some people are annoyed by concerts and others enjoy them, this is likely to continue with the proposed increase in concert numbers combined with the restriction of six pack-in and pack-out activities per year being unchanged. Based on these factors, and by reference to the significant benefits of the concerts that would be expected to accrue to the wider community, it was his opinion that the noise effects from the proposal will be reasonable.
132. In this regard, Mr Day noted that Mr Styles' overall assessment had reached a similar view to his own, and referenced the conclusion reached therein that "[o]verall, I consider that the level of noise exposure to the community is reasonable",<sup>48</sup> but acknowledged Mr Styles' reservation regarding the later finish time of 11pm, who had suggested that this needs to be justified as desirable or necessary. In relation to this issue, it was Mr Styles' view that it was a non-acoustical factor that would need to be weighed by others (i.e., this Panel). We address that particular topic below.
133. Mr Day elaborated on his assessment through an analysis of the submissions relative to their location in respect of Eden Park, from which he was able to conclude that the source of opposing submissions "are spread randomly through a wide range

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<sup>44</sup> Ibid, at p.68

<sup>45</sup> Ibid

<sup>46</sup> EV15, at [3.6]

<sup>47</sup> Ibid, at [6.4]

<sup>48</sup> Ibid

*of noise level and there is virtually no correlation between noise level and opposition”.*<sup>49</sup>

134. With regard to Mr Styles’ assessment that doubling the number of concerts would result in a considerable additional effect, Mr Day considered this was contrary to established acoustic principles. In his view, the increased noise exposure of 3dB (as assessed on a yearly basis) “*is widely agreed to be a ‘just noticeable increase in noise level’*”).<sup>50</sup>
135. We refer here to Mr Vinall’s evidence which acknowledged that while the noise effects generated by concerts will be loud and noticeable, and disruptive and intrusive to some people, he considered this (from a planning perspective) to be overall, and on balance, acceptable and reasonable. In his view this was based on the various mitigation and noise monitoring requirements, and because “*events are limited in number, frequency, duration and timing*”.<sup>14</sup> This was in reference to the restriction on pack-in and out activity and the limitation on the number of concerts in a four-week period and the requirement for a respite weekend in any 35-day period (including from sports events), which in his view would also be sufficient to avoid and mitigate adverse cumulative effects. We also note Mr Dales’ overall agreement with Mr Vinall’s conclusions in this regard.
136. Mr Styles’ response memorandum replied to Mr Day on this matter as follows:<sup>51</sup>
- 4) *I agree that an increase in noise level of the same kind of sound of 3dB will often be described by people as being just noticeable. Examples include a gradual increase in traffic noise over time, or an increase in the noise level between songs at the same concert. I consider that this could be described as a well-established acoustics principle.*
  - 5) *However, I consider that this only works for changes in noise level, not the frequency of large events where the noise level is assessed over months or a year.*
  - 6) *I consider that the effect of doubling of the number of concerts from six per year to 12 per year cannot be described using the 3dB / “just noticeable” approach. I consider that it must be assessed in a more rational and logical way by simply understanding that the adverse effects some people will experience will happen 12 times per year, rather than six.*
137. Accordingly, Mr Styles confirmed that his view had not changed, and that the additional effect would be considerable for those persons who live near Eden Park and do not like the music or concerts. We nevertheless understand that Mr Styles

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<sup>49</sup> Ibid, at [6.6]

<sup>50</sup> Ibid, at [6.9]

<sup>51</sup> EV40

remained of the opinion that the noise effects were acceptable, albeit at the “upper limit” of that threshold.

138. The Panel accepts the evidence in respect of the effects arising from an increase in the number of concerts able to be held. We agree with Mr Styles’ observation that this increase would not result in ‘just noticeable’ effects for those persons opposed to further concerts. In particular, we consider that while the proposed frequency is based on a calendar-year basis, the increase will be experienced over the five-month concert ‘season’, rather than being spread out over 12 months. We consider that the adverse effects will be more than minor (as discussed in more detail later in this decision). Overall, however, we find that on balance the increased frequency will be reasonable, but also at the upper limit of acceptability. This finding is made in conjunction with our consideration of the 11pm finish time (below).
139. As a final note on the issue of frequency, the Panel raised with the Applicant during the course of the hearing that the change in the way in which the concert events are defined on a calendar-year basis, rather than 12-monthly basis, as prescribed in the AUP, created something of a dichotomy with respect to other frequency-related standards set out within the Eden Park Precinct. We further noted that the use of the calendar-year could conceivably result in a high frequency of concerts in the first half of the concert season (i.e., November – December) and again in the second half (i.e., January – March). However, we acknowledge Mr Sautner’s explanation as to the need to define allowable concert events on a calendar-year basis for event booking and programming purposes, and we are satisfied that the three conditions that control frequency will be sufficient to avoid the potential scenario of an excessive number of concerts in any annual concert season.

### **11pm finish time**

140. Mr Styles’ memorandum set out his concern with the proposed 11pm finish time, noting that this extends the potential duration of high noise levels past the normal onset of ‘night-time’ noise limits in the precinct noise standards. He considered that this may not be consistent with AUP Objective E25.2(2) which states:

*The amenity values of residential zones are protected from unreasonable noise and vibration, particularly at night.*

141. In Mr Styles’ view, the determination of whether it is ‘reasonable’ to authorise noise effects into the night-time requires an understanding of whether allowing concerts past 10.30pm is desirable or necessary, and the positive benefits that will arise, albeit that this was an evaluation that would need to be weighed by this Panel.
142. In this regard, Mr Day agreed that the additional half-hour to 11pm is a sensitive period, being the onset of the ‘noise night-time’, but commented that “*we are talking about 12 half hour periods over a twelve-month period*”.<sup>52</sup> He again referred to the TAR provisions which he considered anticipate this activity, as they enable “*15 high*

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<sup>52</sup> EV15, at [6.10]



*noise events per year to operative up to 11pm in every park in Auckland, including Sunday night*.<sup>53</sup>

143. Mr Styles went on to reiterate in his response memorandum that his primary concern remained in respect of the proposed 11pm finish time for concert events.
144. The Panel considers that Mr Day's dismissal of the extra half-hour period understates the likelihood that the 12 concert events would likely occur over a more confined period than 12-months, given that the concert 'season' would most likely arise during a period of less than six months (as described by Mr Sautner and referred to above). Further, and given the stated purpose of the change, several of these events would potentially be associated with multiple nights for a single artist. We are also concerned that his approach does not acknowledge that noise effects (and traffic effects) associated with crowd dispersal would also commence and finish later. As noted above, we are not persuaded by Mr Day's reliance on the allowances provided under the TAR provisions, as these apply elsewhere, and not to Eden Park.
145. The Panel acknowledges Mr Styles' concern (and that of opposing submitters) regarding the allowance for concerts to 11pm, which extends the duration of concerts into a sensitive period, along with associated crowd dispersal. Nevertheless, in reaching an overall finding on this matter we accept the evaluation of the planning experts that the revised limit is reasonable, to the extent that it will provide sufficient flexibility for EPT to attract concert events and to provide sufficient contingency for concerts should certain artist sets require a longer timeframe, or technical or weather delays require the half hour extension. In this regard we consider that the change allows for the positive effects of the proposed changes to be realised. Again, however, we emphasise that we do not reach a conclusion that this extension is only a 'minor' level of adverse effect, and in combination with the increased number of allowable events, places the revised operating parameters of concerts at the upper level of acceptability. However, this finding is subject to the limitations that we place in respect of Sunday concerts, as discussed below.

### **Sunday concerts**

146. Mr Styles' memorandum noted that the ANE had not provided any commentary on the proposal to authorise concerts on any Sunday (we note that this was also omitted from the AEE). He commented that in his experience the amenity expectations in the residential zones are likely to be highest on Sundays for much of the population, being commonly a day of (relative) respite for many people. Accordingly, Mr Styles considered that concerts on Sundays should not be authorised if it is practicable.
147. Mr Day commented in his evidence that the protection of Sundays referred to by Mr Styles is a concept that "*has disappeared from virtually every district plan over the last 30 years and is an out-of-date concept in my opinion*". He went on to state that "*[n]one of the AUP normal noise rules nor the TAR, differentiate between Sundays*

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<sup>53</sup> Ibid

*and other days of the week*", with this being the Council's position in its own district plan rules.<sup>54</sup>

148. The Panel is not convinced by Mr Day's evidence in this regard, as we are aware that the AUP noise rules do in fact incorporate various examples of lower noise standards for Sundays. For example, the daytime noise standard of 50dB  $L_{Aeq}$  that applies from 7am - 10pm Monday to Saturday in residential zones is confined to the period 9am – 6pm on Sundays (per E25.6.2.1). In addition, the Eden Park Precinct includes a standard that excludes the ability for organised sports and recreation activities to be undertaken at night-time on a Sunday (per I310.6.11(5)). This strongly implies a degree of protection in the AUP for Sunday nights even for a certain class of primary activities, relative to the rest of the week.
149. The Panel also draws attention to the general acceptance in the resource consent sphere as to construction activities usually being limited (via conditions of consent) to Mondays – Saturdays, again with reference to the need for respite on Sundays. This reflects the lower noise standard applicable under the AUP to Sundays between 7.30am-6.00pm of 55dBA  $L_{Aeq}$ , compared to 75dBA being enabled on weekdays and Saturdays.<sup>55</sup>
150. The Panel has therefore reached a view, consistent with the AUP's general protection of amenity on this day in terms of noise effects, that concerts on Sundays (where not followed by a public holiday) should not be available as a scheduled concert day as a matter of course. We nevertheless recognise the potential need for EPT to enable provision for a Sunday concert from a programming and concert-scheduling basis, and to do this in a manner that is consistent with EPT's evidence that emphasised the contingency purpose of Sunday concerts. We have therefore incorporated a condition that provides for Sunday concerts (where not followed by a public holiday) as a contingency date only, and to 10.30pm, rather than allowing for Sundays to be accorded the same status as those held on Fridays and Saturdays. We recognise that this earlier finish time could cause some difficulty for artists who wish to play a longer set, but this is a matter that EPT and the promoter will need to manage in the eventuality that a Sunday fixture is required.
151. This specific requirement in respect of Sunday concerts (not followed by a public holiday) is included as new condition 11A.

### **Pack-in and pack-out noise**

152. The proposal involves a change to the conditions that presently manage the noise effects of pack-in and pack-out activities. The AEE described this as the introduction of a night-time noise limit of 45dB  $L_{Aeq}$  to reflect existing background (ambient) noise levels, where the current conditions limit this to 40dB  $L_{A10}$ . It advised that:<sup>56</sup>

*"The number of days required for pack-in and pack-out depends on the stage configuration, artist/act and size and scale of the show. While many of the*

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<sup>54</sup> EV15, at [6.12]

<sup>55</sup> See E25.6.27(1) of the AUP

<sup>56</sup> AEE, at p.36

*activities undertaken during pack-in and pack-out occur within the stadium itself, the following measures are proposed to manage the external effects of both the pack-in and pack-out operations, particularly at nighttime”.*

153. The ANE stated the rationale for the relaxation of the pack-in and pack-out noise limits as follows:<sup>57</sup>

*“As discussed in Section 4.2, the existing background noise levels are in the range of 41 to 45 dB  $L_{A90}$  (detailed data in Appendix H). The generally accepted practice for establishing noise limits is to set an  $L_{Aeq}$  limit at 5 to 10 dB above the background noise level  $L_{A90}$ .*

*“On this basis we recommend the night noise limit in Condition 18 is changed from 40 dB  $L_{Aeq}$  to 45 dB  $L_{Aeq}$ . This proposed limit is also consistent with the AUP ‘Business to Residential’ night noise limit of 45 dB  $L_{Aeq}$ ”.*

154. A further aspect of the application that is relevant in this regard is that the application limits the proposal to six acts or artists, so that the number of pack-in and pack-out activities remains consistent with the maximum number for that activity provided for by the present Concert Consent, and will be the same as for a single one-off concert event.
155. Mr Styles’ memorandum advised that he expected that some pack-in and pack-out noise at this level may be clearly audible at neighbouring properties and would be distinct from other sounds due to its character. This was consistent with some of the evidence that we heard from submitters, and the intrusion that these activities can create at sensitive late-night periods. Mr Styles noted that the Applicant had confirmed that the conditions do not include a +5dB adjustment for any sound that exhibits special audible characteristics such as steel-on-steel contact, which he considered to be an appropriate approach. However, he recommended a minor amendment to the relevant condition to ensure that this was clear.
156. Mr Day’s evidence noted in respect of this matter that the proposed limit is also consistent with the AUP ‘Business to Residential’ night noise limit of 45dB  $L_{Aeq}$ .
157. With regard to pack-in and pack-out noise, Mr Styles advised that the proposed noise limit of 45dB  $L_{Aeq}$  “*would apply for a limited number of nights per year and is only associated with six pack in and six pack out periods*”, and that while the higher limit would mean that amenity is reduced at night-time, this would not be to an unreasonable level. He considered that “[*s]ome people are likely to be able to hear the work being undertaken inside their homes and particularly if windows are open, but most people will not be disturbed*”.<sup>58</sup> He agreed with Mr Day’s point that the noise limit is the same as that within the interface between residential and business zones,

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<sup>57</sup> ANE, at [7.5]

<sup>58</sup> EV40, at [11]

and while this does not make the noise limit automatically reasonable, it is considered reasonable for residential receivers in other situations. Further:<sup>59</sup>

*“The main reason for the higher limit is to allow the business activities to do some things at night to allow their sites to be used efficiently whilst maintaining a noise environment at the upper end of what is normally acceptable. This is a non-acoustical consideration. My reading of the application is that the higher limit is needed to allow the pack in and pack out to be conducted efficiently. The same non-acoustical considerations apply”.*

158. Mr Styles also considered that the OMP-C should be the place to promote careful noise management and the avoidance of impact sounds in order to minimise the occurrence of impact sound that would be the most disturbing noise from pack-in and pack-out activity.
159. Despite these assurances, a concern to the Panel is how this higher noise level allowance would be monitored, if at all. While we anticipate that appropriate guidance as to condition requirements would be provided by EPT to the relevant contractors undertaking this work, it appeared that any infringements would be left to the Council’s compliance monitoring team, presumably in response to complaints from adjacent neighbours, and potentially at periods late into the night. The Panel recognises the efficiency gains for concert promoters arising from an increase in the noise standard, but considers it reasonable for this to be subject to a more active form of monitoring, at least for an initial period, to ensure that adverse effects are confined to an acceptable level (i.e., that defined by the noise limit). This is particularly so where this activity is understood to be carried out by different contractors for each event, and where knowledge of required procedures may not be consistently known or where an appreciation of the effects of non-compliance in a residential setting may not be fully understood.
160. Accordingly, the Panel finds that pack-in and pack-out activities should be the subject of real-time monitoring in a similar manner to the concerts themselves, for a minimum of three concerts, before seeking approval from the Council for dispensation of this requirement. We recognise that noise monitoring of pack-in and pack-out activities is not a current requirement under the Concert Consent. However, we have heard evidence from some submitters as to the disruption that these activities can cause, particularly at night-time. While we conclude, on the basis of the expert evidence, that the requested change is acceptable and consistent with ambient noise levels, we find that real-time monitoring is appropriate to demonstrate that this activity can be undertaken in a compliant manner. The Panel does not view this as an onerous requirement, given the benefits associated with the increased efficiency provided for promoters associated with the revised noise limit. It will, however, ensure a level of accountability for this aspect of concert events rather than place reliance on reactive resident-led complaint procedures.
161. In formulating our amendments to the relevant conditions (being conditions 21 – 25) in this regard, the Panel has found that there is a need to differentiate between

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<sup>59</sup> Ibid, at [12]

‘concert event’ as a singular occasion used in other conditions, and an ‘artist concert event’ which denotes one or more concerts by a single act or artist (which involves only one pack-in and pack-out activity). The purpose of this is to make it clear that monitoring requirements can be sought and approved in relation to an ‘artist concert event’, rather than in respect of each individual concert event undertaken by that artist.

## Steel work

162. An issue associated with pack-in and pack-out activities that was raised by Mr Day through the ANE and his evidence was in respect of the equipment able to be used during this period. He referred to existing condition 46 that prohibits steelwork from taking place inside the stadium at night, which he considered to be contrary to the ‘effects-based approach’ of the RMA. He considered that effects from activities “*should be controlled by appropriate noise limits rather than a blanket ban on particular activities, especially now that we have noise monitoring data for this activity on which to base our assessment*”.<sup>60</sup> This included noise logger information from the P!nk concert in March 2024, which showed infringements of the 40dB L<sub>Aeq</sub> standard, but compliance (just) with 45dB (at 5/64 Sandringham Road).

163. Accordingly, Mr Day recommended the deletion of the condition and that the management procedures set out in Appendix F to the ANE be referred to in the Pre and Post Event Management Plan to directly address the matters referred to in condition 30. Such measures are proposed to include avoidance of tonal reversing alarms and impact wrenches (rattle guns) at night. This change in the condition was proposed as follows:

30. *The Pre and Post-Event Management Plan must include the following information:*

...  
(f) *Measures to avoid the use tonal reversing alarms (beepers) on machinery and ensure no impact wrenches (rattle guns) are used at between 10.30pm and 8am.*

164. Mr Styles’ memorandum advised that he did not agree that limiting steel work by a condition is contrary to the RMA. He noted that in his experience.<sup>61</sup>

*“it is very common and appropriate to control specific activities by specific conditions of consent if those activities are known to or could exceed a particular noise limit if conducted without mitigation that is either proposed or able to be required by a condition of consent”.*

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<sup>60</sup> EV15, at [4.22]

<sup>61</sup> Agenda, at p.73

165. Mr Styles went on to say that:<sup>62</sup>

*“The applicant has demonstrated that steel work can be undertaken in compliance with a reasonable noise limit, if it is undertaken in certain locations and with a great deal of care. I consider it reasonable for the consent to authorise steel work at night if the decision maker can be certain that the noise it generates will either comply with the proposed noise limit, or can be practicably managed to comply by following clear, certain and enforceable steps in the [OMP-C].”*

166. In this respect, Mr Styles noted that considering the noise effects of night-time steelworks need to be assessed in conjunction with the application to authorise a higher night-time noise limit; the monitoring results from the Pink concert; and the recommended management measures in Appendix F to the ANE. He recommended that Appendix F should be updated to provide a clearer and more certain regime for the determination of when noise mitigation is required, and the associated methods, so as to enable EPT to identify:

- The circumstances when rubber or timber mallets must be used;
- How structures must be constructed and dismantled to avoid steel on steel contact; and
- When temporary noise barriers must be used and where, or how the consent holder will know that an infringement of the noise limits might occur if there is no process to identify it.

167. He went on to say that it would be acceptable to remove the condition that prohibits steelwork at night subject to Appendix F being updated with the protocols as set out above.

168. These measures were not responded to in Mr Day’s evidence, and on further review of this matter the Panel notes that it only has the version of Appendix F that is attached to the ANE. We therefore have a concern regarding the way in which the noise management measures and use of temporary noise barriers are contained within the ANE, rather than what would be expected to be a more readily accessible attachment to the conditions, with an appropriate cross-reference.

169. Overall, the Panel considers that a relaxation of the noise standard would be reasonable having regard to ambient noise levels and the mitigation measures proposed by Mr Styles. We consider, however, that greater certainty as to the implementation of measures set out in Appendix F is required, in line with Mr Styles’ recommendations, and that for ease of reference by both EPT and the Council’s monitoring officers (and members of the public) that Appendix F would be better placed as an attachment to the conditions, rather than remaining as a separate document.

170. We have therefore extracted Appendix F from the ANE so that this is now included as ‘Appendix A’ to the set of conditions which form Attachment 1 to this decision.

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<sup>62</sup> Ibid

We have also incorporated Mr Styles' recommended updates for Appendix F as particular matters that are to be addressed in the Pre and Post Event Management Plan, as an amendment within condition 32.

### **Sound checks**

171. Changes were proposed by the EPT in respect of the conditions relating to sound checks. This relates primarily to enabling these checks to be conducted at any time between 10am and 8pm on any day of the week, but subject to a maximum cumulative duration of 3 hours as presently stipulated. Existing condition 15 of the Concert Consent restricts this to 5pm – 7pm (weekdays) or 10am – 7pm (Saturday, Sunday and public holidays), while condition 16 enables this to be extended to a time between 10am and 5pm (weekdays) subject to prior notification to the Council and any care centre or education facility in the vicinity.
172. Mr Styles' memorandum noted that with the written approvals in place from Kowhai Intermediate School and the Best Start Mt Eden ECEC facility, he considered that the changes in this regard are acceptable.
173. However, the Panel heard from some submitters that this activity could be just as disruptive as the concerts themselves, and we queried this matter with Mr Day in terms of the broad duration in which it could occur on any given day. Mr Day also explained that the noisy part of the testing is only a component of the three-hour window for this activity.
174. Mr Styles advised in his response memorandum that he agreed with Mr Day's characterisation of this activity, and while the time window for sound checks to occur was proposed to be extended, he also noted that the 'loud' part would only occur for a small part of the three-hour allowance for this activity. However, he acknowledged within his response memorandum that this could still cause disruption.
175. The Panel considers that in general the proposed condition does not significantly alter the scope of the present condition, and nor would the incidence of this activity increase, given the way in which the additional concert events are tied to the existing maximum of six artists (i.e., the number of potential sound testing events would remain the same as at present). However, the potential for this activity to occur at up to 8pm, rather than 7pm, is considered by the Panel to be unduly disruptive. While it remains earlier than the more sensitive night-time period, it would appear likely to unnecessarily coincide with typical evening respite times for nearby households. We consider that this effect is of greater impact to residents in the evening period than the local education institutions that are emphasised in the current condition and who were of concern to Mr Styles. Because we did not hear a compelling reason why an extension to 8pm was necessary, we have decided that the existing 7pm limitation should be retained. Condition 14 to this decision reflects this change.

## Fireworks and helicopters

176. The issue of fireworks and helicopters were matters raised in submissions but was not raised as a significant matter of concern in the evidence or during the hearing. However, as previously noted it was a procedural issue raised in the Panel's Minute 1 as to the need for and management of fireworks and helicopters, and whether either of these possible components would give rise to the need for additional consents under I310.4.1(A12) and (A14), with reference to rule C1.5(1). Both elements were noise-source issues referred to in some submissions in opposition to the application.
177. While the evidence and Mr Vinall's memorandum of 11 October 2024 did not rule helicopter flights out completely, this matter was effectively resolved through the amended conditions handed up during the hearing by the Council (and confirmed in the Reply version), which changed condition 38 as follows:

*"No helicopter movements are permitted for any concert event ~~may land on or take off from the site on the day or night of a concert event~~"*

178. The issue of fireworks is more complicated, insofar as there are two 'classes' of fireworks that could occur as part of a concert event (or sports event for that matter). Mr Vinall highlighted in his memorandum that the Concert Consent adopted a definition that incorporated both firework displays and theatrical/stage pyrotechnics as follows:<sup>63</sup>

*"A musical or other similar live performance or series of performances of any genre of music and may feature one or multiple artists of equal or lesser billing. It includes performances by an orchestra or other musical troupe or group or live music which may be accompanied by a dramatic performance (such as an opera or ballet). The activity may include a variety of accessory activities and entertainment elements such as staging, lighting, audio visual, special effects including theatrical/stage pyrotechnics, fireworks displays, aerial displays or performances or other features which form part of or enhance the event"*

179. These are subsequently managed through proposed condition 15 that requires pyrotechnics that form part of a concert performance to be included in the cumulative noise limits (as measured at any residentially-zoned site). Condition 17 relates to fireworks involving an air-burst or in an airborne situation (and which might be expected to be visible, and more audible, from outside the stadium).
180. This matter was the focus of the Panel's Minute 1, whereby Rule 1310.4.1(A12) provides that fireworks that are not in compliance with Standard I310.6.13 require consent as a restricted discretionary activity, as their use to 11pm would not comply with I310.6.13(3), and their use on more than three occasions per 12-month period would not comply with I310.6.13(1).

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<sup>63</sup> LUC60351212, at [62]



181. The memorandum went on to note that the type of fireworks used depends on the artist and their associated concert production, but that “*it is more typical that concerts involve pyrotechnic bursts during a song or at the start of finale of the event, generally of a shorter duration, rather than airborne “fireworks”*”.<sup>64</sup> Further, Mr Vinall stated that:<sup>65</sup>

*“pyrotechnics were included in the Six60, Ed Sheeran and P!nk concerts, but did not involve airborne fireworks detonating in the atmosphere above the stadium. These pyrotechnic displays were required to comply (and did comply) with the noise limits in Condition 15”.*

182. It would seem likely that this approach would continue to remain typical (but in some cases may be supplanted by other displays such as through the use of multiple drones, as was suggested by Mr Sautner). However, because the use of fireworks beyond those inherent within the Concert Consent definition have not been excluded, it has been necessary to address their use within condition 17. The updated version of this condition was presented as part of the Reply as follows:

*Professional fireworks displays that include an air-burst where the detonation or burst occurs in an airborne situation must be excluded from any assessment of compliance with the noise limits specified in Condition 15, and noise from these displays shall instead be in compliance with Standard I310.6.13(5) of the AUP, except that any such additional professional fireworks display associated with any of the 12 concerts approved in this consent occurring over the course of each concert performance must not exceed 15 minutes in duration and conclude by 11pm, (being 30 minutes later than the 10.30pm set out in Standard I310.6.13(3)).*

183. These amendments appear to address the issue raised in Mr Styles memorandum, in part, where he noted that the conditions initially proposed by the Applicant did not make it sufficiently clear that the consent seeks to authorise up to 12 additional fireworks displays associated with concerts, as late as 11pm, and that these displays are in addition to the three displays permitted by Standard I310.6.13(1). He therefore recommended that the condition is amended to provide additional clarity to protect EPT from any challenge arising from an unclear or uncertain condition.

184. Mr Styles further advised in his response memorandum that:

*“With the reintroduced definition of concerts into the conditions and the clarifications to the condition relating to fireworks, I consider that it’s clear that there could be fireworks at any concert and that the consent authorises displays that are additional to those permitted by the precinct standards”.*

185. The updated version of the condition therefore contemplates and provides for the use of fireworks beyond standard I310.6.13(3), and so in the Panel’s view this invokes a further consent requirement under I310.4.1(A12), as a restricted

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<sup>64</sup> EV18A, at [2.6]

<sup>65</sup> Ibid, at [2.7]

discretionary activity, as we have referenced at paragraph 180 above. However, we note that the condition has not been framed to address any exceedance of standard I310.6.13(1). Therefore, in the Panel's view, and notwithstanding reference to fireworks in the concert event definition, such fireworks would not be authorised to occur at Eden Park on more than three occasions in a 12-month period. Our approach in this regard precludes a potential cumulative effect where concert-related firework displays might otherwise be considered separately to the three instances that are enabled for other primary activity events at Eden Park. We have added an advice note to condition 17 to highlight this limitation to the Applicant.

186. The Panel nevertheless agrees with Mr Vinall that the consent that we consider is applicable in terms of I310.4.1(A12) does not change the overall activity status of the application (being a non-complying activity).

### Relevant case law

187. The submissions and evidence that the Panel heard in respect of noise (and the proposal generally) highlighted the different tolerances of people to concerts and associated noise effects. We are, however, satisfied that there is a majority level of support and acceptance of these effects in the local area. That was in the order of 91% support via the EPRA survey, and 74% support based on submissions in favour of the application within 500m of Eden Park, and 82% support within 1km.<sup>66</sup>
188. It is relevant to highlight in this regard that the EPT has not sought to rely on this level of support to suggest that adverse effects would be minor (in s.104D(1)(a) terms), as it has appropriately recognised, in the Panel's view, that the adverse effects of the proposal would be more than minor for those persons opposed to concerts.
189. As previously noted, EPT's closing submissions addressed the issue on how to reach a finding in s.104 terms in respect of the competing positions of submitters regarding concert noise. It highlighted that "*case law on people's varying responses to the same event is sparse but helpful*".<sup>67</sup> It referred in the first instance to the 2012 Environment Court case of *Francis v Minister of Energy and Resources* that concerned the variation of a mining licence. In determining what the appropriate noise conditions should be, the Court held:<sup>68</sup>

*"We do not consider that it is practical or necessary to set much stricter quantitative limits that would protect the most sensitive and vulnerable residents."*

190. The Reply also referred to the 2017 Environment Court case of *Norsho Bulc Ltd v Auckland Council* which involved an application for consent to establish a managed fill operation. It noted that noise was not regarded as a major issue but required a

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<sup>66</sup> Agenda, at p.16

<sup>67</sup> EV55, at [12]

<sup>68</sup> *Francis v Minister of Energy and Resources* (2012) NZEnvC 253, at [111]

determination by the Court, and that it adopted an approach that was consistent with the approach in *Francis*, where it said:<sup>69</sup>

*“Without in any way doubting the sincerity of the concerns held by Society members or the significance they attach to these concerns, we place considerable weight on the agreement between independent expert witnesses on the level of effects on lifestyle amenity likely to be experienced by members of the Society from the operation of the proposed fill. In doing so, we acknowledge that some local people will be more sensitive to the low level of offsite effects generated by the proposed fill operation than others. This heightened sensitivity is not of itself sufficient cause for us to decline consent.”*

191. The Reply also referred to the 2013 Environment Court case of *Meridian Energy v Hurunui District Council and Canterbury Regional Council* for a wind farm, where the Court addressed the noise sensitivity issue in the following way:<sup>70</sup>

*“[298] In public health terms, a population of individuals will have individual noise sensitivity that falls on a normal distribution (Gaussian bell curve). It would be a reasonable expectation that the population that falls within the curve defined by plus or minus 2 standard deviations of the mean would be protected. This represents 95% of the population, but 5% of the population remains and these people may be particularly sensitive to an environmental stressor.*

*“[299] In Motorimu Wind Farm Ltd v Palmerston North City Council the Court accepted, in dealing with annoyance that might give rise to sleep deprivation, anxiety and possible consequential health effects, which “ultimately, consideration of noise effects must be based on normal physiological responses, and cannot seek to protect those whose sensitivities might be at the higher end of the scale”. We agree with this approach, because the RMA is not a “no effects” statute. The 5% of the population who are either hyper or hyposensitive to noise may attract an individual assessment and arrangements to avoid a potential health effect, but any arrangements reached will need to be by agreement outside the requirements of the RMA.”*

192. The Reply made the submission that an application of this case law requires decision-makers to determine what is reasonable or unreasonable in the context of the evidence before it as to the range of sensitivities of receivers. It went on to say:<sup>71</sup>

*“The strong local support in favour of the granting of the application includes responses received from people in the immediate vicinity. I note Judge Kirkpatrick’s ultimate reliance in the Norsho Bulc case on the advice received from experts as to what was, in their view, consentable”.*

193. On that basis, the Reply stated that a decision to grant consent in accordance with the proposed conditions *“will not please the most sensitive of the submitters, but with all respect, that is not the test”*, and that the concerts will be notified in advance.

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<sup>69</sup> *Norsho Bulc Ltd v Auckland Council* (2017) NZEnvC 109, at [62]

<sup>70</sup> *Meridian Energy v Hurunui District Council and Canterbury Regional Council* (2013) NZEnvC 59

<sup>71</sup> EV55, at [16]

Therefore, all potential receivers knowing the start and finish times, “*hopefully mitigating the annoyance factor*”.<sup>72</sup>

194. The Panel is not certain that knowledge of the start and finish times will necessarily mitigate the annoyance factor for those persons opposed to concerts. That is because we understood this annoyance factor (i.e., concert noise) to be that which is experienced by receivers during the concerts, along with associated pack-in and pack-out activities, irrespective of having advance notice. However, we accept the preceding point that a grant of consent to the proposal would accord with the *Norsho Bulc* and *Meridian Energy* approaches to a determination of effects, and would reflect the expert evidence that the proposal is, at least in overall terms, consentable.
195. This finding also informs our overall conclusion and evaluation with respect to s.104 as set out later in this decision.

### **Summary and conclusion**

196. Overall, the Panel accepts the predominant view provided by the experts for the Applicant and the Council that the adverse noise effects of the proposed concerts will be reasonable (including in a s.16 sense), and of an intermittent nature, albeit focused within the summer concert period. We have, however, determined that certain changes are required to the conditions framework to reflect the following:
- (a) Sunday concerts are only to be provided for on a contingency basis, and are subject to a 10.30pm finish time;
  - (b) Real-time monitoring is required for the pack-in and pack-down period for a minimum of the first three artist concert events conducted under the terms of this decision;
  - (c) More specificity is required in respect of steel work undertaken as part of the pack-in and pack-down period within Appendix F to the ANE, and this appendix is to be incorporated into as an attachment to the conditions, along with changes to the Pre and Post Event Management Plan requirements at condition 32; and
  - (d) Noise testing is to be limited to 7pm at the latest.
197. The conditions attached at Attachment 1 incorporate these changes.

### **Traffic and transport effects**

#### **Introduction**

198. The primary changes associated with the proposal from a traffic or transportation perspective relate to the increase in the number of events in which the traffic (or transport) management plans would need to be applied and co-ordinated with public transport services provided by AT; the later finish time and increased capacity that

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<sup>72</sup> Ibid, at [17]

would also be relevant to the aforementioned matters; and the movement of heavy vehicles associated with pack-in and pack-out activities.

199. The AEE noted in regard to traffic matters generally, with reference to the ATE provided with the application, that:<sup>73</sup>

*“... the transport effects of additional concert events and changes to the parameters can be adequately mitigated by the existing conditions requiring the implementation of a traffic management plan appropriate to the parameters of the concert event and are overall minor”.*

200. The Panel notes that the traffic and transportation-related effects associated with concert events was a further issue of particular concern for submitters opposed to concerts; we also heard from supporting submitters as to parking and access issues being a source of some frustration at times. As with noise effects, there are a number of aspects that contribute to the traffic and/or transportation related effects of concerts, ranging from parking restrictions to the ability for the overall transport network to cater for attendee arrivals and departures from concert events, with this capacity understood to be somewhat variable across different days of the week. For the sake of clarity, we have also addressed these matters as separate sub-themes below, before drawing together our overall conclusions and findings by way of a summary at the end.
201. As with noise effects we have primarily referenced the expert evidence provided by Mr Langwell for the Applicant and Mr Clark for the Council. We have done so while also cognisant of the evidence presented by local residents both for and against concerts, but in particular by those who consider themselves impacted by localised traffic issues associated with concert events. Again, we have not discounted those concerns because they happen to live in close proximity to Eden Park, especially for those persons who have lived in the vicinity for many years and pre-dating the gradual changes and expansion of activities accommodated at Eden Park. At the same time, however, we also recognise the significant level of support for concert events, as evidenced through the submission process, and surveys undertaken by EPRA. Nevertheless, the ongoing issues associated with traffic and transport management for concerts had been recognised by the Applicant to the extent that it convened a ‘traffic summit’ to seek improved management of these issues for future events. We discuss this further below.
202. We note the overall conclusion of Mr Clark in his memorandum that the key traffic and transport issues from his perspective related to:
- (a) A concern about the transport effects of concerts for over 50,000 on a midweek evening peak, although he noted that the frequency of such events may be limited by venue capacity if the concert stage is at the western or eastern end of the stadium; and

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<sup>73</sup> AEE, at [7.5.5]

- (b) AT's concern about permitting large concerts on a Sunday and managing the effects of these events.

### **Role of traffic or transport management plans**

203. The Panel wished to understand the roles of the EPT and AT in managing parking and traffic/transport effects. In terms of AT, the Panel also sought comment on the ability of its officers to monitor and enforce certain restrictions and their ability to provide the requisite services at later hours and on Sundays, given the reservations that AT had expressed in this regard prior to and during the hearing.
204. As noted above, it was Mr Langwell's evidence that the traffic management response around Eden Park is designed to mitigate the effects of a concert event and ensure traffic flow and pedestrian safety is maintained, while minimising the impact that traffic management has on the surrounding neighbourhood. He also stated that there are ongoing reviews of the relevant Traffic Management Plan (**Traffic MP**) to ensure that each event has a bespoke Traffic MP so that any traffic and transportation related effects are minimised. His evidence also described the recent traffic management summit that had occurred, although the outcomes and measures proposed through that process were not available or described for us in any detail.
205. In terms of both the submissions and the Agenda report, Mr Langwell stated that no new information had arisen that would change the conclusions he had reached in the ATE, and in his view "*the traffic effects of the proposal can be accommodated on the road network without compromising its function, capacity and safety*".<sup>74</sup>
206. Following the completion of the submitter presentations and prior to the Council's responses, the Applicant requested the Panel's approval to introduce supplementary traffic evidence from Mr Langwell. This evidence was in response to questions raised by the Panel during the hearing in reference to the issues raised by Mr Clark in his memorandum included in the Agenda, and the further conferencing between EPT witnesses and the Council, as encouraged within the Panel's Minute 2. Mr Langwell's supplementary evidence also included recommended amendments to the proposed conditions.
207. Mr Langwell advised in his supplementary evidence that his prior reference to the expected 50% public transport usage associated with larger concert events was in respect of weekdays, and following an event, rather than relating to the way in which people access an event.
208. In terms of the concerns expressed by AT regarding the provision of public transport services for later events on Sundays, Mr Langwell referred to the rationale set out in his primary evidence, including the lower transport demands (on the transport network generally) on Sundays; the additional measures introduced for the Rugby World Cup 2011; the likelihood of Sunday concerts being low (as referred to previously); and the importance of communication strategies. He went on to describe

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<sup>74</sup> EV14, at [120]

the services that are available on Sundays and advised that an event can be planned to promote the use of alternative modes, with an adjustment to the Traffic MP. In his opinion, the “*additional capacity on the road network on a Sunday can accommodate the increase in additional private and ride share vehicles, walking, cycling and micromobility*” and that “[t]his can be promoted by Eden Park through the “*know before you go*” programme”.<sup>75</sup>

209. Mr Langwell also outlined other possible measures that could be introduced and drew this approach together with a proposed new condition to require that EPT develop measures to promote alternative modes for events for over 50,000 people. The intent of this was to allow EPT and AT to identify the level of public transport that can be provided and then to allow sufficient time to develop and communicate the promotion of alternative modes to ensure adequate transport options are available for concert goers and they are aware of them. He went on to address the later finish times and situations where the rail line is closed, and in respect of the latter included an addition to his proposed condition described above, which would be as follows:

*[31A] Any concert where the anticipated crowd exceeds 50,000 people, the consent holder must include measures to:*

- i. Plan for and communicate the availability of other modes of transport (including private vehicles, taxis, ride share, walking and cycling) to support available public transport services to ensure that safe and efficient travel can occur for all patrons to and from an event. This is to include contingency planning for rail outages or postponement of events.*

210. Mr Langwell also addressed the issue of crowd management, which he considered was adequately managed by existing conditions, but he was supportive of more directive wording to ensure that crowd management is addressed in the Traffic MP. An additional condition was proposed (as clause (ii) to the above condition) as follows:

- ii. Put appropriate measures in place to ensure that crowds exiting the stadium do so in a safe and efficient manner within the surrounding street network with the preparation and implementation of a Crowd Management Plan, prepared by a suitably qualified and experienced person.*

211. Mr Clark addressed in his response memorandum a number of matters that had been referred to by Mr Langwell, and in particular on topics related to stadium capacity, mode split, Sunday concerts, pedestrian safety, integrated ticketing, later finishes and proposed conditions. In summary, in respect of these topics Mr Clark advised as follows:<sup>76</sup>

- (a) When preparing his original report, he had considered it was unlikely that all concerts would attract 60,000 people. In this regard, he referred to the

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<sup>75</sup> EV35, at [21]

<sup>76</sup> EV39

comments of Mr Kneebone (Live Nation) as to the trend for greater numbers of music acts attracting larger crowd sizes, but also noted that this would be offset to some extent by the fact that 3-9% of people do not turn up on the day.

- (b) In terms of mode split, he commented that there are significant differences before and after events, and between events. For example, approximately 67% of people left one of the P!nk concerts by public transport, but there have been two other concerts with figures of about 50%. The uncertainty as to what percentage of concert attendees would use public transport means that there is a need for a separate Transport Plan to be developed well ahead of concert events, which needs to include provision for contingency planning, as set out in Mr Langwell's proposed condition.
- (c) Mr Clark advised that he shared AT's concerns about large Sunday concerts and their ability to provide services for any approved events. He referred to the proposed conditions that would now make it EPT's responsibility to make specific arrangements to service the events and to bridge any gaps, although he noted that Mr Langwell's original evidence had not provided specific details about how these gaps would be filled. He considered that proposed condition 31A would now put the onus on EPT to plan for Sunday events and contingency issues, such as when train services are not available, and to communicate how concert goers can travel to and from the venue. Mr Clark observed that there would be large gaps to be addressed on an evening with no train services but accepted that the incidence of such events would likely be very low,<sup>77</sup> and would need to be considered by a Crowd Management Plan (CMP).
- (d) Mr Clark highlighted the importance of a CMP in times of insufficient public transport capacity, and in response to the crowd egress issues experienced during the P!nk concerts. He referred to AT's memorandum which highlighted that the current Traffic MP (Traffic MP5 specifically) is already acknowledged as unable to adequately address all adverse effects of large attendances at the stadium. However, he also noted that the effects of the use of the 'boneyard' area on pedestrian circulation for the P!nk concert may not have been fully assessed prior to the event, and that this is of concern. The additional requirements for a CMP were noted by Mr Clark to have been addressed by Mr Dales where it would be required to define how the EPT would take the lead in planning for Sunday events and for contingency events, and the requirements for a CMP, and Mr Clark advised that he considered this would provide appropriate mitigation for this issue.
- (e) Mr Clark advised that while a requirement for integrated ticketing would be highly desirable, it appears difficult to justify making it compulsory for events

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<sup>77</sup> We note that this evidence, and the hearing itself, preceded the announcement by the Minister of Transport and Acting Mayor (Auckland) on 8 November 2024 as to the need for rail closures amounting up to 96 days across 13 months to January 2026, with closures to be centred around holidays, weekends and evenings.



of more than 25,000 people as sought by AT, as an effect of the present application.

- (f) The later finish time of 11pm would reduce the opportunity for concert goers to use secondary public transport services and AT had expressed concern on this issue. Mr Clark considered that this would be at least partly addressed by the proposed Transport Plan condition which would require careful planning and communications advising concert attendees around their options when connecting public transport has ceased.
212. Mr Clark also highlighted a change in reference to the Traffic MP to a 'Transport Management Plan', or 'Transport Plan'. This change was to enable all modes to be included in the planning for events and would be of broader focus than a Traffic MP that would be solely related to managing the conditions of use of a public road (noting too that a Traffic MP is not responsible for confirming that sufficient public transport is available to service a concert event).
213. Based on the adoption of the amended conditions, Mr Clark was of the view that the transport-related effects of the proposal could be adequately addressed. He considered that the most significant transport issue relates to pedestrian safety, and this would be addressed by the requirement for a CMP, which would also reduce the potential issues in this regard on Sundays.
214. With respect to traffic, the Reply acknowledged that submitters both in support and opposition agreed that improvements could be made in terms of traffic management, as also acknowledged by witnesses for the Applicant. The Reply highlighted an area for improvement involving a reduction in direct controls in respect of road closures on Sandringham Road, along with better identification of residents' cars associated with access and parking restrictions during events. It also advised of EPT's concern regarding residents' calls to the hotline to address an issue relating to traffic being told that they were issues to bring up with AT. The Reply accepted, in principle, that:<sup>78</sup>
- "...when a traffic management issue that is not within the power of the applicant to resolve, it and not the complainant should be responsible for communicating that to Auckland Transport officials who are present at the Park and empowered to deal with the problem (such as authorising a towaway)".*
215. The Reply went on to say that the traffic summit organised by EPT, which is intended to be an ongoing process, can provide the right guidance for the development of Traffic and Transport MPs, which would assist in the development of plans appropriate to the different scales of events being held.
216. In this regard, the Reply recognised the importance of AT's involvement, and that the Applicant accepts the appropriateness of developing a Transport MP, under the Council's control as the consent authority, alongside the Traffic MP, under the

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<sup>78</sup> Ibid, at [20]

control of AT as the roading authority. This was noted as being given effect to through the updated proposed conditions attached to the Reply.

217. The Reply also referred to concerns raised by AT regarding their ability to provide bus services to service efficiently the departure of crowds attending the largest of events (and in particular on Sundays). In this regard, it stated:<sup>79</sup>

*“A consequence of a suboptimal bus service, hopefully not permanent, will at the very least be delays in departures. In anticipation of service delivery problems, the applicant will have to give notice to patrons. In relation to arrivals it may mean that patrons may rely on others to drop them off prior to a concert. Those who have the reasonable option may choose to walk. In the case of the vehicle ride share option, some will have to park at a greater walking distance around the extensive perimeter road network with its large supply of on-street parking. The Park and Ride system trialled for the Billy Joel concert could be revisited, but from more than one location – hopefully the shorter travel distances involved would make more efficient use of the available bus supply”.*

218. However, the Reply advised that the EPT *“is far from accepting that given the availability of buses and the workability of the established system, what is presently identified as a bus driver shortage issue should drive the outcome of this application”*.<sup>80</sup>
219. Based on its understanding of transport matters arising from implementation of the Concert Consent and following its review of the proposed conditions, the Panel has formed the view, as expressed during the hearing, that transport management generally needs to be more objective-focused, with more detail around such aspects as post-concert management. We accept the overall approach developed by the transport witnesses that the inclusion of a Transport MP condition, with appropriate objectives, alongside (or incorporating) an amended Traffic MP requirement is appropriate to address the Panel’s concerns in this regard. Further, we find that these measures will assist the EPT, as consent holder, in conjunction with the relevant agencies, to manage traffic and transport issues in a more holistic manner in a way that mitigates adverse effects on both the transport network and the amenity of neighbouring properties, and which maintains the safety of concert attendees.
220. These amendments were addressed through EPT’s supplementary set of conditions, prepared in response to the further comments enabled through our Minute 4. In particular, we note that the proposed Transport MP has become a requirement for a ‘Transport Plan’ (now at condition 33), which incorporates a requirement for a Traffic MP (at condition 33A). It is noted that some aspects of the changes sought by AT were not carried through into the Applicant’s supplementary version (although Mr Vinall advised that the Council’s proposed changes were accepted),<sup>81</sup> but the Panel has adopted these where they are considered to provide

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<sup>79</sup> Ibid, at [24]

<sup>80</sup> Ibid, at [25]

<sup>81</sup> EV63

more certainty as to the scope of contingency measures and requirements in respect of the Bus Hub.

221. The Panel has, however, identified some aspects of the conditions that require amendment to ensure that the post-concert traffic management and associated monitoring/enforcement is given greater priority. For example, to the extent that AT may not be able to provide enforcement officers after 10pm, then that is an issue that the Panel considers will need to be resourced by the Applicant.

### **General amenity effects and patron behaviour issues**

222. A particular theme of concern expressed by submitters in opposition to the proposal related to the effects of large crowds on residential streets, with reports of incidences of anti-social behaviour, litter, safety issues and vandalism.

223. Mr Vinall's evidence provided a helpful overview of the way in which various operational matters associated with concert events are managed, by reference to relevant evidence presented on behalf of the EPT. We summarise this aspect of Mr Vinall's evidence below (with the exception of parts of his evidence that relate to traffic and crowd management and pack-in/pack-out noise, which are addressed separately):

- (a) Mr Vinall advised that the OMP-C has established processes and procedures to manage the actual and potential amenity effects that concert events may have on the surrounding residential neighbourhood. He highlighted that Eden Park's event management delivery processes and procedures are integrated, and that the Event Management Plans are adapted in conjunction with feedback from the Community Liaison Group, the NZ Police, District Licensing Authority, the Council's Compliance Monitoring department, and AT. He referred to Mr Mintern's evidence that described the management plan process, which includes the incorporation of feedback and improvements to the plans.
- (b) Consultation and communication form a significant part of event preparation to ensure that nearby residents and businesses are aware of the concert event and the associated measures to be put in place to manage the event, including the movement to and from the stadium. This was detailed in the evidence of Ms Howse as referred to earlier, and which cited the differences in approach to the Billy Joel, P!nk and FIFA Women's World Cup events as examples of tailored approaches to each event.
- (c) Mr Vinall referred to Ms Katene's evidence which detailed the improvements that have been made to waste management and rubbish collection strategies. This included the expansion of the area where waste bins are located and the litter response prior to, during and after a concert event, including emptying Council-owned rubbish bins. He highlighted that the addition of a Quality Assurance report is an added measure to ensure that litter in the surrounding

streets is removed and referred to Ms Katene's confirmation that her crew are on call on a 24/7 basis to respond to complaints about litter.

- (d) Mr Vinall remained of the opinion that the OMP-C and adaptive management plans provide a robust and proven method to ensure that the amenity and event effects are mitigated to the greatest extent possible and can be refined and modified to cater for differences between individual concert events and incorporate improvements resulting from community and stakeholder feedback.

224. These were matters that were also considered by Mr Dales in his Agenda report where he accepted Mr Vinall's discussion as to the range of management measures set out in the OMP-C and Event Management Plan. He considered that the amenity effects associated with concerts can be adequately mitigated by these measures, based on what had been learnt from the concerts held to date. He also noted that:<sup>82</sup>

*"While these effects have the potential to vary in significance depending on the crowd type and size, the [OMP-C] and Event Management Plan provide the necessary flexibility for strengthening of the various measures where necessary, such as providing additional security, liquor checkpoints, toilets and rubbish bins stationed on key routes to and from the stadium and with the surrounding area generally. I am satisfied that this can be practically achieved in accordance with the recommended conditions of consent..."*

225. The Panel heard a range of views from submitters in respect of the various amenity-related effects of the concerts held to date, both in support of EPT's efforts and apparent success in this regard, and from those who considered that these effects remained unresolved in practice. This included concerns that some anti-social behaviours were not able to be appropriately controlled, due to the distance that they occur from Eden Park and the lack of security personnel able to be deployed within the neighbourhood. Part of this also reflected a perceived lack of action when concerns were raised through the EPT hotline and an associated denial of responsibility.

226. We have referred earlier to an acknowledgement in the Reply about concerns raised regarding the EPT hotline, and the Applicant's undertaking to ensure that traffic management issues are able to be appropriately taken up through its own representatives via AT officials. In this regard we have determined that it is necessary to amend the conditions relating to post-event management in the local area, and so we have set out clear objectives and parameters for managing transport-related effects and issues as described in the previous section of this decision.

227. We have also incorporated more detailed objectives in respect of the OMP-C (at condition 27) and its sub-management plans to ensure emphasis on the following outcomes, as follows:

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<sup>82</sup> Agenda, at p.24

*The objective of the OMP-C and its sub-management plans is to manage the effects of the concert events at Eden Park in an integrated document that:*

- (a) Provides for comprehensive community consultation and communication with respect to concert events, when they will occur and how they will be managed to minimise impacts on the surrounding residential neighbourhood;*
- (b) Ensures a safe and compliant environment within the stadium for concert patrons and staff;*
- (c) Mitigates, as far as practicable, the amenity effects of concert patrons accessing and departing from concert events through the surrounding residential neighbourhood; and*
- (d) Managing the effects of road closures and traffic diversions on the accessibility and use and enjoyment of surrounding residential properties.*

228. In addition, the Panel has also further amended the Event Management Plan provisions (condition 31) to set out the required procedures for litter management in more detail but in a way that reflects the improvements and undertakings on this aspect that were explained to us by Ms Katene. Clause (a) now requires details as to the geographic extent, verification of clean-up and post-event complaints associated with litter management. A further change to condition 31 (at clause (f)) is the inclusion of a requirement for security personnel to be deployed within surrounding streets for a minimum of 90 minutes following the end of a concert event, along with the need for the same coordination of agencies at the post-event stage, rather than just on a pre-event basis. The Panel considers that this will better establish the responsibility of the EPT, as consent holder, to ensure that appropriate enforcement personnel are available to an appropriate time beyond the end of a concert event through the Event Management Plan.

229. Having regard to Mr Vinall's evidence, the Panel is therefore satisfied that implementation of the OMP-C, along with other relevant management plans, and in accordance with our condition amendments, will be sufficiently robust to manage and further mitigate the types of amenity-related effects that were brought to our attention at the hearing.

### **Displacement of sports events**

230. An issue of concern for some submitters was the potential displacement of primary activities (sports events) from Eden Park as a result of increased concerts at the venue. For example, Mr Lucas referred to the fact that this was already happening, whereby "*Auckland cricket is unable to schedule provincial cricket because of concerts – Travis Scott later this month and Luke Coombs in January*".<sup>83</sup>

231. The AEE had advised in this regard, with reference to Policy I310.3(3), rather than an effects matter per se, that the scheduling and hosting of concerts since the issue

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<sup>83</sup> EV28, at [99]

of the Concert Consent in 2020 has demonstrated how concert events can be scheduled without displacing other primary activities, and that:<sup>84</sup>

*“...the Trust Deed provides Auckland Cricket preferential use rights for the Number 1 field for every alternate week between 1 November and 31 March and requires discussions between cricket and rugby codes for early start and late finish of the rugby season. This protects the cricket and rugby codes from displacement by concert events and this aspect of Policy I310.3(3) will be achieved by the proposal”.*

232. Mr Vinall also emphasised in this regard the evidence of Mr Sautner that scheduling and hosting can be managed so that concerts can occur without displacing other primary activities and that this has been demonstrated by reference to Eden Park’s calendar of events since the Concert Consent was issued. He went on to say that, with reference to Mr Blair and in terms of the aforementioned policy, that:<sup>85</sup>

*“...the Trust Deed provides Auckland Cricket preferential use rights for the Number 1 field for every alternate week between 1 November and 31 March and requires discussions between cricket and rugby codes for early start and late finish of the rugby season”.*

233. While EPT’s evidence on this point is acknowledged, the Panel drew attention at the hearing to the submission from Auckland Cricket,<sup>86</sup> which was supportive of the application but in a manner that was conditional upon EPT (and the Council) supporting their relocation to Colin Maiden Park. We were therefore uncertain in this regard as to how the loss of Auckland Cricket would align with the requirement within the Trust Deed to maintain Eden Park as a “*high quality multi-purpose stadium for the use of rugby and cricket...*”, and the various undertakings set out above.

234. Mr Sautner sought to clarify in response to questions on this issue that the EPT Board has committed to support Auckland Cricket’s move to Colin Maiden Park, including financially, noting the need for purpose-built facilities for the domestic form of the game (including the need for more changing facilities for women’s cricket) and the limitations to the outer oval with revised access arrangements for Eden Park in this area (which we understood to be a reference to changes to accommodate pack in and pack out activities for concerts in this area). In the interim, he advised that EPT and Auckland Cricket have worked together on the schedule for the 2024-25 season. He also noted that the average number of games per annum on the no.1 field has been five, with just two scheduled for the current season. He also referred to the improvements in turf technology that enables the no.1 ground to be utilised in quick succession for sports and concert use, as a matter that had been addressed in the original hearing for the Concert Consent.

235. On the basis of the above, it appeared to the Panel that notwithstanding Auckland Cricket’s rights to use the no.1 field, these rights are likely to be abandoned as part

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<sup>84</sup> AEE, p.72

<sup>85</sup> EV18, at [9.9]

<sup>86</sup> Submissions Volume 6, at p.4316

of its proposed move to Colin Maiden Park. Whether that is of Auckland Cricket's own volition or as a result of the facilities being compromised by concert events is not the key issue for us, rather it simply points to a likely significant reduction in cricket at Eden Park, with this being dependent on the ability to attract international tours (Mr Sautner advised that there are three days of international cricket scheduled to occur in January and March 2025).

236. Because concerts are likely to be confined to the November – March period, being the same period in which Auckland Cricket currently enjoy preferential rights, it is difficult to avoid the conclusion that increased concerts will be coincident with a reduction in domestic cricket over summer, the latter being a 'primary activity' provided for at Eden Park.
237. However, the Panel notes that primary activities (being permitted activities in the Eden Park Precinct) are defined through Objective I310.2(1) as comprising:
- (a) *organised sports and recreation;*
  - (b) *informal recreation; and*
  - (c) *day time non-sporting events.*

238. In this regard, we acknowledge the increased range of charitable and community-led events that Mr Sautner has described as having been accommodated and welcomed to the stadium over recent years (as described at his paragraphs 5.8 and 6.5). From the evidence that we heard in support of the application, we understand these events have been popular and largely welcomed by the community, and it is apparent that they have increased the types of events hosted by EPT and offset to some extent the decline in sports attendance for domestic level cricket and rugby. Mr Sautner explained that sporting activities now only comprise 30% of Eden Park's revenue, and that:<sup>87</sup>

*"Big ticket events such as concerts ensure the financial sustainability of the Park. This gets delivered back into the community. As I have already mentioned, we cannot run community events throughout the year without our big ticket events".*

239. While it appears likely that there will be a reduction in domestic-level cricket at Eden Park in the future, the Panel concludes that this is only one of the primary activities provided for under the Eden Park Precinct. We consider that there is a significant range of community and other activities now hosted at Eden Park that offset this reduction in sports activity, and these serve to broaden the range of primary activities that are held at the stadium and the people who would be attracted to such events. We also acknowledge that while there will no doubt be some variability as to the number of primary activities and concert events in any given year, the increased number of concerts sought by this application (albeit limited to six 'acts') will not lead to concerts becoming the dominant activity at Eden Park, or displacing the now increased range of primary activities held there.

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<sup>87</sup> EV2, at [6.8]

## Overall extent of adverse effects

240. The respective conclusions of the Applicant and the Council resulted in a somewhat unusual matter of contention as to the classification of adverse effects overall. This related to the finding to be made under one of the s.104D(1) gateway tests, whereby we are unable to grant consent to a non-complying activity if the adverse effects of a proposal are more than minor, and the application is contrary to the objectives and policies of the plan.
241. In this regard, the AEE concluded that:<sup>88</sup>
- “Overall, while the adverse effects of the proposal are minor to more than minor, their number and frequency is limited, and they are temporary in duration and any cumulative effects from the over-intensive use of the stadium throughout the year are avoided and mitigated by the retention of conditions limiting the frequency of events and ensuring respite periods”.*
242. However, the Agenda report noted that while this conclusion was generally agreed with, Mr Dales had conferenced with Mr Vinall to clarify aspects of it. Whatever the outcome of that conferencing, Mr Dales concluded as follows:<sup>89</sup>
- “Overall, while the adverse effects of the proposal are minor to more than minor in and around the concert events (noting the context of existing permitted and consented events at the Park), their number and frequency is limited, and they are temporary in duration and any cumulative effects from the over-intensive use of the stadium throughout the year are avoided/ remedied/ mitigated by the retention of conditions limiting the frequency of events and ensuring respite periods, so that I consider the adverse effects to be minor overall from a resource management perspective”.*
243. Mr Vinall’s evidence in this regard remained as set out in the AEE, and *“that the adverse effects of additional concert events will result in effects that are minor, or at most more than minor (in terms of noise generated from the concert) remains unchanged”*.<sup>90</sup>
244. The Applicant’s opening submissions reinforced this approach, advising that *“the advice the applicant has received is that the effects should be “acceptable” but not minor”*, a position that was supported by EPT’s review of the submissions. Accordingly, it was the Applicant’s position that it *“does not rely upon this Panel making a finding that effects would be no more than minor”*.<sup>91</sup>
245. Notwithstanding this, Mr Dales’ response memorandum advised that he remained of the view as set out in the Agenda report, based on the benefit of knowing the effects of actual concerts held at Eden Park, as compared to the first concert application where (as referred to by Mr Bartlett) these were assessed as prospective

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<sup>88</sup> AEE, at [7.10]

<sup>89</sup> Agenda, at p.38

<sup>90</sup> EV18, at [10.2]

<sup>91</sup> EV01, at [50]



or predicted effects. He also clarified his conclusion relating to cumulative effects and that these would be 'acceptable', rather than 'less than minor' as had been suggested by one of the submitters.

246. We note here that we heard through the evidence the various ways in which the adverse effects of concert events could be characterised (and to which we have previously referred). For example:

- Mr Day, in highlighting the "*significant benefits of concerts to the wider community*", considered that the noise effects are 'reasonable', a view shared by Mr Styles.
- Mr Styles also considered the noise effects to be acceptable, albeit that he agreed with the statement in the ANE<sup>92</sup> that they are "*at the upper limit of acceptability when considered strictly from a noise effects perspective*".<sup>93</sup>
- Mr Vinall further described noise effects as able to be "*adequately mitigated by the proposed conditions of consent to an acceptable and reasonable level given concerts will be fixed in number, frequency, duration and time*".<sup>94</sup>
- Mr Langwell noted that the traffic management response around the Eden Park environs is designed to 'mitigate' the effects of a concert event and ensure traffic flow and pedestrian safety is 'maintained', while 'minimising' the impact traffic management has on the surrounding neighbourhood.<sup>95</sup>

247. These various characterisations assist to inform our findings under s.104 (below), but we consider that the Applicant's acknowledgement that the adverse effects of the proposal are, in s.104D(1)(a) terms, at least minor in scale, and more typically "more than minor", is appropriate. This must, in our view, be defined by the way in which the effects of the proposal have been explained by those persons who consider themselves to be affected by the concerts, in terms of traffic and other ancillary impacts, if not the noise effects associated with concerts themselves. Indeed, the traffic and parking effects appear to have reached the point where the Applicant itself has resolved to try to address this issue on a broader footing and with the input from the surrounding community (via a traffic summit).

248. The Panel was also not persuaded by the view that adverse effects could be mitigated to a no more than minor extent, as proposed by Mr Dales, by the fact that the events would be fixed in number, frequency, duration and time (as also described by Mr Vinall above). We consider that this reasoning would allow noise at any intensity, so long as it was subject to some defined parameters.

249. Overall, we agree with the Applicant's position that the adverse effects of the proposal will be more than minor, and so does not meet the s.104D(1)(a) threshold test.

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<sup>92</sup> ANE, at section 6

<sup>93</sup> Agenda, at p.68

<sup>94</sup> EV18, at [8.28]

<sup>95</sup> EV14, at [15]

## Alignment with objectives and policies

### **Major Recreation Facility Zone and Eden Park Precinct**

250. While the Applicant acknowledged that the proposal would not meet the s.104D(1)(a) threshold test, its opening submissions were that it would meet the s.104D(1)(b) test by virtue of being “*not contrary to the objectives and policies of the plan*”. Mr Bartlett submitted that the relevant objectives and policies are those relating to the Special Purpose – Major Recreation Facility Zone (**MRFZ**, H26) and to the Eden Park Precinct (I310). These are set out below:

#### H26.2. Objectives

- (1) *Major recreation facilities are protected and enabled to provide for the social and economic well-being of people and communities.*
- (2) *Adverse effects generated by the operation, development, redevelopment and intensification of major recreation facilities are avoided, remedied or mitigated as far as is practical.*
- (3) *Major recreation facilities are protected from the reverse sensitivity effects of adjacent activities.*

#### H26.3. Policies

- (1) *Enable the safe and efficient operation of the primary activities within each precinct.*
- (2) *Provide for a range of appropriate accessory and compatible activities within the precincts.*
- (3) *Discourage activities that may give rise to adverse effects on:*  
...  
*(b) the safe and efficient operation of the transport network.*
- (4) *Avoid, remedy or mitigate the adverse effects of major recreation facilities on adjacent development.*  
...  
*(6) Recognise the potential for major recreation facilities to give rise to reverse sensitivity effects and require new activities that are likely to be sensitive to these effects generated within the precinct to manage the risk of generating reverse sensitivity effects.*

#### I310.2. Objectives (Eden Park Precinct)

- (1) *Eden Park is protected as a regionally, nationally and internationally important venue for all of the following primary activities:*

- (a) *organised sports and recreation;*
  - (b) *informal recreation; and*
  - (c) *day time non-sporting events.*
- (2) *A range of activities compatible with, or accessory to, the primary activities are enabled.*
- (3) *The adverse effects of the operation of Eden Park are avoided, remedied or mitigated as far as is practicable recognising that the primary activities will by virtue of their nature, character, scale and intensity, generate adverse effects on surrounding land uses which are not able to be fully internalised.*

I310.3. Policies

- (1) *Enable the safe and efficient operation of Eden Park for its primary activities.*
- (2) *Protect the primary activities of Eden Park from the reverse sensitivity effects of adjacent development.*
- (3) *Enable a range of accessory and compatible activities where they achieve all of the following:*
- (a) *avoid, remedy or mitigate adverse effects; and*
  - (b) *are of a character and scale which will not displace the primary activities.*
- (4) *Manage the adverse effects of the operation of Eden Park, having regard to the amenity of surrounding properties.*
- (5) *Recognise that Eden Park's primary activities may generate adverse effects that are not able to be fully internalised and may need to be further mitigated by limiting or controlling their scheduling, duration and frequency.*

251. Mr Dales expressed his view through the Agenda report that the proposal would be consistent with both sets of provisions, noting in particular that Policy I310.3(3) which relates to adverse effects:<sup>96</sup>

*"...does not require full or absolute avoidance, remediation or mitigation of all adverse effects of the proposal, but rather at the very least, a sufficient or adequate level of management of effects such that those identified adverse effects can be found to be reasonable and acceptable in the context of the outcomes set anticipated in [the AUP]."*

252. Mr Vinall was of a similar view in respect of this policy, stating in his evidence that:

*9.7 Overall, I consider that the actual and potential adverse crowd, traffic and transport and lighting effects of the proposal on the surrounding residential*

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<sup>96</sup> Agenda, at p.44

*and wider neighbourhood are mitigated as far as practicable to achieve Policy I310.3(3)(a). These effects are not dissimilar with other permitted large scale night-time events.*

9.8 *The primary difference between concert events as opposed to other primary activities is the level of noise generated during the concert performance. The noise levels are higher than those for permitted activities and are at a level that is loud, intrusive and for some people impacts normal household activities. However, I consider that these noise effects will be adequately avoided and mitigated to an acceptable and reasonable level given the various mitigation measures in place and as events are fixed in number, frequency, duration and time.*

253. Mr Vinall also noted with respect to the MRFZ provisions, that:<sup>97</sup>

*“In terms of the MRFZ objectives and policies above, the evidence of EPT’s experts confirms that the adverse effects of concert activities can be remedied and mitigated as far as practical through the implementation of the [OMP-C] which includes event, community consultation and communication and traffic management plans. This has been demonstrated through the implementation of management plans for concert events held to date. While concert activities will result in noise effects that are noticeable and may annoy some surrounding residents, the evidence of Mr Day is that they are reasonable and accord with those of other Major Recreation Facility venues”.*

254. Overall, Mr Vinall considered that the proposal would be in accordance with, and not be contrary to, the relevant objectives and policies of the Eden Park Precinct. In his view, the proposal would represent a compatible activity within Eden Park, and adverse effects are appropriately avoided and mitigated as far as practicable by the proposed conditions and would not displace primary activities. Accordingly, *“the gateway test in section 104D(1)(b) is met and the application can be considered under section 104”*.<sup>15</sup>

255. No expert evidence was presented that expressed a different view, although we note that Mr Lucas queried whether the proposal would be compatible with the objectives and policies of the Eden Park Precinct.

256. Mr Dales also expressed his agreement (through his response memorandum) with Mr Vinall’s comments that the proposed framework of conditions (that set clear parameters) *“is appropriate and also facilitates a tailored and continually adaptive approach to proactively manage the effects of concerts via a number of management plans”*.<sup>98</sup>

257. The Applicant’s opening submissions observed that *“[i]f those objectives and policies above appear to be tailor made with the present activity in mind, it is because they were”*, because *“[t]hey contemplate the need to manage adverse effects”*.<sup>99</sup>

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<sup>97</sup> EV18, at [9.1]

<sup>98</sup> EV39, at [8]

<sup>99</sup> EV01, at [51]

Accordingly, “[f]ar from being contrary to or repugnant to those Objectives and Policies, my submission is that the proposal is consistent with and gives effect to those provisions”.

258. Our discussion above in respect of the potential displacement of primary activities informs our finding in respect of Policy I310.3(3)(b) above, and for the reasons set out, we are satisfied that the proposal will not be contrary to this policy.
259. While the Applicant's case regarding the objectives and policies of the AUP focused on the aforementioned MFRZ and Eden Park Precinct provisions, we also consider that the objectives and policies of the Auckland-wide Chapter 25 (Noise and Vibration) are relevant. These are set out as follows:

#### *E25.2 Objectives*

- (1) People are protected from unreasonable levels of noise and vibration.*
- (2) The amenity values of residential zones are protected from unreasonable noise and vibration, particularly at night.*
- (3) Existing and authorised activities and infrastructure, which by their nature produce high levels of noise, are appropriately protected from reverse sensitivity effects where it is reasonable to do so.*
- (4) Construction activities that cannot meet noise and vibration standards are enabled while controlling duration, frequency and timing to manage adverse effects.*

#### *E25.3 Policies*

- (1) Set appropriate noise and vibration standards to reflect each zone's function and permitted activities, while ensuring that the potential adverse effects of noise and vibration are avoided, remedied or mitigated.*
  - (2) Minimise, where practicable, noise and vibration at its source or on the site from which it is generated to mitigate adverse effects on adjacent sites.*
  - (3) Encourage activities to locate in zones where the noise generated is compatible with other activities and, where practicable, adjacent zones.*
  - (4) Use area or activity specific rules where the particular functional or operational needs of the area or activity make such rules appropriate.*
  - (5) Prevent significant noise-generating activities other than roads and railway lines from establishing in or immediately adjoining residential zones.*
260. These provisions were addressed by Mr Dales as part of his Agenda report, with reference to the assessment provided by Mr Styles. As we have referred to earlier, Mr Styles had referred to his concern that the proposal to apply an 11pm finish time may not align with Objective (2).

261. Mr Dales considered, however, that:<sup>100</sup>

*“Due to the nature of the activity and context within which Eden Park exists, the proposal in my view cannot achieve complete consistency with the objectives and policies of E25. However, the thrust of these provisions is about adopting the best practicable option to achieve a noise outcome that is overall ‘reasonable’.”*

262. In this regard, Mr Dales referred to Mr Styles assessment in respect of adoption of the best practicable option, which had noted that:<sup>101</sup>

*“However, the adverse effects of concerts are limited to 12 occasions in any 12 month period, and pack in and pack out activities only six times per year.*

*“Overall, I consider that the level of noise exposure to the community is reasonable. This takes into account the additional information on certainty of compliance, experience with the eight concerts that have been held under the Concerts Consent, monitoring data, submissions, additional conditions of consent and the analysis in the [ANE] against other venues in Auckland”.*

263. While Mr Styles has acknowledged that events that extend to 11pm could only occur up to 12 times in any calendar year, the concert noise effects would extend into the night-time period and the *“effects would be significant for those who do not enjoy the music or need to sleep”*.<sup>102</sup> In this regard, he went on to say:

*“I consider that the determination of whether it is “reasonable” to authorise noise effects into the night time should involve an understanding of whether allowing concerts past 10.30pm is desirable or necessary, and the positive benefits that will arise. This evaluation involves non-acoustical factors and will need to be weighed by others.”*

264. As we have referred to earlier, Mr Day noted his agreement that post-10.30pm is a sensitive period but was comfortable that this related to twelve half-hour periods over a twelve-month period. He referred to the Council’s own rules anticipating such activity as the TAR *“allow for 15 high noise events per year to operate up to 11pm in every park in Auckland, including Sunday night”*.<sup>103</sup>

265. These issues were addressed by Mr Dales as part of the Agenda report, with reference to the assessment by Mr Styles, and we have set out our findings in respect of this matter earlier in this decision. In overall terms, the Panel finds that it is reasonable to authorise concerts to operate to 11pm (noting the exception for Sundays), but we emphasise that this overall evaluation and finding takes into account the benefits to EPT and its ability to attract concerts because of this specific allowance, and weighing up those benefits in the context of the broad support expressed through submissions and surveys. In the Panel’s view, the revised

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<sup>100</sup> Agenda, at p.46

<sup>101</sup> Ibid

<sup>102</sup> Ibid, at p.77

<sup>103</sup> EV15, at [6.11]

parameters minimise adverse effects to the extent practicable, but also reflect our findings that these revisions reflect an upper limit for the hosting of concerts at Eden Park.

## **SECTION 104D SUMMARY**

266. As we set out above, we agree with the Applicant in terms of the conclusions set out in its evidence as to s.104D(1)(a) and find that the adverse effects of the proposal on the environment will be more than minor, on those occasions when concerts are held, along with ancillary components such as the pack-in and pack-out activities.
267. However, we also conclude that the proposal will not be contrary to any specific objectives and policies of the plan (i.e., the AUP) nor in an overall sense, and in particular those relating to the Eden Park Precinct as set out in Chapter I310 of the AUP.
268. Overall, therefore, we find that the proposal is able to pass one of the gateway tests of s.104D, and as a result, we have jurisdiction to consider the merits of the proposal in terms of s.104.

## **SECTION 104 EVALUATION**

269. We now exercise our discretion in respect of our findings set out above, and in this regard we are required to consider the matters listed in s.104 of the RMA as are relevant. The exercise of our discretion requires us to make a determination in terms of s.104B to grant or refuse consent, in a manner that will achieve the purpose and principles of the RMA set out in Part 2.
270. The planning evidence also concluded that the proposal merits the grant of consent, when assessed in terms of s.104, subject to proposed conditions. There was no expert evidence presented to us to the contrary.
271. From an effects perspective, s.104(1)(a) and (ab) requires us to have regard to “*any actual and potential effects on the environment*” of the proposal, and “*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*”. Accordingly, and notwithstanding our findings in respect of adverse effects under s.104D(1)(a), s.104 directs us to take a broader view and to have regard to the positive effects of the proposal. Such effects were described for us by numerous witnesses in terms of the benefits that concerts would bring to the area, as well as both economic and social/cultural outcomes. These were helpfully summarised in the evidence of Mr Vinall as follows:

*8.27 The ability for EPT to host events makes efficient use of a physical resource and contributes to Auckland’s social and economic wellbeing, enabling Auckland residents and visitors to enjoy a variety of concert performances from a variety of artists/acts. Hosting concerts also brings positive economic*

*benefits to the region and local area as outlined in the evidence of Messrs Gillett, Clarke and Clark and Ms Baxter-Cardy.*

*8.28 Submissions in support have been received from local residents and business owners surrounding Eden Park, residents of greater Auckland, people from around New Zealand and overseas. The reasons include support for greater use of Eden Park to support the stadium's viability, and that concerts will add to the cultural vibrancy of the city and have positive benefits on the local, regional and national economy.*

272. In terms of adverse effects, Mr Vinall's evidence was that (in reliance on the evidence presented by the EPT) the adverse effects of the proposal can be adequately mitigated, subject to conditions of consent, and on balance, the actual and potential adverse effects would in his view be reasonable and acceptable. In this regard he cited the need for concerts to be held in accordance with an OMP-C that incorporates a suite of management plans, including traffic, community consultation and communications and pre- and post-event plans to mitigate the adverse effects of concert activity on the surrounding neighbourhood to an acceptable level. Mr Vinall stated that this provides "*a robust and proven method to ensure that the amenity and event effects are mitigated as far as practicable and can be refined and modified to cater for differences between individual concert events and incorporate improvements resulting from community and stakeholder feedback*".<sup>13</sup>
273. Overall, the Panel finds that any adverse effects on the environment will be acceptable. This finding is of course subject to the conditions that were presented with the Applicant's Reply, and our amendments that have been described throughout this decision. These amendments are necessary in the Panel's view in order to ensure that the conditions and associated management plans place more specific requirements on the EPT (and the role of relevant agencies involved in managing concerts) to minimise the adverse effects of those activities that were of greatest concern to some submitters.
274. In terms of s.104(1)(b), we have previously highlighted those parts of the AUP that relate to the Eden Park Precinct, the MFRZ and to noise. Our conclusions in respect of these objectives and policies therefore inform our findings under s.104(1)(b)(vi), and our overall findings under this section generally, given the lack of direct relevance, or contention, in respect of other clauses. In particular, we consider that the AUP gives effect to the higher order provisions of the RPS, and we heard no evidence that would suggest that the proposal was contrary to those provisions, nor to the NPS-UD (being a relevant 'national policy statement').
275. In terms of other matters of relevance under s.104(1)(c), we have had regard to submissions on the application and the comments of the Local Board, with those being of particular relevance to our consideration of matters related to the operating parameters of the proposal. We also note that EPT's opening submissions canvassed various provisions within the Auckland Plan that Mr Bartlett considered would provide further support for the proposal. We generally accept those



submissions, although we place lesser emphasis on the Auckland Plan in our overall findings under s.104.

276. Overall, it is our finding that the effects of the proposal are acceptable and it has appropriate regard to the provisions of the AUP, including with respect to those related to the Eden Park Precinct and the MFRZ. This finding informs our overall evaluation under s.104 as to the merits of the proposal, and our conclusion in terms of s.104B.

## PRECEDENT

277. A general concern posed through submissions in opposition to the application, and by EPNA in particular, related to the potential for a grant of consent to create a further precedent (in the same way as was suggested in respect of the original Concert Consent) to suggest that further allowances for concerts at Eden Park would be made, or that further dilution of conditions may arise.<sup>104</sup> That said, the Panel observes that numerous submissions also proposed that a higher number of concert events be provided for than what has been sought by EPT. We did not understand the concern as to precedent to be in respect of any other venue, and we would not expect the terms of this consent to be seen as applicable to any other stadium venue in Auckland, noting our previous comments as to the need for context in the consideration of any changes to stadium operations elsewhere.

278. Precedent concerns are a not uncommon matter for consideration as part of non-complying resource consent applications, but this was only commented upon in the memorandum by Dr Stewart who addressed the issue in the following way:<sup>105</sup>

*“[S]ome submitters are also concerned that allowing more concerts now could set a precedent for further increases in the future. They worry that if the current limit is raised, it will be difficult to stop additional increases in the number of events. This fear is compounded by a perception that the interests of Eden Park and commercial promoters are being [prioritised] by the Trust over the well-being of the community. The prospect of facing even more frequent disruptions is a source of anxiety for a number of submitters, who feel that their neighbourhood is being transformed into a commercial entertainment zone at the expense of its residential character...”*

279. In respect of this matter the Panel acknowledges that a range of one-off amendments to the conditions associated with the Concert Consent have been made since March 2021.<sup>106</sup> In general, those reflect the somewhat more confined parameters of the Concert Consent which the present application now seeks to address for the reasons set out within the AEE and the EPT’s evidence.

280. The Panel is cognisant of the concern regarding precedent considerations, for those persons opposed to further concerts or other changes to condition limits, and which we think have been accurately summarised by Dr Stewart above. We note in this

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<sup>104</sup> E.g., EV29 at p.9

<sup>105</sup> Agenda, at p.171

<sup>106</sup> As described in the AEE at [4.3.3]

regard that the evidence of the acoustic experts was not in contention insofar as they both agreed that the proposal was at (Mr Styles) or nearing (Mr Day) the upper bounds of acceptability. As to the nuance between “at or nearing”, the Panel prefers the position of Mr Styles. We therefore record our finding, to the extent that this may be referred to in any future application involving concerts at Eden Park, that the current application, and the conditions that we have determined to be appropriate and necessary, will be at that upper point of acceptability.

281. Therefore, given the overall finding that we have reached, and the conditions that we have considered necessary to ensure that the effects of the proposal are acceptable, further expectations as to condition amendments or concert parameters would not be expected (albeit that applications for the same are not statutorily prohibited). On that basis, the Panel concludes that its decision to grant consent in this case would not result in this decision being used as a precedent for further changes to the operating parameters for concerts at Eden Park.

## **PART 2**

282. We have previously noted a general premise that, having regard to our understanding of case law on the subject, our decision is able to be made with reference to the relevant planning provisions and without recourse to Part 2. This was the approach advanced by the planning witnesses within the AEE and the Agenda report. While the Panel is able to reach a conclusion in respect of the relevant matters to be determined in accordance with ss.104D and 104 in a manner consistent with the Court of Appeal’s conclusions in *Davidson*, we have also undertaken an assessment against Part 2 based on the guidance as to its applicability provided in the opening submissions for EPT.

283. In particular, and in the context of a non-complying activity, the Panel understands that Part 2 can still serve as a useful further check in terms of an overall evaluation where potential doubt may exist with respect to the way in which the provisions of the AUP are to be applied. The utility of Part 2 could also be said to be more pronounced where, as in this case, the adverse effects that may be experienced by some members of the community will be more than minor, and where an overall judgement is required to be made in terms of s.104(1)(a) and (ab).

284. The Panel accepts the point raised by Mr Bartlett in this respect that:<sup>107</sup>

*“While the case law may tell us that it is not always necessary to refer to the purpose of the [RMA], I have yet to find a situation where an application of any scale is not related to the [RMA]’s purpose and principles”.*

285. Mr Bartlett went on to note that the aspirational nature of s.5(2) anticipates sometimes irreconcilable conflicts “*between competing values or levels of comfort*”,<sup>108</sup> but highlighted the short-term and relatively infrequent activity in question. In terms of s.5(c), he referred to the combination of conditions that seek to

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<sup>107</sup> EV01, at [16]

<sup>108</sup> Ibid, at [19]

avoid, remedy or mitigate adverse effects, and that these have been successfully applied to date. He cited Mr Sautner's evidence in particular as demonstrating the extent to which Eden Park is able to function as a hub for people and communities, and that "[t]here is a high degree of goodwill and local pride in the park which is part of the context of the community support shown in for this application".<sup>109</sup>

286. Mr Bartlett acknowledged that changes were necessary in respect of the Traffic MP, although in this regard he highlighted that the measures set out in that plan were excessive and that remedies are addressed by Mr Langwell. The Panel understood, from his subsequent paragraph, that this was a reference to the length of time in which traffic restrictions were in place on Sandringham Road. We note that other aspects of traffic management have been the subject of a community-based traffic summit, the outcomes of which suggest that measures to date more generally could not be described as excessive, but more flexibility in approaches for different events may be appropriate, along with further and more effective enforcement by the relevant agencies.
287. The Panel notes that in response to questions on this topic, Mr Vinall indicated his agreement that Part 2 can assist in the Panel's decision-making function with reference to its purpose. This was expanded upon by Mr Dales in his response memorandum, as follows:<sup>110</sup>

*"In summary, I consider the proposal utilises an existing significant physical resource (Eden Park) in a manner that will further enable people and communities to provide for their social, cultural and economic well-being (including those of future generations) while also avoiding, remedying or mitigating adverse effects on the environment (and I note that this is to be as far as is practicable as set out in the AUP). I would also direct the Panel to the higher level statutory plan objectives and policies which also provide further statutory assistance in this regard".*

288. In this respect, we have found that adverse effects on the environment will be more than minor during concert events (with the extent of this being variable as to scale and duration of each event) but are nevertheless considered to be acceptable in a s.104 sense. Further, we also find that the proposal will be generally aligned with, and not contrary to, the relevant objectives and policies of the AUP. Further, we consider that the proposal will meet the purpose and principles of Part 2 and s.5 in particular, and that appropriate and ongoing engagement and consultation with affected parties has been undertaken, and will continue to be a requirement for the management of concert events.
289. Overall, it is the Panel's finding that the sustainable management purpose of the RMA will be appropriately served by granting, rather than refusing, consent to the application, subject to the conditions that we have determined to be appropriate.

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<sup>109</sup> Ibid, at [21]

<sup>110</sup> EV39, at [7]

## PROPOSED CONDITIONS

290. Through our consideration of the various matters in contention for this application we have referred to aspects of the proposed conditions, with reference to those conditions as initially set out in the Agenda report and the further amendments proposed by EPT within the Reply. We have also explained the reasons why we have determined that further changes to some conditions are necessary.
291. We note that we received comments from the Council (primarily from AT) and from five submitters in respect of the conditions provided in the Applicant's Reply. As referred to above, we have generally adopted those changes proposed by the Council, and Mr Vinall also appeared to indicate that these were acceptable to the Applicant. Mr Vinall also commented on submitter feedback, and noted that this had been carefully considered, but submitters seeking reductions to concert operating parameters were not accepted for the reasons set out in EPT's evidence. He also stated that some of the changes had already been addressed through the existing conditions:<sup>111</sup>
- *“Graeme Brown’s and Mandy McMullin’s suggestion that the community should get information about the monitoring results and have input into the management plans is provided for in Conditions 28 (CCCMP) and 44-46 (post-concert evaluation). This provides for direct feedback from residents on the effectiveness of the management plans.*
  - *Graeme Brown’s suggestion that noise from fireworks should be monitored is already be provided for in condition 22. Monitoring results are provided to Council following the concert event.*
  - *Taryn Murray’s request for a post-event litter management plan is already provided for in condition 29(a) “The Event Management Plan must include ... (a) procedures for ensuring the removal of litter from streets within the vicinity of Eden Park”. The Panel heard evidence from Josie Katene on the pre, during and post event litter patrols and the improvements and changes made to the management of litter for different concert events.*
  - *Mandy McMullin’s request for a Traffic [MP] in addition to the Transport [MP] is provided for in condition 31b. The condition clarifies that the [Traffic MP] is prepared by the consent holder to give effect to the Transport Plan, must be authorised by [AT] and implemented by the consent holder (in conjunction with [AT] and Police)”.*
292. Further to Mr Vinall's comments with which we generally agree, we make the further observations in respect of submitter comments, and the changes made by this Panel:
- (a) We have added a requirement for monitoring of pack-in and pack-out activities;
  - (b) The re-structuring of conditions related to Traffic MPs as part of a new Transport Plan will provide more specificity to the objectives of these plans

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<sup>111</sup> EV63

and the obligations of the consent holder in ensuring they are implemented and properly enforced (in conjunction with the relevant agencies); and

- (c) Additional requirements have been added to litter clean-up within the Event Management Plan condition.
293. We also note Mr Barnes' recommendation during his presentation at the hearing as to the need for the condition relating to concert frequency to include a limitation in the number of artists/concerts, in the event that a same artist may undertake a return concert in the relevant period which might otherwise be compliant with the terms of the condition. We have not determined this condition to be necessary as we would see this is a separate concert event and subject to the limitations that apply in terms of pack-in and pack-out activities.
294. The Panel has undertaken a careful review of all of the conditions including those of an editorial nature or to ensure consistency of terminology or for clarity. Other minor changes are highlighted below:
- (a) Condition 5: inclusion of 'compliance monitoring' as a particular matter to be provided for in terms of site access (and to address issues that we heard as to some difficulties for Council staff in this regard in the past).
  - (b) Condition 8: inclusion of advice notes that address the definition of concert events and what is being referred to in conditions 6 – 8.
  - (c) Condition 28: amended to require the scope of this reporting required for an amendments to the OMP-C to be consistent with that to be used in the Community Consultation and Communication Management Plan at condition 30(f).
  - (d) Condition 30(c): inclusion of reference to 'Dominion Road' as one of the relevant business association(s) in the locality (and from whom evidence was received).
  - (e) Condition 52: addition of reference to s.129 as part of a review under s.128 and incorporation of the language of those sections in terms of the potential outcomes of such a review.

## **CONCLUSIONS**

295. The Panel concludes that the proposal by the EPT to hold up to 12 concerts at Eden Park in a calendar year, performed by not more than six different artists/acts, merits the grant of consent, in accordance with the conditions as proffered by EPT and the amendments that we have determined to be necessary. In reaching this decision the Panel recognises that the proposal will have both positive and adverse effects on the surrounding locality.
296. Positive effects will arise in relation to the local and regional economy, along with social benefits for much of the community through increased opportunities to attend a wider range of concert performances at Eden Park. The proposal will also enable a more efficient use of Eden Park stadium, as a major recreation facility and a significant resource for the Auckland region and enable other community-related activities at this important venue.

297. At the same time, the Panel acknowledges that additional concert activity will result in adverse effects on surrounding residents who are opposed to concerts, arising from noise effects that may be loud and/or annoying (including that from pack-in and pack-out activity), as well as from traffic disruption and the potential for additional amenity impacts associated with crowds moving to and from the stadium.
298. The application and hearing process has, however, been an opportunity for the Panel to review the conditions framework that was established as part of the Concert Consent and to ensure that the new conditions and suite of management plans more effectively mitigate the adverse effects of concert events on the surrounding neighbourhood to a reasonable level. The imposition of conditions, including the Panel's amendments as described elsewhere and attached to this decision, enable us to conclude that the proposal will not be contrary to the objectives and policies of the AUP, including those related to Major Recreation Facilities and the Eden Park Precinct. In particular, we are satisfied that the conditions will provide for the effects of concerts, as a compatible activity within the Eden Park Precinct, to be appropriately avoided or mitigated as far as practicable, without displacing primary activities.
299. As our decision broadly aligns with the recommendations in the Agenda report, we have adopted the reasons set out within that report as the basis for the 'reasons for the decisions' set out below.

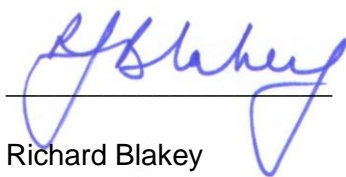
## DECISIONS

- A. That the late submissions by Hon Christine Fletcher (ID 2145) and Sally Petersen (ID 2146) are **accepted** for the reason set out below.
- B. In exercising our delegation under section 34A of the RMA and having regard to the foregoing matters, sections 104 and 104D and Part 2 of the RMA, we determine that the resource consent application by The Eden Park Trust to hold up to 12 concert events at Eden Park in any calendar year, performed by no more than six different artists or acts (excluding supporting acts), along with other changes to operational parameters, is **granted** for the reasons set out below and subject to the conditions attached to this decision.

## Reasons for the decisions

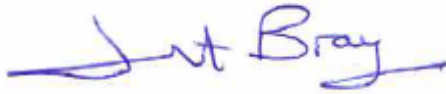
- I. The reason for the decision in respect of the acceptance of the late submissions is that no party will be prejudiced by the acceptance of these submissions.
- II. In respect of section 104D of the RMA, the proposal satisfies the threshold test because the proposal will not be contrary overall to the objectives and policies of the AUP(OP).
- III. In accordance with an assessment under sections 104(1)(a) and (ab) of the RMA, the actual and potential effects from the proposal are found to be acceptable, because:

- (a) In terms of positive effects, concerts bring positive economic benefits to the region with increased visitation and spend. In addition, the ability for Eden Park to host events makes efficient use of a physical resource and contributes to Auckland's social and economic wellbeing, enabling Auckland residents and visitors to enjoy a variety of concert performances from a variety of artists/acts.
  - (b) In terms of adverse effects, including those in relation to amenity, noise, transport, lighting, social and cumulative effects, while being prominent during the concerts, can all be adequately mitigated. This will be achieved primarily through the implementation of a range of management measures and by restricting the frequency, duration and timing of concert events.
- IV. In accordance with an assessment under section 104(1)(b) of the RMA, the proposal is found to be consistent with the Auckland Unitary Plan, as well as the other relevant statutory documents, including the National Policy Statement on Urban Development and the Regional Policy Statement. In particular, the proposal can be viewed favourably in terms of those objectives and policies of the AUP which generally seek to enable the use of major recreational facilities in recognition of the notable social and economic benefits that events bring to the wider community. The adverse effects of the activity are able to be adequately mitigated to a level that is acceptable and reasonable overall.
- V. In accordance with an assessment under section 104(1)(c) of the RMA, the following other matters have been considered:
  - (a) The proposal supports aspirations set out in the Auckland Plan 2050; and
  - (b) All of the public submissions (including the comments from the Albert Eden Local Board) have been reviewed and taken into account in reaching our findings.
- VI. The Panel's consideration of the application has included reference to Part 2 as a further check of its findings made in respect of the AUP, and the proposal is considered to be in accordance with the purpose and principles of the RMA as set out in section 5.
- VII. Overall, the proposal is worthy of being granted resource consent, subject to the conditions of consent attached to this decision as **Attachment 1**.



Richard Blakey

Chairperson



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Justine Bray



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Kitt Littlejohn

28 November 2024



## Attachment 1 – Conditions of Consent

Under sections 108 and 108AA, this resource consent is subject to the following conditions:

### Activity to be undertaken in accordance with the application material

1. The activity must be carried out in accordance with all information submitted with the application, detailed below, and all referenced by the Council as LUC60434909, except as otherwise modified by the conditions of consent:
  - (a) Application form signed by Mark Vinall on behalf of The Eden Park Trust dated 16 July 2024; and
  - (b) Assessment of Environmental Effects by Tattico Limited, dated July 2024 and Attachments A-J.

### Lapse of Consent

2. Pursuant to section 125 of the RMA, this consent to hold up to 12 concerts in a calendar year lapses five years after the date it is granted unless:
  - (a) The consent is given effect to; or
  - (b) The Council extends the period after which the consent lapses.

#### Advice note:

*The consent will be given effect to when a concert is held at Eden Park under this consent.*

### Surrender of Consent

3. The Consent Holder must surrender resource consent LUC60351212 in accordance with section 138 of the RMA prior to the first concert being held under this consent.

### Monitoring fee

4. The Consent Holder must pay the Council an initial consent compliance monitoring charge of \$1,044 (inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent/s.

#### Advice note:

*The initial monitoring deposit is to cover the cost of inspecting the site, carrying out tests, reviewing conditions, updating files, etc., all being work to ensure compliance with the resource consent. In order to recover actual and reasonable costs, monitoring of conditions, in excess of those covered by the deposit, shall be charged at the relevant hourly rate applicable at the time. The Consent Holder will be advised of the further monitoring charge. Only after all conditions of the resource consent have been met, will the Council issue a letter confirming compliance on request of the Consent Holder.*

## Site access

5. Subject to compliance with the Consent Holder's health and safety requirements and provision of reasonable notice, servants or agents of the Council must be permitted to have access to the site controlled by the Consent Holder at all reasonable times for the purpose of carrying out inspections and compliance monitoring, and any surveys, investigations and/or tests.

## Number and frequency of Concert Events

6. No more than 12 concert events may be held in a calendar year performed by up to no more than six different artists/acts (excluding supporting acts).

### Advice note:

*For the purposes of Condition 6, an artist/act may perform multiple nights at the venue where there is single pack-in and pack-out for these concert events.*

7. No more than four concert events may be held in any four-week period.
8. There must be at least one weekend (inclusive of Friday night) in every 35-day period that is free of any concert event or organised sports and recreation undertaken during the night-time on the number 1 field.

### Advice notes:

- (a) *For the purposes of Conditions 6 – 8, a 'concert event' includes a musical or other similar live performance or series of performances of any genre of music and may feature one or multiple artists of equal or lesser billing. It includes performances by an orchestra or other musical troupe or group or live music which may be accompanied by a dramatic performance (such as an opera or ballet). The activity may include a variety of accessory activities and entertainment elements such as staging, lighting, audio visual, special effects including theatrical/stage pyrotechnics, fireworks displays, aerial displays or performances or other features which form part of or enhance the event. A concert event also includes all associated equipment "pack-in/pack-out" activities in the days immediately before and after concert performances.*
- (b) *For the avoidance of doubt, a concert event does not include live performances of music incidental to a permitted primary activity held at Eden Park.*
- (c) *For the purposes of Condition 8 a concert event includes the pack-in and pack-out dates either side. Night-time activities are defined in I310.4 of the AUP as those activities that are undertaken between 30 minutes before sunset on one day and 30 minutes before sunrise on the following day. For clarity, any activity that continues longer than 30 minutes before sunrise remains defined as a night time activity.*

## Days of the Week

9. Concert events may take place on Monday to Saturday, and any Public Holiday except for Good Friday, Easter Sunday and Christmas Day in accordance with

Conditions 10 and 11. Any concert events on Sundays that are not followed by a Public Holiday the next day are subject to Condition 11A.

**Concert on a weekday (other than a public holiday)**

10. Any concert event held on a weekday (other than a public holiday) is restricted as follows:
- (a) The gates to the Number 1 field must not open before 5:00pm;
  - (b) The concert event must not start before 6:30pm for supporting acts and 7:30pm for the main act;
  - (c) The concert event must finish no later than 11:00pm;
  - (d) The total duration of the concert event, being time between the commencement of the first (or single) performance/act and the conclusion of the last (or single) performance/act, must not exceed five (5) hours; and
  - (e) The crowd size must not exceed 60,000 persons.

**Concert event on a Saturday, a Sunday (preceding a public holiday) or a Public Holiday**

11. Any concert event held on a Saturday, a Sunday (preceding by a public holiday) or a public holiday is restricted as follows:
- (a) The gates to the Number 1 field must not open before 8:30am;
  - (b) The concert event must not start before 10:00am;
  - (c) The concert event must finish no later than 11:00pm;
  - (d) The total duration of the concert event, being time between the commencement of the first (or single) performance/act and the conclusion of the last (or single) performance/act, must not exceed six (6) hours; and
  - (e) The crowd size must not exceed 60,000 persons.

**Concert event on a Sunday (not followed by a public holiday)**

- 11A. Sundays that are not followed by a public holiday must not be used as a concert event nor booked on that basis except as a contingency date, subject to the requirement that the use of a Sunday as a contingency date:
- (a) Must only be as a result of weather conditions or significant technical or primary artist-related issue that requires postponement of a concert event that would otherwise be held between Monday and Saturday; and
  - (b) Must be notified to the Council a minimum of 24 hours prior to the commencement of the contingency event with details of the circumstances

leading to the need to utilise Sunday as a contingency for a previously scheduled concert event.

Any concert event held in accordance with this condition is subject to the following:

- (i) The gates to the Number 1 field must not open before 8:30am;
- (ii) The concert event must not start before 10:00am;
- (iii) The concert event must finish no later than 10:30pm;
- (iv) The crowd size must not exceed 60,000 persons; and
- (v) The total duration of the concert event, being time between the commencement of the first (or single) performance/act and the conclusion of the last (or single) performance/act, must not exceed five (5) hours.

### **Multiple Concerts**

12. No more than one concert event may be held on any one day.

*Advice note:*

*A concert event may feature one or multiple artists of equal or lesser billing.*

### **Concert stage**

13. The concert stage must be on the Number 1 field.

*Advice note:*

*There are no other limitations on stage configurations.*

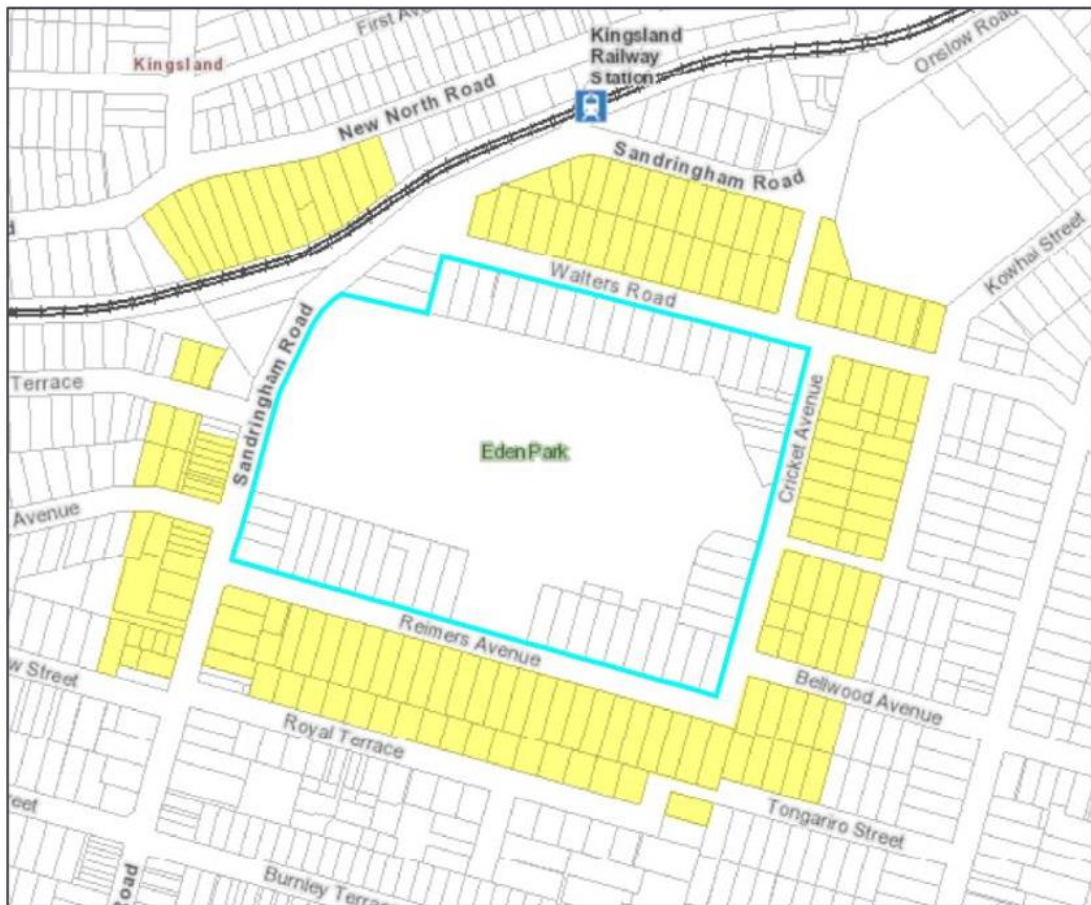
### **Testing and balancing**

14. Testing and balancing of all sound systems involving public address and/or vocal checks and/or rehearsals by performers for a concert event must:
  - (a) not cumulatively exceed three (3) hours;
  - (b) not commence before 10:00am;
  - (c) be completed by 7:00pm; and
  - (d) comply with the noise levels in Condition 15.

### **Noise limits**

15. The noise level from use of sound systems associated with concert events, sound checks and the balancing of sound systems and any pyrotechnics displays that form part of the concert performance must not cumulatively exceed 75dB  $L_{Aeq(t)}$  and 80dB  $L_{Aeq(10min)}$  when measured/calculated within the boundary of any residential zoned site not owned by the Eden Park Trust.
16. Pack-in and pack-out activities occurring between the hours of 10:30pm and 8:00am, must comply with noise limits of 45dB  $L_{Aeq}$  and 75 dB  $L_{AFmax}$  for those residential zoned properties identified in Figure 1, and the Eden Park Precinct Noise Standards in

I310.6.1.1 at all other residential zoned properties. Pack-in and pack-out activities occurring at all other times must comply with the noise limits contained in the Eden Park Precinct Noise Standards in I310.6.1.1 at all residential zoned properties.



**Figure 1 – Residential zoned properties where concert night noise limits apply (Condition 16)**

Advice note:

*Pack-in and pack-out activities include the delivery of equipment, construction of the necessary infrastructure including turf protection, security fencing, staging, production infrastructure, temporary toilet and food and beverage facilities, post-event deconstruction, loading and removal of all concert-related infrastructure.*

17. Professional fireworks displays that include an air-burst where the detonation or burst occurs in an airborne situation must be excluded from any assessment of compliance with the noise limits specified in Condition 15, and noise from these displays must instead be in compliance with Standard I310.6.13(5) of the AUP (i.e., 140dB  $L_{Zpeak}$  at any point in the audience area and within the boundary of any activity sensitive to noise), except that any such additional professional fireworks display associated with any of the 12 concert events approved in this consent occurring over the course of each concert performance must not exceed 15 minutes in duration and conclude by 11:00pm (being 30 minutes later than the 10:30pm set out in Standard I310.6.13(3)).

Advice note:

*The number of fireworks displays undertaken in accordance with Condition 17 are limited in frequency to Standard I310.6.13(1).*

18. The noise level from all other activities (not covered by Conditions 15 to 17), including pack-in and pack-out activities, must comply with the noise limits contained in the Eden Park Precinct Noise Standards in I310.6.1.1.
19. Noise levels must be measured in accordance with 'NZS 6801:2008 Acoustics – Measurement of Environmental Sound' and assessed in accordance with 'NZS 6802:2008 Acoustics – Environmental Noise', except that:
  - (a) where  $L_{Aeq(t)}$  is specified, 't' is the duration in Conditions 10(d), 11(d) and 11A(g); and
  - (b) for the duration of 't' as applied in Condition 15, there must be no adjustment for special audible character (in accordance with section 6.3 of NZS6802:2008) for amplified music, and or amplified voice and no further adjustment for duration (in accordance with section 6.4 of NZS6802:2008) for amplified music or amplified voices.
20. Crowd noise must be excluded from any assessment of compliance with the noise limits specified in Condition 15.

### **Noise Monitoring**

21. The Consent Holder must engage a suitably qualified and experienced acoustic expert to carry out noise monitoring of every concert event and the associated pack-in and pack-out activities, except as provided by Condition 23 below. The objective of the monitoring is to accurately determine whether or not compliance with the noise limits in Conditions 15 and 16 are achieved within the boundary of residential zoned sites not owned by the Eden Park Trust that are most exposed to the noise from the concert event and by pack-in and pack-out noise. The monitoring requirements must be undertaken as follows:
  - (a) For concert events, this noise monitoring must involve measurements at the mixing desk in real time to ensure that compliance with the limits in Condition 22(a) are achieved. The noise limits in Condition 22(a) below have been calculated using the established transfer function for the three representative stage configurations. The transfer function must be measured if a different stage configuration is used (e.g., south or north).
  - (b) For pack-in and pack-out noise, the noise monitoring must involve measurements in real time between 10:30pm and 8:00am to ensure that compliance with the noise limits in Condition 16 are achieved.
22. The noise monitoring for concert events required by Condition 21 is subject to the following:
  - (a) Noise level measurements at the mixing console that must not exceed:
    - i. East Stage (facing west): 98 dB  $L_{Aeq(t)}$  and 103 dB  $L_{Aeq(10min)}$ ; and
    - ii. West Stage (facing east): 100 dB  $L_{Aeq(t)}$  and 105 dB  $L_{Aeq(10min)}$ .

- (b) Measurement and assessment must be in accordance with NZS6801:2008 and NZS6802:2008, except where varied by the conditions of this consent.
  - (c) There must be no adjustments for special audible character or meteorological effects.
  - (d) The requirement for the acoustic expert to communicate directly with a nominated person at the mixing console inside the venue who has the authority to reduce noise levels to ensure compliance with the noise limits in Condition 15.
  - (e) Noise level measurements must be conducted in contiguous 10 minute samples to determine the  $L_{Aeq(10min)}$  for each 10 minute period, and the  $L_{Aeq(t)}$  value must be calculated in real time to allow for any reduction in the noise levels that might be necessary to achieve compliance with the  $L_{Aeq(t)}$  noise limit in Condition 15.
  - (f) The acoustic expert must establish the maximum sound system level at the mixing console for any stage configuration that is not represented in Condition 22(a) by monitoring at the mixing console and at the most affected residential interface simultaneously (e.g., for a Centre Stage arrangement).
23. The results of all noise monitoring must be provided to the Council for its certification. The report must be prepared by a suitably qualified and experienced expert in acoustics and the report must be provided to the Council within five working days of the concert event and completion of the associated pack-in and pack-out activities occurring. The report must detail the results of:
- (a) All  $L_{Aeq(10min)}$  and  $L_{Aeq(t)}$  measurements for concert events, including locations, meteorological conditions and all adjustments made for crowd noise or any extraneous noise sources. The report must also record the results of all noise measurements of professional fireworks displays to determine compliance or otherwise with the relevant noise limits in I310.6.13 of the AUP.
  - (b) All  $L_{Aeq}$  measurements for pack-in and pack-out activities, including locations, meteorological conditions and all adjustments made for extraneous noise sources.
24. Following the monitoring of at a minimum of five artist concert events in accordance with Conditions 21-23, the Council may waive the requirement to monitor any artist concert event where the Consent Holder can demonstrate to the Council's satisfaction in advance, in writing, and at least 15 working days prior to the artist concert event, that the particular size, character or nature of an artist concert event means that it will comply with the relevant noise limits in the precinct standards and in Condition 15 with a high degree of certainty.
25. Following the monitoring of a minimum of three pack-in and pack-out activities in accordance with Conditions 21 and 23 associated with a concert event or artist concert event, the Council may waive the requirement to monitor the pack-in and pack-out activities associated with a future artist concert event where the Consent Holder can demonstrate to the Council's satisfaction in advance, in writing, and at least 15 working days prior to the artist concert events, that the pack-in and pack-out

activities will comply with the relevant noise limits in Condition 16 with a high degree of certainty (and based on previous real-time monitoring of this activity).

Advice note:

*For the purposes of Conditions 24 and 25, an artist concert event means any concert event and includes two or more concert events by a single act or artist.*

### **Community Liaison Group**

26. The Consent Holder must ensure that the terms, functions and responsibilities of the existing Eden Park Community Liaison Group (**CLG**), required by resource consent LUC-2006-4828, are expanded, as necessary, to include all aspects of the concert activity approved under this consent. The purpose of the CLG is to provide a forum for consultation on matters affecting the local community arising from all activities at Eden Park, including the exercise of resource consents, proposed resource consent applications.

### **Operating Management Plan - Concerts**

27. The Consent Holder must maintain an up-to-date Operating Management Plan – Concerts (**OMP-C**), certified by the Council, that combines the Community Consultation and Communications Management Plan, Event Management Plan, Pre and Post Event Management Plan and Transport Management Plan.

The objective of the OMP-C and its sub-management plans is to manage the effects of the concert events at Eden Park in an integrated document that:

- (a) Provides for comprehensive community consultation and communication with respect to concert events, when they will occur and how they will be managed to minimise impacts on the surrounding residential neighbourhood;
  - (b) Ensures a safe and compliant environment within the stadium for concert patrons and staff;
  - (c) Mitigates, as far as practicable, the amenity effects of concert patrons accessing and departing from concert events through the surrounding residential neighbourhood; and
  - (d) Managing the effects of road closures and traffic diversions on the accessibility and use and enjoyment of surrounding residential properties.
28. The OMP-C may be amended if necessary to reflect any minor changes in methods or management of effects, including (but not limited to) any changes arising as a result of CLG or community feedback, or monitoring undertaken in accordance with the conditions of this consent. Any amendments must be certified by the Council in writing prior to implementation of any changes to ensure that the amendments are within the scope of the consent, and once implemented will result in an outcome that is similar to, or better than that described in the original OMP-C. Where any changes are certified by the Council, these must be reported to the same businesses and households that are informed in accordance with the requirements of Condition 30(f) (below) prior to the next concert.



29. All concert events must be carried out in accordance with the OMP-C.

### **Community Consultation and Communication Management Plan**

30. The Community Consultation and Communication Management Plan (**CCCMP**) must include the following information:

- (a) Details of the community communication procedures and the appointed Community Liaison Officer. The Community Liaison Officer must be identified as being the main and accessible point of contact. The Community Liaison Officer's contact details must be listed on the Eden Park and Auckland Council websites.
- (b) Details of the membership of the CLG.
- (c) Details of how all of the following have been invited to participate within the CLG:
  - (i) representatives of recognised local community organisations active in the Eden Park community;
  - (ii) the Eden Park Neighbours Association Incorporated;
  - (iii) the Eden Park Residents Association Incorporated;
  - (iv) mainstreet business associations from Dominion Road, Kingsland and Valley Road;
  - (v) the Council and relevant Council Controlled Organisations;
  - (vi) the New Zealand Police; and
  - (vii) Kōwhai Intermediate School (including a representative of the Ministry of Education).
- (d) Details of the responses to the request to participate within the CLG.
- (e) Details of how the Consent Holder will provide all of the following to the CLG:
  - (i) regular updates on scheduling of concert events;
  - (ii) opportunities for feedback and input with regards to the effectiveness of methods to avoid, remedy or mitigate adverse effects associated with the activities authorised by this consent;
  - (iii) details of how the Consent Holder will respond to queries and complaints including all of the following matters:
    - who is responsible for responding;
    - how responses will be provided; and
    - the timeframes that the responses will be provided within,

- (iv) details of consultation undertaken and responses and feedback received. Where responses and feedback are provided, the Consent Holder must set out how feedback and responses have been addressed, and if not incorporated into the CCCMP, the reasons why.
- (f) Details of methods for informing each household and business within the vicinity of Eden Park, the CLG, other stakeholders and affected parties of forthcoming concert events and related arrangements, including the timing of any aerial burst fireworks and explosive sounds to be used as part of the performance, not less than two weeks prior to each concert event.
- (g) Details of the Eden Park “hotline” - the Eden Park hotline must be maintained and advertised for the purposes of enabling the local community, stakeholders and the CLG to contact the appropriate authorities or gain assistance. The hotline must be operated for two hours prior to any concert event being held within Eden Park and must continue to operate until midday (12:00pm) the following day after the concert event.
- (h) Details of the complaints protocol, developed in liaison with the CLG, to deal with any complaints arising from the actions of concert patrons and concerns over the management of concert events.
- (i) Details of the eviction protocol, developed in liaison with the NZ Police, to ensure as far as practicable that such persons do not engage in anti-social behaviour in the vicinity of Eden Park after eviction.

### **Event Management Plan**

31. The Event Management Plan must include the following information:

- (a) Procedures for ensuring the removal of litter from streets within the vicinity of Eden Park both before and after a concert event, and a description of:
  - (i) the geographical extent to which these procedures will be deployed;
  - (ii) how litter removal results will be verified; and
  - (iii) how complaints regarding litter will be responded to.
- (b) Measures in place to support Police enforcement of details of liquor bans in the vicinity of Eden Park and surrounding streets (such as liquor checkpoints).
- (c) An Alcohol Management Plan that is in place that is agreed in liaison with the NZ Police and the liquor licensing authority.
- (d) Pre-event procedures including: methods for ensuring the appropriate coordination of agencies involved in managing events which may include:
  - the New Zealand Police;
  - security companies (in the precinct and street security patrol);
  - Traffic management contractor;

- Auckland Transport;
  - St Johns Ambulance;
  - Fire Service;
  - Event promoter; and
  - Broadcasters.
- (e) Procedures for ensuring that security arrangements are undertaken in a safe and efficient manner.
- (f) Post-event procedures including methods for ensuring that concert patrons depart the stadium in a safe, efficient and orderly manner, which at a minimum must include the deployment of security personnel at each stadium exit and within the surrounding streets for a minimum period of 90 minutes following the end of a concert event, as well as methods for ensuring the appropriate coordination of agencies referred to at clause (d) above.
- (g) A plan of Eden Park and surrounding streets which identifies the locations of portaloos, rubbish bins, liquor checkpoints, key locations for Police/Security to be stationed, and the main walking routes to and from Eden Park.

### **Pre and Post Event Management Plan**

32. The Pre and Post-Event Management Plan must include the following information:
- (a) Details of the Eden Park “hotline”, which must be operated for the duration of park-in and pack-out activities.
- (b) Procedures for ensuring that delivery vehicles are managed in a way that minimises adverse effects upon the transport network and adjacent residents, as far as practicable.
- (c) Measures for ensuring that the relevant noise limits for pack-in and pack-out activities are complied with (with reference to Appendix 1), including a description of:
- (i) How structures must be constructed and dismantled to avoid steel on steel contact;
  - (ii) The circumstances when rubber or timber mallets must be used; and
  - (iii) When temporary noise barriers must be used and where, or how the consent holder will know that there is potential for the infringement of the noise limits specified in Condition 16 to occur.
- (d) Measures to avoid the use of tonal reversing alarms (beepers) on machinery and ensure no impact wrenches (rattle guns) are used between 10:30pm and 8:00am the following day.
- (e) Measures for ensuring that the relevant noise limits for sound checks are complied with.

- (f) Measures for minimising light spill to adjacent residents from pack-in and pack-out activities and the testing and checking of concert performance lighting.

### **Transport Plan**

33. The Transport Plan must be prepared by a suitably qualified and experienced person and be implemented at every concert event. The specific objectives of the Transport Plan are to:

- (a) Ensure that residents and their invitees are able to access their properties and residents-only parking at all times before, during and after concert events.
- (b) Ensure that roads not closed for concert events continue to function as far as practicable and do not experience undue congestion.
- (c) Strongly encourage concert patrons and staff to make use of public transport (especially trains) to access Eden Park by providing public transport information and making use of integrated ticketing where possible.
- (d) Maximise pedestrian safety before and after each concert event including by having effective crowd management measures in place to ensure that crowds exiting the stadium do so in a safe and efficient manner within the surrounding streets.
- (e) Ensure that emergency vehicle access to the stadium and the surrounding neighbourhood is maintained at all times.
- (f) Provide for the parking and movement of buses and coaches, including within Eden Park and ensuring that the Bus Hub remains available at all times during a concert performance unless otherwise agreed with the Council.
- (g) Manage road closures, pedestrian desire-lines and traffic flows around Eden Park to facilitate rapid clearing of people and vehicles from the streets in the vicinity of Eden Park after concert events.
- (h) Ensure that procedures are in place for communicating any unplanned network disruptions to residents, patrons and relevant event staff. For example, when trains are not in operation or there are other rail disruptions, contingency measures may include:
  - (i) measures to plan for and communicate the availability of other modes of transport (including private vehicles, taxis, ride share, walking and cycling) to patrons to support available public transport services, with the objective of ensuring that safe and efficient travel can occur for all patrons to and from an event; and
  - (ii) specific consideration to providing 'Fan Trails' and 'Satellite Park and Ride' locations with bus shuttles to transport patrons between Eden Park and the 'Satellite Park and Ride' locations.
- (i) Set out a strategy to communicate the Transport Plan to residents and patrons.

33A. The Transport Plan must include the following components:

- (a) Measures to plan for and communicate to concert goers the availability of other modes of transport (including private vehicles, taxis, ride share, walking and cycling) to support the available public transport services and ensure that safe and efficient travel is available as far as practicable for all concert patrons to and from concert events.
- (b) Contingency planning for:
  - (i) known rail outages or bus service capacity constraints that will impact on public transport capacity to and from the stadium; and
  - (ii) postponement of concert events to alternative days.
- (c) A Crowd Management Plan, prepared by a suitably qualified and experienced person, to implement effective measures to ensure that crowds exiting the stadium do so in a safe and efficient manner within the surrounding street network.
- (d) A Traffic Management Plan (**TMP**) to implement temporary controls within the surrounding street network to manage the impacts of concert events.

34. The TMP required by Condition 33A(c) must include the details of a traffic management specialist to be engaged by the Consent Holder, who will be responsible for managing any traffic-related issues as they arise before, during and after the concert event in conjunction with Auckland Transport and the NZ Police.

35. The TMP must be authorised by Auckland Transport prior to each concert. The Consent Holder must co-operate with, and provide all practical and reasonable assistance to, Auckland Transport with the implementation of the TMP.

36. The Consent Holder must meet the costs of implementing the TMP, unless otherwise agreed with Auckland Transport.

### **Equipment and Containers**

37. The storage of containers on the site outside the stadium must be restricted to the carparking area to the south of the South Stand, the Outdoor Broadcasting compound under Gate A, the Outer Oval and the area under the western concourse.

### **Heavy vehicle access**

38. Heavy vehicles associated with concert events must access and egress from Sandringham Road only, using Gate Q, the bus hub or temporary gates. Heavy vehicles associated with concert events must not access, park or idle on Walters Road or Reimers Avenue. Heavy vehicles or buses associated with concert events must not idle on Sandringham Road.

38A. Where pack-out activities commence following the conclusion of a concert event, heavy vehicles must enter and exit the site via the Gate Q driveway.

## **Hire Agreements**

39. The Consent Holder must include in its hire agreement for all or any part of the stadium and functions rooms a section of that agreement which sets out relevant conditions of this resource consent for concert events which the hirer must accept and comply with.

## **Helicopters**

40. No helicopter movements are permitted for any concert event.

## **Lighting**

41. The stadium floodlights may operate during pack-in and pack-out activities but in a manner that minimises light spill to adjacent residents.
42. All performance lighting associated with a concert event must cease by 11:00pm.
43. Following the conclusion of a concert event, the stadium floodlights may operate to provide for the safe egress of patrons.
44. Concert lighting projectors must not direct stationary peak beams in the direction of windows of habitable rooms of dwellings not owned by the Eden Park Trust.

## **Pre-concert meetings**

45. No less than one month prior to any concert, the Consent Holder must arrange a briefing meeting to be attended by the following persons:
  - (a) the Council's Compliance Monitoring Officer;
  - (b) the Event Promoter (or the promoter's representative);
  - (c) the Eden Park Operations Manager (or representative);
  - (d) the appointed Traffic Management Specialist;
  - (e) the appointed Acoustic Specialist;
  - (f) Security representative;
  - (g) Auckland Transport's Special Events team (or representative); and
  - (h) Any other relevant person as required by the Council's Compliance Monitoring Officer.

The purpose of the meeting must be to confirm and clarify all actions and responsibilities as required by the conditions of this consent and ensure that all necessary steps towards implementation are being undertaken by the relevant persons.

46. No less than one week prior to any concert event, the Consent Holder must arrange an on-site meeting to be attended by the persons listed in Condition 45.

The purpose of this on-site meeting is to ensure that all required processes and management measures for efficient running of the concert event are in place.

47. The following information must be made available at the pre-start meeting:
  - (a) A copy of this resource consent;
  - (b) A copy of the approved OMP-C; and
  - (c) The relevant TMP approved by Auckland Transport.

#### **Post-concert evaluation**

48. The Consent Holder must, at least annually where a concert event has been held in the preceding calendar year, and for the duration of this consent, invite, at least, all households within the Eden Park TMP area to provide feedback on the effectiveness of the management measures implemented in accordance with the OMP-C.
49. The feedback provided, alongside data gathered from the noise monitoring and traffic management plan, hotline/ complaints process and the Community Liaison Officer, must be:
  - (a) reported to the CLG as soon as practicable and discussed at the next meeting of the CLG; and
  - (b) the minutes of the CLG meeting must be provided to all households invited to provide feedback. The minutes must identify those adaptive measures that have been modified/adopted as a result of the feedback provided and provide an explanation of why any adaptive management measure identified in the evaluation has not been adopted.
50. A summary of the feedback and minutes of the CLG meeting required by Condition 49(a), including the adoption or otherwise of any adaptive management measure, must be provided to the Council's Compliance Monitoring Officer within ten working days of the CLG meeting.

#### **Review condition**

51. Under section 128 of the RMA the conditions of this consent may be reviewed by the Council at the Consent Holder's cost after any of the first six concert events, and then after every 12 subsequent concert events following commencement of this consent in order to deal with any adverse effect on the environment arising from the exercise of this consent which it is appropriate to deal with at a later stage, in particular adverse effects relating to noise, lighting, traffic/transport and crowd behaviour (both within and outside of the stadium).
52. In accordance with section 129(1)(d) of the RMA, the outcome of a review under Condition 51 may include the proposition of new consent conditions to address any adverse effects arising from the exercise of this consent and that are related to the matters referred to in Condition 51.

## **Appendix A – Pack-in and pack-out Noise Management Procedures**

### **1. General management measures**

Complaints can arise even if the noise levels comply with the consented noise limits. To minimise noise complaints, the following common mitigation measures are required to be implemented during pack-in and pack-out stages of a concert event:

- (a) Avoid unnecessary noise. This means managing the site to ensure:
- No shouting;
  - No unnecessary use of horns - consider use 2-way radio, spotters, cameras, proximity sensors etc to minimise use of horns;
  - No loud site radios at night;
  - No rough handling of material and equipment;
  - Avoidance of steel on steel contact (e.g., loading/unloading of scaffolding) – and requiring the use of rubber or timber mallets for scaffold construction; and
  - No high engine revs. This includes choosing the right-sized equipment, turning engines off when idle, and ensuring forklift operators are skilled and use their machine considerately.
- (b) Locate stationary equipment (e.g., generators) away from noise-sensitive receivers and/or screen them behind site buildings using noise matts / barriers. More detail on the construction and use of noise barriers is included under 'Noise barriers' below.
- (c) When selecting equipment (e.g., forklifts):
- Use electric motors rather than diesel / LPG engines where practicable;
  - Use equipment that is suitably sized for the task to balance efficiency and noise emissions;
  - Maintain equipment well to minimise rattles, squeaks etc;
  - Avoid tonal reversing or warning alarms (beepers). Alternatives include broadband alarms (squawkers/quackers), flashing lights, proximity sensors, reversing cameras and spotters; and
  - Avoid the use of rattle guns at night.

### **2. Noise barriers**

Temporary noise barriers should be used where an activity is predicted to exceed the noise limits. They should be installed prior to works commencing and maintained for the duration of the activity. Effective noise barriers typically reduce the received noise level by 10 decibels.



Where practicable, the following guidelines will be used in designing and installing temporary noise barriers:

- (a) The panels will have a minimum surface mass of 6.5 kg/m<sup>2</sup>. Suitable panels include 12mm plywood or the following proprietary 'noise curtains':
  - SealedAir 'WhisperFence 24dB' ([www.sealedair.com](http://www.sealedair.com));
  - Hushtec 'Premium Series Noise Barrier' ([www.duraflex.co.nz](http://www.duraflex.co.nz));
  - Soundbuffer 'Performance Acoustic Curtain' ([www.soundbuffer.co.nz](http://www.soundbuffer.co.nz));
  - Hoardfast 'Fast Wall Premium PVC partition panels' ([www.ultimate-solutions.co.nz](http://www.ultimate-solutions.co.nz));
  - Safesmart 'Acoustic Curtain 6.5kg/m<sup>2</sup>' ([www.safesmartaccess.co.nz](http://www.safesmartaccess.co.nz)).
- (b) Alternatives will be approved by a suitably qualified and experienced acoustic specialist.
- (c) The panels should be a minimum height of 2m, and higher if practicable to block line-of-sight.
- (d) The panels should be abutted, battened or overlapped to provide a continuous screen without gaps at the bottom or between panels.
- (e) Barriers should be positioned as close as practicable to the high-noise activity to block line-of-sight between the activity and noise sensitive receivers. A site hoarding at the boundary may not be effective for all receivers. In such cases, add extra barriers close to high-noise activities to ensure effective mitigation for sensitive receivers on upper floors.