

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



Proposal

To hold up to six concerts in any 12-month period at Eden Park, including all related set-up, pack-down, traffic and crowd management activities.

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

Application number:	LUC60351212
Site address:	42 Reimers Avenue, Mt Eden
Applicant:	Eden Park Trust
Hearing days:	2, 3, 4, 5, 6 and 10 November 2020
Hearing panel:	Kitt Littlejohn David Hill Richard Blakey
Appearances:	<u>Eden Park Trust (Applicant):</u> Russell Bartlett QC and Bronwyn Carruthers - Legal Counsel Nick Sautner - CEO Geoff Jones – Promoter Keith Parker – Operations Manager Colin Skals – Production Manager Greta Lawson – Engagement Dr Peter Phillips – Social Effects Fraser Colegrave – Economic Effects John McKensey – Lighting Effects Todd Langwell – Traffic Effects Chris Day – Noise Effects Mark Vinall – Planning Steve Gillett – Local Businessman Louise Broad – Principal, Kowhai Intermediate Rob Williamson - Local resident Mary O'Donnell - Local resident Connie Phillips - Local resident Kathryn Marshall - Local resident Warren Sharp - Local resident Jonathan Burton - Local resident Sally Petersen - Local resident

Submitters:

Sophia Malthus
D T Boersen
Rt Hon Helen Elizabeth Clark (with Dr David Welch appearing as a witness)
Dr Julia Martin
Astrid Modrow
Derek Nolan (witness appearing for submitter Dr Emma Nolan)
Daniel Newcombe
Brent Halby Laurence Eccles (for Eccles Entertainment)
Franz Mascarenhas (for Cordis Auckland)
Wade Gillooly
Natalie Hill
Bhajanpreet Singh
Sir Bryan Williams
Trevena Young
Chris King and Christine Fielder
Melanie Diane Carpenter
Phillip Leslie Clark
Mark Kneebone (Live Nation)
Graham Gibson (for the Auckland Returned and Services Association Inc, with Wayne Shelford appearing as a witness)
Vicki Toon
Roger Thomas Giese
Matthew Cutts
Jose Luis Fowler
Michael Barnett (for The Auckland Business Chamber)
Anthony Joseph Wright
Martin Gaskell
Sandra Khouri
Julie Kelleway
Louise Brandt
Frank Grgec
Wendy Hughes
Carol Lucy Ireland
Stephen Schulz
Graham Alfred Walton
Gary Holmes (for the Dominion Rd Business Association Inc)
Dave Letele (for BBM Motivation Ltd)
Anthony McGivern
Ange Hart (appearing as a witness for submitter Christopher Leigh Hart)
Shaun Bosson
Robert G M Dexter
Judith Dexter

Eden Park Neighbours' Assoc. Inc (Daniel Sadlier (counsel), with Mark Donnelly, Nigel Lloyd and David Wren appearing as witnesses)
Colin Lucas
Claire Baxter-Cardy (for the Kingsland Business Society Inc T/A The Fringe District and calling John Arkley & Gail Hunter as witnesses)
Claire Baxter-Cardy (for Empire Studios)
Isabelle O'Connell
Nicholas Heyworth (for New Zealand Wheelchair Rugby)
William Reginald Barnes
Mark Donnelly (for the Mark Donnelly Family Trust)
Graeme Hodgson
Andrew Francis
Peter Eyley and Claudia Eyley
Samuel William Jack
Sarah Jack
Michael Tagg
Peter Kenny
Lindsey J Rea
Eden Park Residents Association (Anthony Joseph Wright, and calling Shona Tagg and Jeremy Todd as witnesses)
Jarrod Bear
Iain Laxon
Alex Bryning
Marc Peard
Kerry Copas
Joanna James
Lambert Hoogeveen (with Frank Guzzo appearing as a witness)
Mandy McMullin
Dr David Gilbert
Ross Speakman

Tabled submitter statements

Semisi Pone (for the Project Revival Charity Trust (Inc))
Steve King
Sol Khan
Peter Townsend (for Townsend Architects)
Jill Farquharson (for Auckland Normal Intermediate School)
Denise Bijoux
Rae Wilkin

For Council:

Fennel Mason, Project Lead
Hayden Wadams, Planner
Ian Clark, Traffic Consultant

	Jon Styles, Noise Consultant <u>Hearings Advisor:</u> Bevan Donovan
Commissioners' site visit	29 October 2020
Hearing Closed:	10 November 2020

A. SUMMARY OF DECISION

1. The Eden Park Trust (**EPT** or **Trust**) seeks consent to hold up to six concerts at Eden Park in any 12-month period. The concerts would take place on weekdays, Saturdays, Sundays preceding a public holiday and public holidays, subject to restrictions on frequency, duration and timing, and to being carried out in accordance with a comprehensive Operating Management Plan, incorporating Event Management, Community Consultation and Communication, Pre and Post Event Management and Traffic Management.
2. The proposal requires consent under the Auckland Unitary Plan, where the rules applying to the Eden Park Precinct provide for up to six concerts in any 12-month period as a discretionary activity. Accordingly, the full range of effects generated by the activity have been considered.
3. A large number of submissions were received on the application, 2966 in support, 10 neutral and 180 in opposition. Common themes of submissions in support include the proposal supporting the financial independence and viability of Eden Park, positive economic effects for local businesses and the regional economy, and enhancing the arts, culture and vibrancy of Auckland. Submissions in opposition commonly cite concerns in relation to the adverse effects of the proposed activity, particularly in relation to amenity, noise and traffic.
4. On the basis of a review of the application materials, the submissions, the evidence for the Trust and the expert assessments provided by Council technical specialists, we have concluded that the identified adverse effects of the proposal are able to be adequately avoided or mitigated, if conducted in accordance with the detailed conditions of consent. We have therefore found that the actual and potential adverse effects of the proposal are reasonable and acceptable overall, notwithstanding the genuine and long-held views to the contrary expressed by those opposed.
5. Allowing concerts at Eden Park would also be generally consistent with the Auckland Unitary Plan provisions for Eden Park. The proposal will also actively achieve objectives and policies of the National Policy Statement on Urban Development, the Auckland Regional Policy Statement and the Auckland Plan 2050.
6. Accordingly, we have decided to exercise the discretion delegated to us by the Auckland Council to approve the application, subject to conditions. We are satisfied that doing so will promote the sustainable management of natural and physical resources.

B. INTRODUCTION

7. This decision is made on behalf of the Auckland Council (“**Council**”) by Independent Hearing Commissioners.¹ It contains the findings of our deliberations following the hearing of the application by EPT for resource consent to hold up to six concerts in any 12-month period at Eden Park, including all related set-up, pack-down, traffic and crowd management activities.
8. This decision has been prepared in accordance with s 113 of the Resource Management Act 1991.²

Procedural matters

9. The application by the Trust was publicly notified on 5 March 2020. A total of 3,156 submissions were received, 2966 in support, 180 in opposition, and 10 neutral.
10. The Commissioners were delegated the task of determining the application in early September 2020 and directions for the pre-exchange of reports and evidence were issued on 8 October 2020.
11. A site visit of Eden Park and its facilities was undertaken by the Commissioners on 29 October 2020. The site visit was guided by employees of the Trust, none of whom were directly involved in the hearing of the application.
12. The hearing of the application commenced at 9.30am on 2 November 2020. Two procedural matters were addressed at the opening of the hearing:
 - (a) pursuant to s 37 we resolved to receive 19 submissions that were filed after the close of the submission period on the grounds that the delay in filing them was minimal, that they raised similar matters to other submissions and because the Trust did not object to them being received; and
 - (b) applications by media agencies to film aspects of the hearing and the presentations by various parties were received, and in the absence of objection by any of the parties present, were allowed.
13. In evidence pre-circulated for the hearing, Mr Mark Donnelly, President of the Eden Park Neighbours’ Association Inc (**EPNA**) outlined a history of attempts by the Trust to obtain approval to hold concerts at Eden Park. One of the documents, dated 30 September 2005 and entitled “Joint Memorandum of Counsel”,³ included a statement, apparently endorsed by (then) counsel for the Trust that: *“the future focus of Eden Park will be as a sporting venue” and that the Trust “intends to withdraw the present appeal and would not pursue a new consent for non-sporting (concert) events at night-time”*.⁴ The context to the memorandum was the withdrawal of an

¹ Kitt Littlejohn, David Hill and Richard Blakey appointed and acting under delegated authority under ss 34 and 34A of the Resource Management Act 1991.

² Unless otherwise specified, references to sections and sub-sections are references to sections and sub-sections in the Resource Management Act 1991.

³ Evidence of M Donnelly, 28 October 2020, Appendix 8. We note that the copy of this document provided with Mr Donnelly’s evidence was unsigned. A signed copy was produced subsequently by Mr Sadlier, counsel for EPNA.

⁴ Ibid, paragraph 4.

appeal by the Trust against a decision refusing it consent to hold three concerts at night-time, several years prior to the Rugby World Cup redevelopment.

14. We initially anticipated that EPNA intended to rely on this document to raise a procedural estoppel-based argument to the effect that the Trust was equitably barred from pursuing the current proposal. However, in his submissions for EPNA, Mr Sadlier advised that EPNA's position was that the paragraph quoted above "*does not comprise a legally binding and enforceable agreement between the parties to the memorandum, but an expression of intent on the part of the Trust Board at the time*".⁵ We consider that EPNA's acknowledgment in this regard is appropriate. With the effluxion of time, we find the statement in the memorandum is, as noted by Mr Sadlier, simply an expression of an historic intent that has now, clearly, been revisited by the Trust. We consider that the redevelopment of the stadium in 2010 and the complete review of the planning provisions applying to it commencing in 2013, provide ample justification for this change of mind.

Materials considered and summary of evidence

15. Prior to the commencement of the hearing the following materials were provided to the Commissioners and reviewed:
- (a) A copy of the Trust's resource consent application and supporting assessment of environmental effects, prepared in accordance with Schedule 4;
 - (b) Further information provided by the Trust in response to requests from Council officers under s 92;
 - (c) A copy of all submissions made on the application;
 - (d) A report on the application and submissions under s 42A prepared by Mr Hayden Wadams, a Principal Planner employed by the Council;
 - (e) Briefs of evidence in support of the application from the Trust⁶ and expert briefs of evidence from submitters.⁷
16. The s 42A report prepared by Mr Wadams analysed all of the information received in relation to the application. The report was informed by a number of technical specialist reviews, prepared by other Council officers and independent consultants. These reviews were from Mr Jon Styles (acoustic effects), Ian Clark (traffic effects), Dr Shane Martin and Mr Shyamal Maharaj (economic effects), Dr Gillian Stewart (social effects), and Mr Glen Wright (lighting effects).
17. Although not required by s 42A, Mr Wadams also included a recommendation that we exercise our discretion to grant consent to the application, subject to conditions.
18. The s 42A report was taken "as read" at the hearing.

⁵ Legal Submissions for EPNA, 5 November 2020, paragraph 8(a).

⁶ The evidence comprised non-expert corporate evidence, expert technical and evaluative evidence from a range of qualified and experienced persons, and lay evidence from local residents and businesses.

⁷ A number of submitters also helpfully provided the briefs of non-expert evidence they intended to call in advance of the hearing.

19. Briefs of pre-exchanged evidence were also taken “as read” at the hearing, but witnesses were given the opportunity to summarise and/or highlight aspects of their written briefs. Four of the Trust’s witnesses also presented rebuttal statements of evidence responding to the expert evidence that had been provided by submitters.
20. Some parties “tabled” evidence for our consideration (refer record of appearances).
21. At the conclusion of hearing from the Trust and submitters, Mr Wadams and several of the reporting specialists summarised their assessments and provided responses or further comments on matters that had arisen during the hearing relevant to their areas of expertise.
22. Consistent with convention, counsel for the Trust had a right of reply, which was presented at the end of the hearing.
23. Section 113 specifically requires us to provide a summary of the evidence we heard at the hearing. The volume of evidence and representations presented to us was considerable, but the key issues and themes were consistent with the comprehensive summary set out in the s 42A report (in summary in section 10 and in Attachment 6). For these reasons we do not intend to provide a detailed account of the evidence by submitters. Rather, we have included a summary of the evidence presented in Schedule 1 to this decision. Where necessary we discuss evidence directly relevant to issues in contention with the application later in this decision.
24. We record that we have reviewed and considered in detail all the evidence presented to us, as well as the submissions that were made on the application.

C. EDEN PARK STADIUM

Background

25. Eden Park stadium has a long-standing and celebrated history as a major and iconic sporting venue in New Zealand since the early 1900’s, hosting Rugby World Cup games in 1987 and 2011 (including the final of each event), as well as Cricket World Cup games in 1992 and 2015. The stadium and its associated land holdings and facilities are owned and managed by the Trust, a charitable entity created pursuant to the Eden Park Trust Act 1955. Its trustees are appointed by Auckland Cricket, Auckland Rugby and central government under a 2009 Trust Deed which requires them:
 - (a) To promote, operate and develop Eden Park as a high-quality multi-purpose stadium for the use and benefit of rugby and cricket (including under the organisations of ARU and ACA respectively pursuant to their rights under this deed) as well as other sporting codes and other recreational, musical and cultural events for the benefit of the public of the [Auckland] Region; and
26. To administer Eden Park and the Trust Assets on a prudent commercial basis so that Eden Park is a successful financially autonomous community asset. To support the 2011 Rugby World Cup event to be hosted in New Zealand, a \$256 million redevelopment of the stadium was completed in 2010. This included new south and

east stands, an internal concourse and new food and beverage and corporate areas. These works were authorised by a resource consent⁸ which contained a suite of conditions relating to the frequency and timing of events (particularly at night-time) and the management of the associated effects of these activities.

27. Over 2013 to 2016 the district plan provisions relating to activities at Eden Park were reviewed with the operating conditions imposed on the 2006 resource consent forming the basis for many of the rules and standards for the new Eden Park Precinct under the AUP. These provisions became operative in November 2016 following the Council's acceptance of the Independent Hearing Panel's recommendations in this regard. As with the pre-AUP provisions applying to Eden Park, the Eden Park Precinct (**EPP**) provisions also provide for up to six concerts to be held in a 12 month period, subject to a discretionary activity resource consent being granted.

Eden Park - Site description and facilities

28. Eden Park is located at 42 Reimers Ave, Kingsland, a central Auckland suburb. Its landholdings comprise almost all the land bounded by Reimers Avenue to the south, Cricket Avenue to the east, Walters Road to the north and Sandringham Road to the west. The site is zoned Special Purpose - Major Recreation Facility zone (**MRFZ**) and is subject to the EPP. Within the EPP, the Trust owns properties (60 and 62 Sandringham Road and Units 1, 3 and 5/64 Sandringham Road), that are developed for and used for residential accommodation.
29. The site is surrounded by residential development, with the majority of properties in the immediate vicinity of Eden Park being zoned Single House with a Residential Isthmus A Special Character Overlay. The area retains a collection of Victorian, Edwardian and early 20th century houses, including villas and transitional villas. Houses are generally single-storey timber-framed detached dwellings on individual sites.
30. To the west of Eden Park, on the opposite side of Sandringham Road, are residential properties with a mix of housing types zoned Terrace House and Apartment Building (**THAB**), Mixed House Urban and Suburban and Single House. Beyond this housing area is the commercial and light industrial area of Morningside, zoned Business Mixed Use. On the elevated embankment between the rail line and New North Road are a mix of residential properties (single house and apartments) zoned THAB and the commercial activities of Kingsland's town centre zoned Business Local Centre.
31. Hospitality areas are located in Kingsland and Dominion/Valley Road, within walking distance of Eden Park. To the north-east of the site is Kowhai Intermediate School and the Trent Bray swim centre.

⁸ R/LUC2006/4828

32. The main stadium and the number one field are located towards the eastern side of the site. The main stadium comprises two covered stands (north and south) and two uncovered stands (east and west). Gates A, D, E and H provide the primary public access to the main concourse and stands, with the concourse allowing people to circulate inside the stadium and access food and beverage outlets, merchandise and toilet facilities.
33. Gate A is located in the north-western corner of the stadium on Walters Road and near the intersection with Sandringham Road in close proximity to the Kingsland Rail Station and provides a large, asphalted area at the entrance to the gate turnstiles. Gate D is located near the corner of Walters Road and Cricket Avenue and is accessed via a plaza area level with the footpath and a set of stairs that lead to the gate turnstiles. Gate E is located in the south-eastern corner of the stadium near the corner of Cricket and Reimers Avenues and is also accessed via a plaza that is level with the adjoining footpath. Gate H is located in the south-western corner of the stadium and is accessed from Sandringham Road via the 'bus-hub' or from Reimers Avenue through the carpark area located between the stand and the road boundary.
34. The North stand is primarily accessed via Walters Avenue through Gates A, B and C. This covered stand provides 13,888 permanent and temporary seats and includes reception and hospitality facilities on Level 5 and corporate boxes on Level 6. Gates B and C provide direct access to the corporate facilities in the stand. The stand also contains a merchandise retail shop, Auckland Rugby Union offices and gym facilities. There are three vehicle crossings located on the Walters Road frontage accessing a parking area providing 136 carparks located between the stadium and road boundary.
35. The uncovered East stand has a lower and upper tier and is primarily accessed via Gates D and E. The stand provides seating for 8,226 people (including temporary seating). The rear of the Lower East stand is dominated by the base and undercroft wall of the stand. Above the base of the stand is the Upper East stand and a digital screen located in the south east corner. This frontage to Cricket Avenue includes a mixture of grass berm and gardens with low level planting and specimen trees, as well as the pedestrian plaza's outside of the two entry points into the stadium. The East stand is setback approximately 14m from the road boundary with Cricket Avenue.
36. The covered South stand contains three tiers, and has reception and lounge facilities, corporate boxes and a media centre. The stand has a capacity of 21,411 people (including retractable seating). The South stand is 'enclosed' with a translucent material providing insulation and an integrated architectural finish. A service road is located underneath the stand and is accessed via a two-way vehicle ramp adjacent to Gate F which is accessed from Sandringham Road via the 'bus-hub' and carpark area. The stand also contains changing facilities, ancillary rooms and access to the number one field via two separate entrance tunnels located in the centre and south-eastern corner of the stand. There are 99 car parks available directly in front of the stand.

37. The West stand comprises two uncovered tiers with a large reception room located beneath the upper tier. The stand provides 4,771 permanent and temporary seats and is primarily accessed via Gates A and H. The elevated concourse is located on the outer, western edge of the stand. Beneath this concourse is a roadway and service area linking the service road beneath the south stand and Gate Q located on Sandringham Road. The Upper West stand does not connect to either the north or south stands. A digital screen is located in the gap between the north and west stand beneath which is the main equipment and vehicle access to the field.
38. The number two or 'outer-field' is located on the western side of the site adjoining Sandringham Road. It comprises a cricket oval, practice nets, high performance centre and grandstand facilities (including the historic Eden Park grandstand). The field is fenced on Sandringham Road with a permeable rail fence about 1.8m in height. Gate Q, accessed off Sandringham Road, provides vehicle access adjacent to the outer oval and connects to the service road which runs beneath the South stand.
39. A central 'bus-hub' is located on the corner of Sandringham Road and Reimers Avenue and is accessed via three separate vehicle crossings on Sandringham Road. The 'bus-hub' is operated by Auckland Transport during large events and matches, providing capacity for 12 coaches to load/unload passengers. When not in operation, the area is used for general parking providing 108 parks.
40. The main loading and service area for the stadium is located beneath the south stand accessed either via the vehicle entrance off Sandringham Road through the bus hub and carpark or from Gate Q. The service road is large enough to accommodate 7-10 articulated trucks and provides the ability to load and unload goods in a covered, enclosed space. Together with the undercroft, this is the main storage area for the stadium and houses the back of house, service, mechanical and plant areas.

Surrounding road network

41. Eden Park is centrally located on the Auckland Isthmus, approximately 4km from the Central Business District and is accessible by a variety of transport modes.
42. Eden Park can be approached from a variety of routes with the north-western motorway being the closest strategic route for vehicles. Sandringham Road is a main arterial road and public transport route. Walters Road, Reimers and Cricket Avenues are local roads providing access to residential properties and the Eden Park precinct. The stadium is located within 200m of the Kingsland rail station and 800m from Morningside Station, both of which connect to Auckland's rail network.
43. The nearest bus stop to the stadium is located on Sandringham Road, north of Altham Avenue, directly opposite the stadium. The bus service operates every five to ten minutes during peak commute hours, and every fifteen to thirty minutes at other times.

44. Walters Road is one of the primary roads used by pedestrians to access Eden Park during events as it provides a connection between the Kingsland rail station, Sandringham and Dominion Roads and the North, West and East stand general admission entrances (A and D). The pedestrian facilities include a signalised crossing across Sandringham Road, providing direct access to the Kingsland rail station, a pedestrian walkway between Sandringham Road and Walters Road and speed tables along Walters Road for traffic calming effects. These facilities are designed to enable accessibility for large numbers pedestrians attending events at the stadium.

Eden Park – Consented Activities

45. The Trust holds a number of resource consents, which together with the activities permitted to occur at the site under the AUP, govern the nature and extent of activity currently able to be undertaken at Eden Park. We set these out below due to their relevance to our consideration of the application.

LUC60126194

46. Granted in 2017, this consent provides for organised sport and recreation on the number one field at Eden Park at night-time,⁹ subject to the following restrictions:
- There must be no more than 25 activities within any 12-month period.
 - There must be no more than one day/night cricket test match within any 12-month period.
 - If scheduled between Monday and Friday (inclusive), these activities (excluding day/night cricket test matches) must commence after 7:30pm and be scheduled to finish no later than 9:30pm. Activities on public holidays are excluded from these time limits.
 - Day/night cricket test matches must be scheduled to finish no later than 10.00pm.
 - These activities must not be undertaken on a Sunday.
 - These activities must not exceed four occurrences within any 35-day period.
 - The crowd attending any of these activities must not exceed 50,000 persons.
 - For the purpose of these standards, a day/night cricket test match of up to five days in duration is to be counted as one activity.

⁹ Refer AUP I310.4 – ‘night time activities are those undertaken between 30 minutes before sunset on one day and 30 minutes before sunrise on the following day’.

47. The activities authorised by this consent must also be undertaken in accordance with the specific standards in the EPP (I310.6), including in relation to noise, lighting, and traffic management. Together, the noise and lighting standards operate to require activities on weekend nights to conclude by 10:30pm.¹⁰

LUC60301178

48. This consent supplements the activities authorised by LUC60126194 and enables Eden Park to host One Day International (**ODI**) cricket matches with a scheduled finish time of 10:00pm on a weekday/night and T20 cricket matches held during a weeknight between 7:00pm and 10:00pm.

LUC60337912

49. This consent amends the scheduled finish time of ODI and T20 cricket matches for tours by the India national cricket team to 11:00pm on Friday and Saturday nights.

LUC60360116

50. This consent provides for up to 25 night-time sports events in the period beginning 14 June 2020 and ending 28 March 2021 at a frequency of no more than eight events in any 35 days, to offset the preceding three months where no events were held due to COVID-19. It effectively supersedes resource consent LUC60126194 until it expires on 28 March 2021. A variation to this consent (referenced LUC60360116-A) was granted on 29 October 2020 which amends conditions 1 and 6 and allows the scheduled finish time for T20 cricket matches authorised by this consent to extend to 10:15pm.

CER70016331

51. This certificate of compliance, issued on 13 December 2019, confirms that a proposed integrated acoustic barrier and digital screen to be erected on the East Stand is a permitted activity under the AUP. Under s 139(10), this certificate is a deemed resource consent.
52. This certificate puts beyond doubt the ability of the Trust to comply with a condition that it has offered to be bound to in relation to the current proposal, namely proposed condition 5, which states:

The East Stand shall be completed with the installation of an integrated acoustic barrier and digital screen prior to the first consent being held. Minor changes can be made to the design contained in the Certificate of Compliance issued by Auckland Council on 13 December 2019 provided the Consent Holder obtains certification from a suitably qualified independent person that any such design changes do not increase the noise (rating) level as measured within the boundary of any residentially zoned site not owned by the Consent Holder.

¹⁰ Playing field lights curfew for night time events applies from 11:00pm (I310.6.2(4)); Noise limits reduce from 10:30pm (I310.6.1(1)).

53. Importantly, the current application relies on this acoustic barrier to ensure that its proposed noise emissions achieve the design noise standards for night time concerts recommended by the Trust's acoustic advisers.
54. We note that resource consent R/LUC2006/4828 as varied, included a similar (but different) acoustic barrier requirement for the purposes of reducing the effects of noise from the (then) proposed night time sporting activities upon properties to the east. However, this acoustic barrier has never been constructed and nor has enforcement of this obligation been undertaken by the Council. Both of these facts were relied on by submitters in opposition to the proposal as indicative of *male fides* and untrustworthiness on the part of the Trust and dereliction of duty on the part of the Council.
55. In replying to the allegations on behalf of the Trust, Mr Bartlett QC explained that noise monitoring of events occurring at the rebuilt stadium indicated compliance with the applicable noise standards without the attenuating effects of the acoustic barrier. Moreover, the Trust's legal advice was that the consent authorised the construction of the barrier but, in circumstances where the noise conditions were being met without it, did not require it.
56. We do not need to make a finding on this issue to determine the current application. No enforcement action has been commenced by any party either in relation to this alleged condition breach, or in relation to compliance with noise standards at Eden Park. Moreover, past conduct of an applicant is only relevant to a new application made by that person in the rarest of cases,¹¹ and we are satisfied that this is not one of them.
57. In summary on this issue, the Trust's proposed condition 5 requires an acoustic barrier (which it can lawfully build), to be built prior to the exercise of this consent. The ability to exercise the consent is therefore constrained by this obligation being satisfied.

Summary of existing environment

58. There can be no doubt that Eden Park is a major recreation facility, with a long standing physical and operational presence in Mt Eden/Kingsland. The current planning provisions that apply to the stadium and the resource consents it holds allow it to hold regular sporting events, including at night time, involving crowds of up to 50,000 spectators, with all the related noise, pedestrian and traffic management activity (and disruption to local residents) that follows from events of that scale.
59. In relation to night time sporting events in particular, the evidence of Mr Sautner¹² was that for the past four years (1 November 2016 to 30 October 2020), the average number held per annum has been just over 15. 16% of the events involved a crowd size exceeding 40,000 spectators. Based on crowd size, the average number of annual night time events were as follows:

¹¹ *Walker v Manukau CC* EnvC C213/99; *Hinsen v Queenstown Lakes DC* [2004] NZRMA 115.

¹² Evidence N Sautner, 15 October 2020, Attachment 7.

- >10,000 4.5
- 10,000 – 20,000 6.25
- 20,000 – 30,000 0.75
- 30,000 – 40,000 0.75
- 40,000 – 50,000 1.75

60. It is clear from these figures that the allowance for 25 night time sporting events involving 50,000 spectators at Eden Park has yet to be fully utilised. Nevertheless, it is the authorised use of this facility that comprises the ‘existing environment’ for the purposes of considering the effects (including cumulative effects) of the current proposal for an additional six night time events, namely concerts involving up to 60,000 spectators.

D. THE APPLICATION, CONSENT REQUIREMENTS AND ACTIVITY STATUS

The application

61. The application is to hold up to six outdoor concerts on the number 1 field at Eden Park in any 12 month period.

62. For the purposes of the application a “concert” is described as:¹³

“...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 pyrotechnics, aerial displays or performances or other features which form part of or enhance the event”

63. The concerts would include all associated equipment “pack-in/pack-out” activities in the days immediately before and after the concert performances.

64. A key feature of the application are the operational parameters proposed to apply to the exercise of the consent (if approved) that have been put forward by the Trust to ensure the effects of the use of Eden Park for concerts are acceptable. These parameters were modified¹⁴ during the hearing in response to evidence received, including comment by Council officers. At the conclusion of the hearing, they comprised the following:

¹³ We adopt this definition for the purposes of this decision.

¹⁴ Note, the parameters summarised in section 7.1 of the s 42A report were superseded by the close of the hearing.

Item	Description
Number of events	Up to six concert performances in a 12 month period (including associated pack-in and pack-out days) provided there are no more than four concert events in any two week period.
Frequency	No more than four concert events in any four week (28 day) period.
Respite period	At least one weekend (inclusive of Friday night) in every 35-day period must be free of any concert or organised sports and recreation undertaken during the night-time on the Number 1 field.
Days of week	Monday to Saturday, and any Sunday preceding a public holiday.
Start time	<p>Weekday concerts to commence no earlier than 6.30pm for supporting acts and 7.30pm for the main act.</p> <p>Concerts on Saturdays, public holidays or a Sunday preceding a public holiday can start anytime from 10am.</p>
Duration	<p>The total duration of any concert(s) shall not exceed a total duration of:</p> <ul style="list-style-type: none"> • 6 hours on Saturdays, public holidays and a Sunday preceding a public holiday; and • 4 hours on any other day.
Finish time	10:30pm.
Admission times	<p>On a weekday (other than a public holiday) general admission to the number 1 field must not commence prior to 5pm.</p> <p>On Saturdays, public holidays or a Sunday preceding a public holiday generally admission to the number 12 field must not commence prior to 8:30am.</p> <p>Corporate hospitality areas may be opened earlier if required.</p>
Multiple concerts	None – one concert performance per day.
Crowd size	<p>Saturday and any Sunday preceding a public holiday, and on public holidays regardless of day of week – up to 60,000.</p> <p>All other days - up to 50,000.</p>
Stage configurations	Stages restricted to the Number 1 field only (but no restriction on stage location or configuration on the Number 1 field).
Noise limits	The noise level from use of sound systems associated with concerts, sound checks, and the balancing of sound systems must not exceed 75 dB LAeq(t) and 80 dB LAeq(10min) when measured within the boundary of any residentially zoned site not owned by the Eden Park Trust.

	All other activities, including pack-in and pack-out shall meet the noise limits contained in the Eden Park Precinct Noise Standards in I310.6.1.1.
Sound checks	Testing and balancing of all sound systems involving PA and/or vocal checks and/or rehearsals by performers for a concert must not cumulatively exceed 3 hours for any concern, must not commence before 5pm on any weekday (except in specified circumstances), or 10am on any other day, and must be completed by 7pm.
Stadium lighting	At the end of the concert, stadium lighting is switched to egress mode, with the floodlights shut off no later than 45 minutes after the conclusion of the concert.
Helicopters	Helicopter flights used in conjunction with a concert event shall comply with standard I310.6.14 of the Eden Park precinct. No helicopter to land or take off from the site on the date of the concert.
Firework displays	Professional fireworks displays shall comply with the noise standard in I310.6.13(5) of the Eden Park precinct.
Truck movements	Heavy vehicles associated with concerts must access and egress from Sandringham Road only, using Gate Q, the bus hub or temporary gates. No heavy vehicles associated with concerts may access, park or idle on Walters Road or Reimers Avenue. No heavy vehicles may exit the site between 10:30pm and 8:00am except for pack-out activities commencing immediately following the conclusion of a concert when 17 heavy vehicles may exit the site between the hours of 10:30pm and 8:00am the next day.

65. Several other conditions relating to the management of concerts and the monitoring of noise associated with them are also proposed by the Trust to form part of the application. The details of these conditions were debated during the hearing. At its close, we were told that the Trust and the Council's reporting officers had reached agreement on all conditions to apply in the event consent was approved.

66. Based on the above description/application parameters the proposal involves the following key features that extend the activities currently allowed at Eden Park (by reference to the 'existing environment' described earlier):
- (a) Six additional night time events in each 12 month period, including on Sunday nights preceding a public holiday, thereby bringing the total events that could be held to 31;¹⁵
 - (b) Larger crowds for six of those events, if held on a Saturday night, or Sunday night preceding a public holiday, or on a public holiday (up to 60,000), but otherwise up to 50,000 as for sporting events;
 - (c) Weekday start time of 6:30pm, compared to 7:30pm for sporting events;
 - (d) Weekday finish time of 10:30pm, compared to 9:30pm/10:00pm for sporting events;
 - (e) Concert noise allowed up to 75dB $L_{Aeq(t)}$ and 80dB $L_{Aeq(10min)}$, compared to 55dB $L_{A10(13hr)}$, 60dB $L_{A10(10min)}$ and 85dB L_{Amax} for sporting events;
 - (f) Stadium lighting (in egress mode) allowed until 11.15pm, compared to 11:00pm for sporting events.
67. The following features of the proposal though would replicate or maintain the same constraints/conditions on proposed concert activities as apply to sporting events:
- (a) Crowd and traffic management procedures;
 - (b) Compliance with AUP noise limits for all other activities associated with concerts (i.e., pack-in and pack-out);
 - (c) A respite period requiring that at least one weekend (inclusive of Friday night) in every 35-day period must be free of any concert or organised sports and recreation at night-time on the number 1 field;
 - (d) Community liaison.
68. We were told that apart from a promotional Osmonds concert in 1975, Eden Park has never been used for concerts. A number of applications have been made by the Trust over the years¹⁶ to allow them, but for various reasons they have never obtained approval. The most recent attempt, in 2018, to stage a charity concert in co-operation with Sir Ray Avery, was abandoned with "*time constraints and the prospect of substantial Environment Court costs*" cited as the reasons.¹⁷ This history of attempts to stage concerts at Eden Park is not directly relevant to our assessment of the application. However, it does place a greater burden of proof on the Trust to satisfy us that Eden Park is appropriate for concerts. Monitoring of prior concert

¹⁵ Evidence M Vinall, 15 October 2020, paragraph 109, noting that the proposal would potentially result in 35 nights of activity because a day/night cricket test is one event but up to 5 days/nights in duration.

¹⁶ Refer Evidence of M Donnelly, 28 October 2020, paragraphs 16 to 20.

¹⁷ <https://www.rnz.co.nz/news/national/362714/eden-park-withdraws-sir-ray-avery-charity-concert-application>

activity at Eden Park would also have been helpful to assess the adequacy (or otherwise) of the methods to be employed by the Trust to manage their effects.

Consent requirements

69. As noted above, Eden Park is zoned MRFZ in the AUP and is also subject to the EPP. The MRFZ does not contain any activity rules but H26.1 describes the zone as follows:

There are currently 20 facilities within the Special Purpose - Major Recreation Facility Zone. Each facility is also contained within a precinct. The zone contains general objectives and policies which guide the operation and development of current and future sites. The precinct provisions contain additional objectives, policies, activities, standards and assessment matters which are specific for each existing facility....

70. The Trust's proposal to hold up to six concerts a year at Eden Park requires land use consent under EPP rule I310.4.1(A15), which provides for that specific number of concerts over that timeframe as a discretionary activity.
71. We note that the AUP does not provide a definition of "concert" for the purposes of the EPP, raising a potential issue as to the scope of the activity contemplated by the rule. Two activities commonly associated with the staging of concerts at a stadium venue such as Eden Park are the construction of a temporary stage and other structures (for the performance) and the 'pack-in' and 'pack-out' of equipment required for the stage etc and the performance.
72. The application considered that the former of these two activities was permitted by rule I310.4.1(A25) – Temporary buildings and structures, and the latter was simply part of the concert activity. The s 42A report agreed with this assessment, as do we. In fact, we think both are an integral and anticipated part of the activity of staging a concert at such a venue, and have been incorporated within the definition that has been adopted for the purposes of our decision in paragraph 61.
73. In any event, even if these two specific concert-related activities are not considered part of the concert activity contemplated by rule I310.4.1(A15), AUP General rule C1.7(1) would apply to classify them as discretionary, meaning that, overall, the proposal remains discretionary.
74. The preamble to the EPP Activity Table states that the provisions [activity rules] in any relevant overlays and Auckland-wide chapters apply in this precinct, except for those contained in E24 Lighting, E25 Noise and vibration (noise provisions only) and E40 Temporary activities. However, the site is not subject to an overlay and there are no other relevant Auckland-wide rules applying to the proposed activity.
75. Finally, on the issue of consent requirements, the EPP lists a range of standards which all permitted, controlled and restricted discretionary activities provided for in the precinct must comply with. As a discretionary activity, these standards do not apply to the proposal (such that non-compliance with them would require resource

consent for an infringement of a standard under rule C1.9(2)¹⁸). This is also the case for the standards listed in Auckland-wide chapters including E24 Lighting and E25 Noise and vibration.

E. RELEVANT STATUTORY PROVISIONS

76. The statutory framework for consideration of the application is in Part 6 of the RMA.

Section 104(1)

77. Section 104(1) sets out the mandatory matters to which we must have regard when considering the application and any submissions received. For this application, the matters comprise: the actual and potential effects on the environment of allowing the activity and the relevant provisions of any applicable national and regional policy statements and plans. Section 104(1)(c) also allows regard to be given to any other matter considered relevant and reasonably necessary to determine the application.

Section 104(2)

78. Section 104(2) gives consent authorities discretion to disregard adverse environmental effects of a proposed activity if the applicable plan permits an activity with that effect.

79. Although the application notes that the AUP provides for various activities to be undertaken within the EPP as permitted activities, no reliance is placed on this “permitted baseline” of effect for the purposes of the s 104(1)(a) assessment.

80. Similarly, the s 42A report sets out¹⁹ the specific activities permitted within the precinct observing that:

the Eden Park Precinct is enabling of a significant level of day-time activity without the need for resource consent. A maximum capacity sporting event held during the day-time could generate some similar levels of effects, particularly in terms of traffic and amenity, as would be likely be generated by a day-time concert. However, the only night-time activities that can be undertaken without a resource consent are ‘functions, gatherings, conferences and meetings’ which are of a significantly smaller-scale being limited to 2000 people

81. The nature of the activities permitted at Eden Park and the established (and anticipated) scale of their effects on the surrounding neighbourhood provide a helpful context in which to assess the application. But we agree with the reporting officer that strict application of a “permitted baseline” is difficult because of the different nature and scale of the effects likely to be generated by proposed concerts at Eden Park, particularly at night-time (as described above). For this reason we have not utilised the discretion in s 104(2).

¹⁸ But see paragraph 103 below as to the relevance of these standards.

¹⁹ S42A report, at 12.2.1

Part 2

82. The consideration of applications under s 104(1) is “subject to Part 2”, the meaning of which is well settled.²⁰ The extent to which express recourse to Part 2 may be required when considering an application for resource consent will depend on whether the relevant plan(s) have been prepared having regard to Part 2 and include a coherent set of policies designed to achieve clear environmental outcomes. If not, or if in doubt, it will be appropriate and necessary to refer to Part 2.
83. In the case of this application, no party submitted that we ought to expressly resort to Part 2 on the grounds that the relevant planning framework was incoherent. All accepted the currency and comprehensive nature of the AUP as the primary planning document to be considered.
84. We agree and find that it is not necessary to resort directly to Part 2 to determine the application. In this regard, we follow the approach of the Environment Court in its decision granting consents for the works required for the AC36 regatta, where it too saw no basis to resort to Part 2.²¹

Section 104B

85. Our jurisdiction in respect of the application is set out in s 104B: after considering the application we may grant or refuse consent. It is trite that we must exercise this discretion for a proper purpose, namely to promote the sustainable management of natural and physical resources.

Section 108

86. If we grant consent, we may impose conditions under s 108, provided they comply with s 108AA. This latter section prevents a consent authority imposing a condition unless the applicant for the consent agrees to it, or the condition is “directly connected” to an adverse effect of the activity on the environment and/or an applicable district or regional rule or a national environmental standard. Conditions may also be imposed if they relate to administrative matters that are essential for the efficient implementation of the resource consent.
87. An important component of the application is its proposed conditions, as they are intended by the Trust to manage the actual and potential adverse effects of the proposed activity to an appropriate level. We have treated the applicant’s indication in reply that it agrees with the final revised condition set produced by Mr Wadams at the close of the hearing as agreement for the purposes of s 108AA(1)(a). Any amendments that we might consider necessary or appropriate to these conditions arising from our consideration of the evidence etc will therefore need to meet the requirements of s 108AA(1)(b) or (c).

²⁰ *R J Davidson Family Trust v Marlborough DC* (2018) 20 ELRNZ 367 at [73] – [76].

²¹ *Re Panuku Development Auckland Ltd* [2018] NZEnvC 179 at [667].

Section 113

88. Section 113 sets out the matters to be included in any decision on a resource consent application. Although we have not structured our decision to follow the format of s 113, we confirm that we have addressed and included all of the matters required in this decision.

Section 16

89. Section 16 is often referred to and relied on where resource consent applications propose activities that potentially involve loud and/or frequent noise disturbance. The section places a duty on every occupier of land to adopt the 'best practicable option' (**BPO**) to ensure that the emission of noise from their land does not exceed a reasonable level. It is frequently relied on to support arguments that a consent applicant must ensure that the noise emissions of their proposed activity are reasonable and, concomitantly, that a consent authority cannot approve emissions that are not.
90. However, s 16 is not a statutory provision that is directly relevant to the consideration of an application under Part 6. This is because it does not engage pre-emptively to require a resource consent applicant to demonstrate that it has adopted the BPO for its proposed noise emissions.²² Rather the duty under s 16 applies to occupiers of land as they are, not what they might be.²³
91. Despite that, the High Court has observed:²⁴

"That is not to say that the existence of the s 16 duty will not guide the development of noise emission standards nor that those whose function it is to decide applications for resource consents will not have regard to it."

92. We propose not to disregard s 16 entirely, but rather to pay close attention to the relevant noise emission standards and related provisions in the AUP, as this will assist us to understand the AUP's approach to ensuring the s 16 duty is achieved. We will also consider s 16, albeit at a general level, when it comes to the exercise of our discretion. This is because it would not be an appropriate exercise of our discretion to allow an activity that would result in noise emissions that are unreasonable, as understood in the context of the relevant plan, amongst other matters.

²² *Empire Entertainment Ltd v Vicki Vuleta Trust and others* [2010], CIV-2010-404-002832, Brewer J, 19 August 2010 (HC), at [42] – [43]

²³ *Ibid*

²⁴ *Ibid*.

F. RELEVANT POLICY STATEMENTS AND PLANS (s 104(1)(b))

93. In considering and determining the application, we find that s104(1)(b) requires us to have regard to relevant provisions of the following policy statements and plans:

- The National Policy Statement on Urban Development 2020 (**NPS:UD**);
- The Auckland Regional Policy Statement 2016 (Chapter B of the AUP) (**RPS**), in particular:
 - B2 Urban growth and form.
- The AUP, in particular:
 - C1 General rules.
 - E24 Lighting.
 - E25 Noise and vibration.
 - H26 Special Purpose – Major Recreation Facility Zone.
 - I310 Eden Park Precinct.

94. We provide a brief outline of these provisions below.

NPS:UD

95. When lodged in February 2020, the Trust's application addressed various objectives and policies of the NPS on Urban Development Capacity 2016 (**NPS:UDC**). On 20 August 2020, however, the NPS:UDC was replaced with a new NPS, the NPS:UD. Although the theme of the NPS:UDC and the NPS:UD is similar, there are some significant differences between them in terms of the nature and scale of the directions they give to local authorities and consent authorities dealing with Tier 1 urban environments such as Auckland.

96. Even though the application is not concerned with housing supply, that being a primary focus of the NPS, the Trust and the Council reporting officer considered that the following objectives of the NPS:UD were relevant to the application:²⁵

***Objective 1:** New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*

***Objective 3:** Regional policy statements and district plans enable more people to live in, and more businesses and community services to be located in, areas of an urban environment in which one or more of the following apply:*

- (a) *the area is in or near a centre zone or other area with many employment opportunities*

²⁵ Legal Submissions for the Trust, 2 November 2020. See also s42A report, section 13.1.1.

- (b) *the area is well-serviced by existing or planned public transport*
- (c) *there is high demand for housing or for business land in the area, relative to other areas within the urban environment.*

Objective 4: *New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.*

97. No other submitter contended that the NPS:UD was irrelevant and ought not be considered, although submissions as to the weight it ought to be given varied amongst the parties. We set out our intended approach to the multiple policy and plan provisions at paragraph 110.

RPS

98. Part 1, Chapter B of the AUP sets out the strategic resource management framework for the identified issues of significance for Auckland, and the resultant priorities and outcomes sought. It is the RPS for the Auckland region. No party contended that its provisions were not relevant to the application.
99. Of the matters addressed in the RPS, the objectives and policies within B2 Urban growth and form, specifically B2.7 Open space and recreation facilities and B2.8 Social facilities, are the most relevant. We set them out for completeness.

B2.7.1. Objectives

- (1) *Recreational needs of people and communities are met through the provision of a range of quality open spaces and recreation facilities.*
- (3) *Reverse sensitivity effects between open spaces and recreation facilities and neighbouring land uses are avoided, remedied or mitigated.*

B2.7.2. Policies

- (1) *Enable the development and use of a wide range of open spaces and recreation facilities to provide a variety of activities, experiences and functions.*
 - (3) *Provide a range of open spaces and recreation facilities in locations that are accessible to people and communities.*
 - (5) *Enable the development and use of existing and new major recreation facilities.*
 - (6) *Encourage major recreation facilities in locations that are convenient and accessible to people and communities by a range of transportation modes.*
 - (8) *Avoid, remedy or mitigate significant adverse effects from the use of open spaces and recreational facilities on nearby residents and communities.*
- B2.8.1. Objectives**

(1) Social facilities that meet the needs of people and communities, including enabling them to provide for their social, economic and cultural well-being and their health and safety.

(2) Social facilities located where they are accessible by an appropriate range of transport modes.

(3) Reverse sensitivity effects between social facilities and neighbouring land uses are avoided, remedied or mitigated.

B2.8.2. Policies

(1) Enable social facilities that are accessible to people of all ages and abilities to establish in appropriate locations as follows:

(a) small-scale social facilities are located within or close to their local communities;

(b) medium-scale social facilities are located with easy access to city, metropolitan and town centres and on corridors;

(c) large-scale social facilities are located where the transport network (including public transport and walking and cycling routes) has sufficient existing or proposed capacity.

(2) Enable the provision of social facilities to meet the diverse demographic and cultural needs of people and communities.

(3) Enable intensive use and development of existing and new social facility sites.

(5) Enable the efficient and flexible use of social facilities by providing on the same site for:

(a) activities accessory to the primary function of the site; and

(b) in appropriate locations, co-location of complementary residential and commercial activities.

(6) Manage the transport effects of high trip-generating social facilities in an integrated manner.

AUP Provisions

C1 General rules

100. The general rules in Chapter C of the AUP clarify the AUP framework for considering a resource consent application made under its provisions. Three of the rules are relevant to our assessment of the Trust's application.

101. First, rule C1.8(1) provides:

When considering an application for resource consent for an activity that is classed as a restricted discretionary, discretionary or non-complying activity, the Council will consider all relevant overlay, zone, Auckland-wide and precinct objectives and policies that apply to the activity or to the site or sites where that activity will occur.

102. This rule ensures that even when not specifically listed in a precinct, other AUP objectives and policies applying to the proposed activity will be considered. This is how the objectives and policies in E24 Lighting and E25 Noise and vibration become relevant to the proposal, despite the more refined lighting and noise provisions incorporated into the EPP itself.

103. Second, rule C1.8(2) states:

When considering an application for resource consent for an activity that is classed as a discretionary or non-complying activity, the Council will have regard to the standards for permitted activities on the same site as part of the context of the assessment of effects on the environment.

104. The following standards applying to permitted activities in the EPP are therefore relevant for consideration:

- I310.6.1 Noise
- I310.6.2 Lighting
- I310.6.3 Special lighting events
- I310.6.4 Traffic management
- I310.6.5 Parking
- I310.6.10 Primary activities undertaken during the daytime
- I310.6.11 Organised sports and recreation activities undertaken at night time on the Number 1 field
- I310.6.12 Functions, gatherings, conferences and meetings
- I310.6.13 Professional fireworks displays
- I310.6.14 Helicopter flights
- I310.6.15 Temporary buildings and structures

105. Third, rule C1.8(3) states:

The absence of any specific reference to positive effects in the objectives, policies, matters of discretion or assessment criteria does not mean that any positive effects of allowing an activity are not relevant to the consideration of an application for resource consent for that activity.

106. We confirm that we have considered all positive effects of the proposal, regardless of whether they have been referred to in the AUP or not.

E24 Lighting

107. Relevant objectives and policies in chapter E24 Lighting are as follows:

E24.2. Objectives [rcp/dp]

- (1) *Artificial lighting enables outdoor activities and the security and safety of people and property.*
- (2) *The adverse effects of outdoor lighting on the environment and safety of road users are limited.*

E24.3. Policies [rcp/dp]

- (1) *Provide for appropriate levels of artificial lighting to enable the safe and efficient undertaking of outdoor activities, including night time working, recreation and entertainment.*
- (2) *Control the intensity, location and direction of artificial lighting to avoid significant glare and light spill onto adjacent sites, maintain safety for road users and minimise the loss of night sky viewing.*
- (3) *Use area or activity specific rules where the particular functional or operational needs of the area or activity make such rules appropriate.*

E25 Noise and vibration

108. Relevant objectives and policies in chapter E25 Noise and vibration area as follows:

E25.2. Objectives [rcp/dp]

- (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.*

E25.3. Policies [rcp/dp]

- (3) *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.*
- (4) *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.*
- (5) *Use area or activity specific rules where the particular functional or operational needs of the area or activity make such rules appropriate*

H26 Special Purpose – Major Recreation Facility Zone

109. The relevant provisions of the MRFZ are as follows:

H26.2. Objectives

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

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:*
 - (a) *the function, role, or amenity of any metropolitan town or local centre beyond those effects ordinarily associated with trade effects on trade competitors; and*
 - (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.*

I310 Eden Park Precinct

110. The objectives and policies of the EPP that are of greatest relevance to the application are:

I310.2. Objectives

- (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.*

1310.3. 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.*

111. All of the provisions of the EPP are relevant to the application to some extent, as they provide context for the activities at Eden Park. We do not list them here but will refer to them as necessary while considering the issues in contention with the application.

Approach to s104 matters

112. The approach to be taken to the various matters in s 104(1) is well established: the directive “*must have regard to*” does not mean “*must give effect to*”. Rather it simply requires decision-makers to give genuine attention and thought to the matters set out.²⁶ The relative weight to be given to the matters listed in s 104(1)(a)-(c) is for the decision maker, on the evidence. Flexibility is important when approaching this task, in the sense that the relative importance that various considerations have, and the manner in which they interrelate, will vary according to context.²⁷
113. In accordance with this guidance, we record that we have approached our assessment of the policy and plan provisions engaged by the application by giving greatest weight to the most specific relevant provisions, namely those in the EPP. We have next considered the more general provisions in the MRFZ, E24 Lighting and E25 Noise and vibration (where necessary). Together, these provisions “give

²⁶ *Foodstuffs (South Island) Ltd v Christchurch CC* (1999) 5 ELRNZ 308; [1999] NZRMA 481 (HC).

²⁷ *Albert Road Investments Ltd v Auckland Council* [2018] NZEnvC 102. See also *The Warehouse Ltd v Dunedin CC* EnvC C101/01; *R v CD* [1976] 1 NZLR 436.

effect to” the RPS²⁸ and so comprise the most refined or detailed manifestation of those policies in relation to the natural and physical resources affected by the application and their sustainable management.

114. Finally, we have then had regard to the RPS and the NPS:UD as the next most contextually relevant, higher-order policy provisions.

G. OTHER RELEVANT MATTERS (s 104(1)(c))

115. Section 104(1)(c) requires us to have regard to “*any other matter [we] consider relevant and reasonably necessary to determine the application*”. We adopt the approach that any “matters” to be considered must be related to the issues contemplated by the purpose of the RMA, which touch and concern the application and the submissions to be determined.
116. The s 42A report identified several “matters” as potentially falling within the ambit of s104(1)(c).²⁹ We agree that the Auckland Plan 2050 and the Eden Park Trust Act 1955 are relevant to the application and necessary for us to consider (see below).
117. Potential effects of an application on property values per se are not a relevant effect requiring direct consideration under the RMA.³⁰ Similarly, the compliance history or other pre-application conduct of an applicant for consent is not relevant to an assessment of whether a consent should be granted under Part 6.³¹ We agree with the s 42A report that these issues raised by some submitters should be disregarded.
118. We also agree that concerns with fire egress are the domain of other legislation (The Fire and Emergency New Zealand (Fire Safety, Evacuation Procedures, and Evacuation Schemes) Regulations 2018) and does not require our consideration under the RMA.
119. Finally, although identified as a potential s 104(1)(c) matter in the s 42A report, we note that submissions received on an application must be considered pursuant to the general direction in s 104(1) and so there is no need to utilise s 104(1)(c) to make them relevant.

Auckland Plan 2050

120. The Auckland Plan 2050 is a visionary document that looks to the future and identifies broad goals sought for Auckland and how it will address key challenges relating to high population growth, shared prosperity, and environmental degradation. It identifies the following six outcomes:
- Belonging and participation
 - Maori Identity and wellbeing
 - Homes and places

²⁸ s 67(3).

²⁹ S42A report, Section 14.

³⁰ *Foot v Wellington CC EnvC W073/98; Tram Lease Ltd v Auckland Transport* [2015] NZEnvC 137.

³¹ *Supra*, fn 11.

- Transport and access
- Environment and cultural heritage
- Opportunity and prosperity.

121. The AEE prepared for the Trust's application considers that:³²

The proposal is supportive of the Auckland Plan vision and outcomes for arts, culture and a vibrant city. The ability to host concerts at Eden Park will enable people in the region to enjoy music at a stadium with the facilities and infrastructure required to successfully hold these types of events. Concerts at Eden Park broadens the range of facilities in Auckland available to artists and promoters in a location accessible by public transport, close to food and hospitality areas and the city centre.

122. We agree with the s 42A report observation that this statement closely aligns to the 'belonging and participation' outcome in the Auckland Plan 2050, and in particular, focus area 7, which notes the following:

Many Aucklanders already enjoy a lifestyle where they engage in a wide range of activities that contribute to their quality of life. The ability to take part in sport and recreation, and arts and cultural activities is particularly important. It supports both mental and physical wellbeing – they feed both body and mind.

Providing opportunities for all Aucklanders to access, participate in and experience arts and culture, helps create cohesiveness amongst people and communities through learning, understanding and appreciation of difference. Participating and engaging in the arts can:

- *improve self-esteem and confidence*
- *foster identity and pride*
- *build social connection*
- *increase our sense of belonging and wellbeing*

123. We agree that the proposal supports this aspiration for Auckland and that this is a relevant matter for us to have regard to in determining the application.

Eden Park Trust Act 1955

124. We find that the Eden Park Trust Act 1955 (**EPTA**) is relevant to our consideration of the application in two ways.

125. First, it is the source of the statement of purpose to be pursued by the Trust in operating Eden Park and administering all its assets. By reference to those

³² AEE, February 2020, page 80.

purposes (refer paragraph 25 above) we are satisfied that the current application is consistent with them and that it is therefore within the Trust's powers to pursue.

126. Second, the EPTA requires the Trust to operate as a charitable entity. While that does not mean that it is unable to operate in a commercially prudent manner, including by making a profit from operations, it limits the options available for the distribution of those profits to reinvestment in the business to further its purposes, or for other charitable enterprises. For this reason, it is not possible to equate the Trust with businesses that are structured to allow profits to be distributed to their owners. In this regard, the pejorative assertions of some submitters that the Trust's motivations are 'profit driven' are in substance ill-informed and unfounded. We find that in seeking to derive additional revenue from its operations the Trust is acting in a commercially rational and lawful manner.
127. We have considered both of these factors in determining the application.

H. PRINCIPAL ISSUES IN CONTENTION

128. Section 113 requires our decision to identify the principal issues that were in contention with the application and set out our findings thereon. Before we do so, on an issue-by-issue basis below, we record that there was one potential resource management issue arising from the application that was not in contention, namely, effects on mana whenua values. In this regard, we observe that there are no specific sites or places of significance to mana whenua identified in the AUP either on the site or in the vicinity of the site, and no iwi authority representing mana whenua made a submission on the application. Nor did any submission contend that the application would have adverse effects on mana whenua values.
129. Mr Blair, a Crown appointed trustee of the Trust, as well as an elected trustee of the Ngāti Whātua Ōrākei Trust, provided evidence to the hearing³³ about the history and cultural significance of the site to Ngāti Whātua. Mr Blair described the positive cultural effects that the application would bring for Māori generally, both in terms of providing an opportunity for Māori to express themselves and their culture through specific events that could be held at Eden Park, and in contributing to the Maori economy through employment and contracting opportunities. This evidence was uncontested.
130. We accept that the proposal would have positive effects on mana whenua values arising from the proposal.

Summary of principal issues in contention

131. On the basis of the s 42A report and the detailed expert evidence, submissions and representations presented to us, we find the application raises the following principal issues that are contentious:³⁴

³³ Evidence of R Blair, 15 October 2020 (taken as read).

³⁴ We have 'defined' contentious for the purposes of this decision as a matter on which there was debate or disagreement between parties, rather than a matter on which experts disagreed.

- (a) Is the approach of seeking consent for six concerts per 12 month period, rather than seeking consent on a concert-by-concert basis, appropriate?
- (b) Will the proposal have any relevant positive effects?
- (c) Will the proposal's actual and potential adverse effects be acceptable, in particular with respect to:
 - Event related amenity effects;
 - Social effects;
 - Noise effects;
 - Transport and traffic related effects;
 - Lighting effects;
 - Cumulative effects.
- (d) What are the key policy outcomes sought for activities at the site? Does the proposal achieve them?
- (e) Are the proposed conditions of consent suitable to avoid, remedy or mitigate the adverse effects of concerts to an appropriate level?
- (f) Should the application be approved?

132. We address and make findings on these issues below.

ISSUE (A) – APPROACH TO APPLICATION

133. The Trust's application seeks consent under rule I310.4.1(A15) for 'up to 6 concerts in any 12-month period' without specification of the artist or artists to perform or the nature of the entertainment to be offered. Some submitters in opposition considered that this approach was inappropriate, in that it did not enable the effects of particular artists or acts to be assessed. Allowing them to 'have their say' on who could perform at Eden Park on a case-by-case basis was necessary in their view to enable the effects on them to be adequately assessed.
134. The rationale for the Trust's approach was explained in the evidence of Mr Sautner/Mr Vinall and based on the outcome of a previous experience of seeking consent under this rule for one concert to be held in 2018. This application was notified, drew submissions in opposition and was subsequently abandoned (see paragraph 68 above). In the result, the Trust considered it would be more cost effective and efficient to seek consent for the maximum discretionary allowance for consents, without identifying the artists or acts that would perform, thereby giving it flexibility to schedule concerts as and when artists booked the venue.

135. This approach was supported by Mr Derek Nolan, witness for Dr Emma Nolan who said:³⁵

it is totally sensible to seek a single consent to cover all six possible concerts a year and for the years ahead. Seeking separate consents for each individual concert, or a consent for (say) just the next year's concerts, is inefficient and costly for both Eden Park and all other participants. It also allows the system to be abused by opponents who can delay applications or cause the applicant to incur such costs that makes it no longer worth proceeding with the applications – the opportunity to hold the event has gone, or the RMA costs become too great to make the event(s) worthwhile.

136. The Trust's case at the hearing was that the proposed conditions of consent were sufficient to manage the effects of concerts to an acceptable level and that conditions controlling their content were unnecessary. Due to the wide variation in musical tastes and performance art preferences in the community at large, such conditions were also argued to be inappropriate.
137. As a matter of plan interpretation, we find that there is no requirement in the EPP provisions that the application entitlement provided by rule I310.4.1(A15) to be 'taken-up' *seriatum* on a concert-by-concert basis, or even on a year-by-year basis. The activity of holding 'up to 6 concerts in any 12-month period' can be sought for approval at the site as a land use consent, effectively in perpetuity³⁶ (albeit subject to ss 126 and 128), as the Trust has done. Contrary to the assertions by some opponents, we find that this approach is available under the EPP provisions and is therefore lawful.

ISSUE (B) – POSITIVE EFFECTS

138. Positive effects were assessed in the s 42A report as comprised of economic, social and cultural effects. Economic and social effects were, however, matters of some contention during the hearing, either to the extent that these effects were adverse rather than positive, or not as positive as suggested in the s 42A report or the applicant's evidence. As noted above, cultural effects were not a matter in contention and the uncontested evidence was that they would be positive.

Economic effects

139. The case for a positive economic effect arising from the proposal was set out in the application by way of a report by Mr Colegrave (Insight Economics), with the conclusions therein adopted in the applicant's AEE.
140. It was uncontested that the proposal, for the right to host six concerts in addition to existing sporting events, would provide a positive economic impact for the Trust itself, this being a primary driver for the application. Mr Sautner's evidence described the present low utilisation rate of Eden Park, and while it was not an expectation that the stadium could return a profit, "*the objective remains to reasonably minimise the*

³⁵ Evidence D Nolan, undated, paragraph 9.

³⁶ See s 123(b).

obligation for government support or other social funding".³⁷ He further noted that *"obtaining consent to this application will not of itself result in the operation becoming self-sufficient but will reduce the extent of its dependence on public funding"*.³⁸

141. The key issue in this regard, as noted in the s 42A report, is the issue of whether enabling concerts to be held at Eden Park would result in 'new concerts' (i.e., concerts that would not have otherwise come to Auckland) coming to Auckland (or NZ more generally) or 'existing concerts' being diverted from other Auckland concert venues. The implication, from an economic perspective, was that if concerts were diverted from other venues then those economic benefits are already part of the regional economy. A further concern was that displacement of concerts from Council-run venues, such as Mt Smart or Western Springs, would have an adverse impact on ratepayer revenue through requiring financial "top-up" for those facilities, or that the extent of ratepayer support would simply be re-allocated from Eden Park to those venues.
142. This concern was expressed in particular by Mr Wren, expert planning witness for EPNA, who provided a schedule of the number of concerts held at Mt Smart and Western Spring since 2017.³⁹ In his opinion, and given the range of concerts that do come to various Auckland venues, *"there is no evidence to suggest that the 6 concerts proposed in this application will not simply replace concerts that would have come to Auckland anyway"*.⁴⁰ He considered that, if the use of Eden Park is only on a preferential basis, then the proposal *"will simply take concerts already coming to Auckland from existing venues and no net regional economic benefit will arise"*.⁴¹
143. We also observe that the application does not seek a minimum capacity ceiling for events so the six consents could, if commercially viable, attract audiences of less than the 60,000 maximum which could otherwise have been accommodated in some of Auckland's smaller venues such as the Spark Arena.
144. In contrast, we heard in evidence from witnesses called by the Trust that Eden Park would offer numerous advantages over existing venues in terms of its desirability for top international acts, such that it would likely attract concerts that would not otherwise visit Auckland. Mr Jones, CEO of TEG Pty Ltd, described in his evidence what would make Eden Park a desirable venue for concerts and outlined the range of 'Tier 1' acts likely to be attracted to Eden Park as a venue.⁴² In his view, Eden Park would be the preferred venue for 'suitable' acts, as *"[t]he competitive set of venues in Auckland is considerably inferior to Eden Park as they lack facilities, infrastructure, corporate and VIP alternatives, crowd amenity and the 'vibe' of Eden Park"*.⁴³ He went on to advise that:⁴⁴

I believe that Acts that would have otherwise bypassed Auckland will play at Eden Park... The location of Eden Park and its reputation and status as New

³⁷ Evidence N Sautner, 15 October 2020, paragraph 37.

³⁸ Ibid, paragraph 49.

³⁹ Evidence D Wren, 22 October 2020, paragraph 6.51.

⁴⁰ Ibid, paragraph 6.49.

⁴¹ Ibid, paragraph 6.52.

⁴² Evidence G Jones, 15 October 2020, paragraph 8.

⁴³ Ibid, paragraph 9.

⁴⁴ Ibid, paragraph 10.

Zealand's premier Venue makes it highly desirable to these Acts. The other outdoor Venues in Auckland do not have this reputation or standing.

145. We acknowledge a central point of Mr Wren's evidence - that numerous such acts have visited Auckland in the past, albeit at a relatively low rate, and have been able to hold successful concerts at other main venues such as those noted above. However, we consider that Mr Jones' evidence, based on his experience and knowledge as a promoter, is persuasive and we accept his view that the availability of Eden Park would have the potential to increase both the number and range of 'Tier 1' acts that would be drawn to Auckland.
146. Even if no additional acts were drawn to Auckland, we accept that Eden Park would be seen by such acts as a preferable venue to those other venues for all of the reasons outlined by Mr Sautner and could therefore result in a reduction in revenue and an increase in their draw on ratepayer funds for their continued maintenance. Such considerations, however, arguably fall within the ambit of s 104(3)(a) which prevents our consideration of "*trade competition or the effects of trade competition*". Nevertheless, we recognise that a grant of consent in this matter will require some broader consideration by the Council of its regional stadium strategy, but such analysis is outside the scope of the matters which we need to determine.
147. In terms of likely economic benefits, Mr Colegrave concluded that "*[o]verall, I expect the proposed future concerts at Eden Park to generate significant, tangible economic impacts in the form of increased regional GDP, incomes, and employment*".⁴⁵ Mr Colegrave also noted that he also expected the proposed concerns to generate wider economic effects as a result of the accessibility of Eden Park, its proximity to hospitality venues, improved utilisation of Eden Park, support for Auckland's tourism strategies, and opportunities provided for local musicians. Mr Colegrave quantified the net regional economic effects as representing a GDP increase of \$25m, including employment for 535 people and increases to household incomes of more than \$15m.⁴⁶
148. Mr Colegrave also responded to the peer review by the Council's Chief Economist Unit (CEU). That review agreed that the proposal would provide economic benefits, for similar reasons to those noted in Mr Colegrave's evidence. However, the CEU review noted some differences, in particular the extent to which flow-on effects and adverse effects such as noise should be taken into account in an economic assessment, such that "*if only direct effects are counted, the annual GDP impact is \$9.3 million instead of the \$24.8 million*".⁴⁷ Those differences did not affect the overall conclusions reached by Mr Colegrave and, as he noted, "*the [CEU] peer review appears to largely accept the overall conclusion of my assessment, namely that the proposal will generate significant and enduring net economic benefits for Auckland*".⁴⁸

⁴⁵ Evidence F Colegrave, 15 October 2020, paragraph 21.

⁴⁶ Ibid, paragraph 18.

⁴⁷ Hearing Agenda, p219.

⁴⁸ Evidence F Colegrave, 15 October 2020, paragraph 50.

149. Some of those perceived economic benefits were expressed in individual terms by owners of businesses in the area, such as Steve Gillett, the owner of The Kingslander and Philip Clark owner of a restaurant also located in the Kingsland village. Support was expressed in similar terms by organisations supporting local businesses, both at a local level (e.g., the Dominion Road Business Association Inc⁴⁹ and the Kingsland Business Society⁵⁰) and at regional level by Mr Barnett for the Auckland Chamber of Commerce. These organisations assessed the extent of economic benefit associated with events at Eden Park as being in the region of half a million dollars.
150. A further issue addressed by the economic experts was the potential for the proposal to adversely impact on housing values in proximity to Eden Park. While this issue is not an aspect that is normally a matter for consideration under the RMA (see paragraph 117 above), we note Mr Colegrave's research, based on US examples, that demonstrated that a premium was placed on homes in close proximity to concert venues.⁵¹ This was consistent with evidence we heard from submitters in support of the proposal who noted the increases in house values that have occurred in recent times. While such increases may be consistent with those well-publicised price rises that have been experienced throughout Auckland, it is apparent that the existing activities at Eden Park have not resulted in a suppression of value for neighbouring properties and based on Mr Colegrave's evidence, adverse impacts of this nature as a result of hosting concerts are not, in our finding, likely to occur. Therefore, and in overall terms, we find that the proposal would likely provide for economic benefits at a regional scale but experienced most directly by local businesses and as stated in the CEU review, "*the benefits would likely outweigh the costs considerably*".⁵²

Positive social effects

151. The focus of the debate in relation to social effects was centered around the social impacts on persons residing in the vicinity of Eden Park caused by the potentially anti-social behavior of concert patrons on their way to and from concerns. We address this category of social effect below in our discussion of the adverse effects of the proposal.
152. In terms of positive social effects, considered at the broader level, we agree with Dr Phillips, and the conclusions reached by Mr Wadams, that the proposal will, at a minimum, have a positive social effect, insofar as it will support the social well-being of people through increased opportunities for social interaction and the enjoyment of music, thereby enhancing Auckland's reputation as a vibrant and world-class city.

ISSUE (C) – ADVERSE EFFECTS

Event related amenity effects

153. It was accepted that the nature of the proposal is such that it has the potential to disrupt and diminish the existing levels of amenity enjoyed by people living and

⁴⁹ Represented by Gary Holmes.

⁵⁰ Represented by Claire Baxter-Candy.

⁵¹ Evidence F Colegrave, 15 October 2020, paragraph 29.

⁵² Hearing Agenda, p226.

working in the surrounding area. Submitters opposed to the proposal noted that their outdoor amenity, including the hosting of friends and family for summer barbeques, was a key part of the overall enjoyment of their properties and surroundings and that the noise of concerts, and the disruption they would entail for access to their properties, would be a concern. Anticipated anti-social behaviour, which included vandalism, drunkenness, littering and public urination, was also a common complaint/concern expressed by those in opposition as a reason consent should be refused.

154. Broadly speaking, many of the adverse effects likely to be generated by the proposal (noise, traffic and lighting) can be defined as amenity issues impacting on the way people enjoy their environment. We have discussed these effects separately below, as well as the alleged anti-social behaviour related amenity effects, under the heading of 'social effects'. We can therefore confine our discussion of this particular aspect of amenity effects to those effects resulting from the movement of people through the surrounding residential areas on event days.
155. The proposal provides for up to 60,000 people to attend concerts on Saturday's and Sunday's preceding a public holiday and 50,000 people to attend on any other day/night. This is a large number of people, with attendances of 60,000 previously only occurring for Rugby World Cup games in 2011. Despite that, the primary pedestrian access routes to and from the stadium are likely to be the same as for sporting events, meaning that the area affected by this aspect of the proposal will be the same as is presently experiencing pedestrian activity associated with events at Eden Park.
156. We also note that the Trust implements an Operating Management Plan (**OMP**) for all events held at Eden Park as a tool for managing and mitigating actual and potential effects of Eden Park's activities as far as practicable. The OMP has been implemented for large-scale events and has been refined over time to incorporate feedback from various stakeholders, including from an established Community Liaison Group. Based on those tried and tested measures, the Trust has developed a Operating Management Plan – Concerts (**OMPC**) that is specific to the proposed concert activity and its effects. This plan integrates an event management plan, traffic management plan, pre- and post-event management plan, and a community consultation and communication management plan.
157. The various management measures are detailed in the OMPC included with the application materials itself, and include provisions for alcohol management and checkpoints, security, portaloos and rubbish bins, street cleaning, and the distribution of event details. A high degree of co-ordination between stakeholders and open communication with the local community appears to be central to the success of these management plans.
158. The Trust's AEE concludes that: "*...the effects of concert activity on surrounding residential amenity are able to be adequately avoided, remedied or mitigated through the implementation of the adaptive management plans contained in the Concert Operations Management Plan prepared for this application*".⁵³

⁵³ AEE, February 2020, p43.

159. We have carefully considered the range of crowd management measures proposed in the OMPC (and particularly the Event Management Plan) and find that the amenity related effects of this aspect of the proposal can be adequately mitigated by the proposed management measures. While these effects have the potential to vary in significance depending on the crowd type and the crowd size, the OMPC and Event Management Plan provide the necessary flexibility to enable them to be continuously updated or 'customised' as necessary, such as providing additional security, liquor checkpoints, toilets and rubbish bins stationed on key routes to and from the stadium and within the surrounding area generally. We are satisfied that this can be practically achieved in accordance with the recommended conditions of consent such that this effect will be experienced in much the same way as it is presently for large sporting events.
160. In terms of pack-in and pack-out activities, the Trust's AEE notes that these activities could be necessary for up to seven days in advance of the concert and up to three days afterwards. This will involve the coming and going of people and vehicles and a general level of activity in and around the Stadium. While this general level of activity will represent a noticeable increase on the current situation, it is not out of character in an urban environment.
161. Containers and equipment will be visible in the 'boneyard' to the south of the South Stand, however noting the relatively short duration and existing landscaping along the Reimers Avenue frontage, and viewed in the context of a very large built structure, any reduction in the visual amenity enjoyed from neighbouring properties will be minimal in our view.
162. Overall, we find that the event related amenity effects of the proposed concerts can be adequately mitigated to an acceptable level on the basis of the proposed conditions. We address the broader amenity considerations relating to noise, traffic and lighting below.

Social effects

163. The potential social effects of the proposal were addressed in Mr Wadams' s 42A report with reference to the Social Impact Assessment (**SIA**) prepared by Dr Phillips, and the review of that assessment by Dr Gillian Stewart on behalf of the Council. While acknowledging some of the criticisms expressed by Dr Stewart in respect of the SIA, Mr Wadams concluded that:⁵⁴

Overall, I accept that the proposal will generate positive social effects as identified in the SIA particularly for those people residing beyond the area immediately surrounding Eden Park, and I am satisfied that the adverse social effects can be adequately mitigated subject to conditions of consent.

164. The key condition in this regard relates to the concept of post-concert evaluations that focus on the effectiveness of management measures, as part of a quasi-adaptive management approach to dealing with the potential adverse effects of concerts. While the rationale for such surveys was not supported by Dr Phillips, their

⁵⁴ s 42A report, p24.

inclusion in the recommended conditions of consent was not opposed by the applicant and so we do not need to determine the competing evidence in this regard.

165. An issue in respect of the different approaches adopted by Dr Phillips and Dr Stewart was the extent to which their assessments included various environmental effects, particularly in terms of amenity, noise and traffic. Dr Phillips outlined in his evidence why inclusion of such effects resulted in the ‘double-counting’ of adverse effects that are addressed in the evidence of others. As Mr Wadams notes in his report: *“the identification and assessment of the effect as part of the overall consideration of the application, as opposed to correct categorisation, is the most important thing”*.⁵⁵
166. Dr Phillips’ evidence also addressed the three main social issues raised by submitters in opposition to the application, being:
- (a) Anti-social behaviour by patrons of sporting events;
 - (b) Alleged behaviours of concert attendees; and
 - (c) Challenges to evidentiary sources used in the SIA.
167. As an initial point, the evidence of Mr Parker, the Operations Manager at Eden Park, was of some significance to addressing the manner by which any current or future anti-social behaviours are or would be managed. He outlined the range of measures undertaken by EPT in the management of events through its Operating Management Plan and Event Management Plans, arising from preparations and procedures associated with the Rugby World Cup in 2011. He noted that:⁵⁶
- The current operational processes are effective in managing and mitigating the effect of EPT operations on residential amenity, and traffic flows in and around the Park. These processes and procedures are the subject of constant review to ensure they remain relevant and contemporary.*
168. Mr Parker also advised that while preparations for large events, such as an All Blacks test match, start some six months out, once the gates are open the event is run from the Command Centre (**VOC**), which has *“connectivity to all relevant agencies with access to good information in real-time”*, and which is run by a group of 32 *“trouble shooters”*.⁵⁷ We record here that we visited the VOC during our site visit, and observed its extensive network of CCTV cameras and communications facilities. Mr Parker advised that management plans are subject to continuous amendment to reflect the feedback of residents and as a result of various experiences or incidences arising during events. He highlighted a recent amendment to procedures having been to incorporate recommended resident access points into the traffic management plan.⁵⁸
169. The evidence of Ms Lawson (Engagement) also set out the extent of community consultation and engagement undertaken by the Trust, and what it will continue to

⁵⁵ Ibid, p24.

⁵⁶ Evidence K Parker, 15 October 2020, paragraph 8.

⁵⁷ Ibid, paragraph 14.

⁵⁸ Ibid, paragraph 24.

do in respect of concerts. This has included the establishment of 'The Hood' approximately three years ago, being a communication channel for neighbours and local businesses about Eden Park in the lead up to large events, and which now has approximately 1,400 members.⁵⁹ A Community Liaison Group is also in operation and meets on several occasions during the year, formed with representation from Eden Park, the Council, Auckland Transport, local business association and both the EPRA and EPNA.⁶⁰ Ms Lawson noted that, given the range of measures undertaken by the Trust to consult, liaise and engage with the wider community, the proposed condition requiring a Community Consultation & Communication Management Plan is achievable.

170. For the purposes of considering the current proposal, we find that such 'crowd-behaviour' effects arise from existing sports events that are lawfully enabled to take place at Eden Park by the EPP provisions and consents held by the Trust, and we are satisfied that the Trust presently employs a range of management measures that seek to minimise the potential adverse effects of events on surrounding neighbours. We acknowledge evidence from submitters to the effect that despite the Trust's management anti-social behaviours (such as litter, noise, public urination, and interference with private property) continue to some extent. It was unclear though whether such experiences were recent occurrences or not, and we enquired from various submitters whether they had noted improvements in this regard. In general, this was acknowledged.
171. In terms of anti-social behaviour associated with Eden Park's current sporting events, Dr Phillips advised that he had undertaken research into the number of complaints received by the Eden Park 'hotline'. In this regard he noted that from 77 events attracting some 1.2m patrons, seven complaints had been received about crowd behaviour, ten with respect to noise and 93 regarding vehicles. Across those 77 events there had also been 33 arrests, however he observed that "*only one arrest was outside the Park where residents not attending the event might potentially have been affected in some way*".⁶¹
172. We also note that Dr Phillips' evidence considered other such amenity-related matters, and in respect of litter he noted that there was no objective measure that could be relied upon to determine the extent to which events at Eden Park may contribute to litter on local streets. However, we did note that the plan provided in the application depicting the range of the litter clean-up area was unnecessarily truncated in our view. A revised Liquor Bin and Street Clean Map was provided during the hearing which set out locations for bins and the clean-up range.⁶² This also addresses the suggestions of Dr Stewart in regard to these facilities.⁶³ A revised plan provided by Mr Vinall also set out the additional provision for Portaloos for events of more than 30,000 patrons.⁶⁴

⁵⁹ Evidence G Lawson, 15 October 2020, paragraph 7.

⁶⁰ Ibid, paragraph 12.

⁶¹ Evidence Dr Phillips, 15 October 2020, paragraph 28.

⁶² Document EV28B.

⁶³ Hearing Agenda, p260

⁶⁴ Document EV96B.

173. In terms of the additional management measures proposed by the Trust to address the management of crowds associated with proposed concerts, Mr Parker had also outlined the proposal to adapt the existing OMP to a concert-specific OMPC. In addition, a 'Mock Event Plan' had been prepared, which formed the basis of a specific plan for each act performing at Eden Park. Mr Parker's evidence concluded in this regard that:⁶⁵

I am confident that Eden Park has the experience and capability to successfully host concerts. I am also confident that we have done as much pre-planning as is possible in advance of having a specific concert to plan for, and that once we have a specific concert to plan for we will prepare for all possible scenarios to manage the risks and ensure the event is delivered in accordance with any relevant consent conditions, the Concert OMP and the concert-specific event plan.

174. Dr Phillips' evidence addressed the criticisms of submitters with respect to alleged behaviours of concert-goers. He cited a theme of such submissions that while crowds for sporting events have been largely reasonable and respectful of the neighbourhood, "*the attendees at concerts would at times potentially be less so, with some concerts attracting people more inclined to abuse alcohol and drugs*".⁶⁶ Dr Phillips advised that while he was aware of such perspectives when preparing his SIA, he was not able to find any relevant peer-reviewed studies to substantiate such claims or concerns. This theme was also touched on in Dr Stewart's review, where it was noted that:

Depending on the type of concert or band, patrons may be different from the more family-friendly comprised crowds of sporting events. The OMP should be designed to avoid the congregation of patrons within the residential areas coming in and leaving Eden Park. This may require security to be positioned along residential streets that lead from/to local entertainment venues and public transport hubs....

175. Dr Stewart also highlighted the desirability of post-concert surveys in addressing such effects, which as we have already noted has been confirmed as an accepted condition.

176. We acknowledge the nature of concerns held by some submitters and residents, but at the same time also accept the point made by Dr Phillips that those concerns cannot be substantiated on any peer-reviewed expert evidentiary basis. While concerns about such behaviour can form part of the reasons for opposition to music concerts, we agree with Dr Stewart's observations that:

the ability for stadia to work alongside local residents to understand and address their needs and issues in an inclusive and responsive manner lies at the heart of supporting successful outcomes for all parties involved, particularly the maintenance of the stadia to maintain its social licence.

⁶⁵ Evidence K Parker, 15 October 2020, paragraph 30(a).

⁶⁶ Evidence Dr Phillips, 15 October 2020, paragraph 29 (citing submission #1774).

177. In this regard, we are satisfied by the evidence for the Trust that it has established an array of communication methods and feed-back loops into its management plans that demonstrate a proactive approach to the avoidance, in the first instance, of anti-social behaviour and we find accordingly.

Noise effects

178. The issue of greatest contention at the hearing and the one on which we had the most evidence (both expert and lay) was the impact of the amplified noise that would be generated by the proposed concerts, particularly on people residing in the vicinity of Eden Park. In this regard, it was generally accepted that concert noise would be audible beyond the stadium and probably be annoying and disruptive for some residents. There was less agreement though on whether the proposed level of noise was unreasonable, that being the agreed evaluative 'test' of whether it was acceptable (and thus consentable), or not.
179. In considering this important issue we propose first to set out our understanding of the matters that were not in dispute (or substantial dispute), and then turn to those that were. We will then set out our findings on the core matter that we need to determine: will the adverse noise effects be sufficiently avoided, remedied or mitigated to such an extent that they can be considered not unreasonable (i.e., reasonable)?

Matters not in dispute

180. The Trust's proposal is to manage the noise from proposed concerts to the following level:

The noise level from use of sound systems associated with concerts, sound checks, and the balancing of sound systems must not exceed 75 dB LAeq(t) and 80 dB LAeq(10min) when measured within the boundary of any residentially zoned site not owned by the Eden Park Trust.

All other activities, including pack-in and pack-out shall meet the noise limits contained in the Eden Park Precinct Noise Standards in I310.6.1.1.

181. Based on detailed modelling undertaken by Mr Day's firm and peer reviewed by Mr Styles,⁶⁷ it was agreed that the proposed noise levels at the residential boundary would enable the typically expected sound experience within the stadium to be achieved.⁶⁸ This confirms that concerts can be held at Eden Park in compliance with the standard proposed thus avoiding a significant risk of non-compliance. It also indicates that the proposed standard is the minimum acceptable to concert promoters to enable concerts to be staged at Eden Park, meaning that any thought of reducing the level to avoid the effect further would frustrate the activity for which consent has been sought.

⁶⁷ Despite criticising aspects of the modelling work completed by Mr Day, Mr Lloyd accepted that it was adequate for the purposes it was developed for: N Lloyd, EIC, para 6.12.

⁶⁸ Up to 105 dBA at the mixing console as a maximum, but more likely 100 dBA; Evidence C Day, 15 October 2020, paragraph 26.

182. It was not disputed that when compared with the noise of activities currently authorised at Eden Park, the proposed noise from concerts would be significantly louder and of a different character. In the case of weekday nights, it would also potentially go later into the evening. There was no dispute that, consequently, it would be clearly audible for those within a radius of up to 200m of the stadium, and generally audible further afield.
183. It was also agreed by the experts, and manifestly confirmed by the lay evidence presented from those who lived in the vicinity of Eden Park (and further afield), that the human response to this audibility will vary. Some will find it annoying, intrusive, and disruptive of their domestic routine and the enjoyment of their properties. Others will find it enjoyable - even exhilarating - and certainly tolerable based on what is proposed (i.e., confined to six times per year; and finishing by 10:30pm).
184. It was also consistently clear from the evidence that in addition to the objective operational parameters controlling the noise (frequency, duration etc), the subjective attitude of the receiver to the style or genre of the entertainment being performed will influence their opinion as to its acceptability and, consequently, their perception of the adversity of the effects they may incur. Furthermore, some submitters expressed their opposition regardless.

Matters in dispute

185. Two noise related issues, distinct from the evaluative issue of reasonableness, remained at the end of the hearing. The first concerns the ability and practicality of concerts being able to effectively comply with the proposed noise standard. The second relates to the effects of the proposed noise at the volume proposed and how disruptive or physically harmful it might be for receivers. We discuss each of these in turn below.
186. The conclusion from the acoustic modelling was that compliance with the boundary noise standards by a concert providing a typical sound experience within the stadium was hypothetically achievable. However, the ability and practicality of compliance was questioned by a number of witnesses opposed to the application.
187. For example, based on personal experience with concerts, many lay witnesses were convinced that the noise limits would be ignored by the performer and their production team, whose sole objective would be to please the audience, and this would lead to them 'cranking up the volume' to provide the most memorable (and loud) experience they could. In their view, there was no effective means of preventing such a breach or enforcing compliance.
188. Mr Lloyd, an expert acoustic witness appearing for EPNA, did not echo this concern but was nonetheless dubious about the practicality of compliance for a variety of reasons.⁶⁹ These related to issues over the design of the sound system, the practicality of communicating 'real-time' monitoring to the mixing console to ensure time-based limits are being achieved, and the impact of background traffic and crowd noise on determining compliance.

⁶⁹ Evidence N Lloyd, 22 October 2020, paragraphs 7.1 – 7.16.

189. With respect to the 'performer in control' concern, we were satisfied from the evidence that such is the complexity of managing the sound environment during a concert performance that it is exclusively the domain of the sound engineers stationed at the mixing console and that the performers have no ability to over-ride the controls and independently increase the amplification volume. This was confirmed by Mr Matiu Walters, vocalist and guitarist for the popular New Zealand band Six60, who was in attendance at the hearing.
190. The practical issues raised by Mr Lloyd were generally not accepted by Mr Day or Mr Styles, who both considered that effective compliance monitoring was feasible as proposed. Both noted that the first concert would provide an important opportunity for 'teething' issues to be identified and the system calibrated for future events, but that compliance was achievable nonetheless. We also accept Mr Day's advice to us in his rebuttal evidence that compliance was practicable by monitoring on a 'real-time' basis with consequent feedback to the mixing console during a concert. This capability was confirmed as well by the music industry evidence we heard.⁷⁰
191. How noisy would the concerts be? Would the noise result in health effects on receivers, or a situation where receivers might feel compelled to leave the area to escape the impacts? Like the views of lay witnesses, the opinions of the experts on this issue were also varied.
192. Mr Styles and Mr Lloyd were of the view that inside the closest houses concert noise would be dominant and would preclude activities such as watching television, listening to music or having a normal conversation. Mr Day disagreed.⁷¹ His evidence was that if the 10-minute noise level outside the closest houses is limited to 75 to 80 dB, then inside, assuming people close their windows if they do not like the music (which was not an assumption made or required by the other two experts), the noise level would be approximately 50 dB. Mr Day noted that typical listening levels for TV watching are 55 to 60 dB; listening to music on a hi-fi system 60 to 70 dB (listening not background); and normal conversational speech 55 to 60 dB at 1m to 3m. As such, it was his view that at 50 dB noise will be audible but below these critical listening levels, and certainly not sufficient to preclude watching TV or listening to music or normal conversation. Sleep would likely be disturbed though.
193. With respect to low frequency sounds from concert music, all three experts agreed that it would be more audible inside a house than high frequency sounds. Mr Day's view however was that the response to these low frequency noises, which would be assessed subjectively as a bass beat, will vary due to the attitude of the receiver.
194. Dr Welch's evidence was that people's health may be negatively impacted by sound. He advised that there were several pathways that can cause stress and associated health problems over time, impacting cardiovascular and mental health, and causing sleep disturbances, but that the effects will depend on several factors.⁷² These factors included attitude towards the sound source, the physical properties of the

⁷⁰ Evidence C Skals, 15 October 2020, paragraph 36.

⁷¹ Rebuttal Evidence C Day, 28 October 2020, paragraph 29.

⁷² Evidence Dr Welch, 22 October 2020, paragraph 4.

sound and its quality, the receiver's psychological state and traits, and the distraction from activities that would result. In relation to these matters, Dr Welch's opinion was that:

- (c) A sound that was unwanted or unexpected was more likely to cause a negative response in the receiver;
- (d) "[M]ost people" in nearby properties would find the proposed overall average sound level "rather loud";⁷³
- (e) The sound would be of poor quality;
- (f) Noise sensitive people are more likely to experience health effects;
- (g) Disruption to normal residential activities, particularly sleep, may be more upsetting.

195. In conclusion, Dr Welch opined that the "*health impacts of unwanted sounds are hard to address effectively*". On that basis he recommended that concerts not be allowed at Eden Park.⁷⁴

196. Mr Day was critical of Dr Welch's evidence because he provided no objective data as to what level of noise exposure would avoid health impacts in all cases. An argument that any unwanted sound would have an adverse effect sufficient to warrant its prohibition was not helpful in Mr Day's opinion, because it put the attitude of the receiver above all other factors and ignored the (accepted) fact the same sound might also be enjoyable for a person who wanted to experience it, or as a minimum, tolerable, for a person who was favourably disposed to the source.⁷⁵ In the absence of any evidence that what was proposed would (as opposed to could) have an adverse effect, Mr Day considered that Dr Welch's evidence in this regard was of little assistance. With respect, we agree, noting though that attitude will undoubtedly vary with the act and artist performing.

197. Mr Day accepted that there are individuals in the community who are more sensitive to noise than others, but also noted in response to questions that noise standards are designed to achieve noise levels that cater for 90% of the population, not the 10% of potentially sensitive receivers. This fact was echoed by Mr Styles who advised that "*controlling noise effects to the most sensitive of the population will prevent most development, events and infrastructure from being authorised*".⁷⁶ These opinions were consistent with the approach in cases referred to by counsel for the Trust,⁷⁷ in particular, to the effect that "*consideration of noise effects must be based on normal psychological responses, and cannot seek to protect those whose sensitivities might be at the higher end of the scale*".⁷⁸

⁷³ Ibid, paragraph 6.

⁷⁴ Ibid, paragraph 18.

⁷⁵ Rebuttal Evidence C Day, 28 October 2020, paragraph 43.

⁷⁶ Summary Statement J Styles, 5 November 2020, paragraph 4.

⁷⁷ *Francis v Minister of Energy and Resources* [2012] NZEnvC253, at 111; *Norsho Bulc Ltd v Auckland Council* [2017] NZEnvC, at 62; *Meridian Energy v Hurunui DC and Canterbury RC* [2013] NZEnvC 59, at 298 et seq

⁷⁸ *Motorimu Wind Farm Ltd v Palmerston North City Council* EnvC W067/08.

198. In considering this issue, we cannot overlook the fact that the proposed maximum level of noise that would be received at the residential boundary outside the stadium is likely to be 20 to 25 dB lower than the noise within the concert venue, where concert-goers will be willingly present to experience a musical performance at that volume. We heard no evidence that exposure to noise reaching those levels during a concert has adverse health effects on receivers. We have doubts, therefore, that at the comparatively lower volumes being received by those outside the venue there is a high likelihood of health-related impacts arising from the noise. We accept that it will be “rather loud” to use Dr Welch’s descriptor, but that alone does not mean it will have an adverse health effect, as distinct from an adverse psychological effect the extent of which will vary with the attitude of the receiver.
199. To be added to this discussion is the evidence we heard about the noise limits applying to other concert venues in Auckland and overseas. Although we agree with Mr Wren that each venue has its own specific features and context, we take confidence from the fact that the limits proposed by the Trust for concerts at Eden Park are consistent with those adopted for other venues staging similar activities and that there was no evidence that these limits were inappropriate to protect residential receivers from concert noise effects.⁷⁹

Discussion and findings

200. We have set out our understanding of the matters related to the noise expected to be generated by concerts that were agreed, as well as our findings on those that were in dispute. We now turn to our evaluation of the overall effect of the noise that would be generated by concerts.
201. All acoustic experts and counsel for those parties who were represented agreed that the evaluation of whether a particular noise proposal is reasonable (or ‘not unreasonable’ to use the language of the AUP), will involve a consideration of factors that go beyond mere acoustical analysis. This approach is consistent with caselaw which confirms that it is an assessment of fact and degree,⁸⁰ which allows consideration of factors such as the frequency, intensity, duration, offensiveness/character and location of the noise.⁸¹
202. The Environment Court has also taken into account specific sub-factors where appropriate such as the zoning of the land, its characteristics, background noise sources and levels,⁸² the legitimate amenity expectations of those living in close proximity,⁸³ the permitted noise standards in the relevant plan,⁸⁴ and the proposed conditions of consent.⁸⁵ Noise that disturbs sleep particularly during normal sleeping hours will generally be considered unreasonable, unless the recipients are hypersensitive.⁸⁶

⁷⁹ Rebuttal Evidence M Vinall, 28 October 2020, paragraph 5 et seq.

⁸⁰ See *Ngataranga Bay 2000 Inc v Attorney General*, A16/94, at 14

⁸¹ *Nelson City Council v Harvey* (2011) NZEnvC 48 at 70; *Brooks v Western Bay of Plenty DC* [2011] NZEnvC 216.

⁸² *Forrest Hill Childcare Centre Limited v North Shore CC* EnvC A090/98.

⁸³ *Speedy v Rodney District Council* Decision No. A134/93

⁸⁴ *Yaldhurst Quarries Joint Action Group v Christchurch CC* [2017] NZEnvC 165, at 209.

⁸⁵ *Re Meridian Energy Limited* [2013] NZEnvC 39, at 247-248.

⁸⁶ *Thompson v Davidson* EnvC C130/97, at 13.

203. Eden Park is a major recreation facility established within the residential/commercial neighbourhoods of Mt Eden, Kingsland and Morningside. It is regularly used for major events that involve large numbers of people coming to and going from the stadium, with all of the disturbance that process generates. It also makes noise and will continue to do so in the manner authorised by the AUP and the resource consents it holds until it is disestablished. The surrounding neighbourhood is alive to all of these effects and the amenity value enjoyed by residents is influenced by them.
204. The noise from concerts will be louder than, and of a different character to, noise from events presently held at Eden Park. However, even though it will be audible and will invariably disturb some people's domestic routine and peace and quiet, we are satisfied that this fact does not make it unreasonable. In this regard, conditions requiring active pre-concert community engagement, limiting the duration of events, and prescribing a 10:30pm curfew and limitations regarding pack-in and pack-out activities, will assist to minimise the degree of disturbance that will be caused. Some people will still be annoyed, but we find that they will not suffer any lasting health related impacts, or that their ability to sleep during normal sleeping hours will be unduly disrupted.

Traffic and transportation effects

205. The Trust's traffic assessment and analysis was based on the following assumptions (as modified by evidence during the hearing):
- (a) A crowd size of 50,000 for weekday events and 60,000 for weekend events (i.e. Saturdays and Sundays preceding a public holiday) and public holidays. The former reduction being in recognition of the need to mitigate any transport effect on the evening commuter peak;
 - (b) Only one concert event on any day;
 - (c) On-site preparation time of 7 days prior to an event (stage and production infrastructure, turf protection, security fencing);
 - (d) 24-hour post-event pack down and up to 3 days for deconstruction;
 - (e) Start and finish times for an event of before 7pm and after 10pm;⁸⁷
 - (f) Up to 50 container loads of equipment will be delivered to and be removed from the site;⁸⁸
 - (g) Heavy vehicles will access via Gate Q on Sandringham Road and exit via the bus interchange (or in the reverse direction depending on stage position) so that forward direction is maintained, avoiding the use of local residential streets;

⁸⁷ The final conditions sought included gate opening no earlier than 5pm; concert starting no earlier than 6.30pm and finishing no later than 10.30pm for weekday events, with earlier gate opening (8.30am) and start times (10am) for weekend and public holiday events.

⁸⁸ AEE, February 2020, Attachment F: Traffic Assessment, section 3.3.

- (h) Up to 240 heavy vehicle movements over 10 days could be associated with production set up and pack down (being some 90 additional trucks to that experienced with an All Blacks fixture);⁸⁹
 - (i) Capacity for 17 trucks with empty containers to be parked on-site (5 under Gate A broadcasting bay, 10 in tunnel beneath South Stand, 2 on ramp from southern car park tunnel);⁹⁰
 - (j) Initially the highest tier traffic management plan – TMP-5 - was proposed for concerts but, through the hearing, the Trust amended that proposal such that a generic but bespoke TMP is now proposed tailored to the particular circumstance of the scheduled event (which will be known some considerable time ahead and, unlike many sports fixtures with variable numbers of walk-up patrons, advanced ticket sales will provide a reasonably reliable indication of the actual numbers to be expected);
 - (k) Extension of parking controls and administration of Resident Only Permits (ROPs) are subject to approval of and administration by Auckland Transport (AT), not the Trust.
206. Given those assumptions, Mr Langwell (and Mr Wadams and Mr Clark for Council)) was satisfied that the road network and general arrangements proposed meant that events could be managed within the capacity of the network and with no more traffic inconvenience than is currently experienced during larger sports events. Mr Clark added a recommendation for the Trust to develop a “back-up plan” for contingencies beyond its control – such as rail service outages.
207. We were assured by industry witnesses that the pre- and post- concert activity times were conservative and allowed sufficient contingency for unanticipated incidents – noting, in effect, that ‘time is money’ and that the teams engaged with Tier 1 Act tours are both very experienced and very professional in the management of their operations.
208. The Mock Event Plan provided by Mr Parker illustrated in fine detail the typical activity streams on that assumed timeline from 6am on Event Day minus 7 days for the Stadium, Boneyard and Gate Q through to 5pm on Event Day plus 3 days when works are concluded on site and the Gate Manager, Safety Officer, Medical Officer and Ramp Manager sign off.
209. Mr Colin Skals, an Australia-based Production Manager with 45 years’ experience in the music industry, confirmed that he had been involved in the preparation and revision of the Mock Event Plan and that it was “*a realistic representation of how a concert could be run at this venue.*”⁹¹
210. Some of the submitters’ traffic concerns – for example, those relating to traffic congestion, ROP and road closure and extent decisions – are matters that, in the final analysis, are approved by Auckland Transport rather than the Trust. Certainly,

⁸⁹ Evidence T Langwell, 15 October 2020, paragraph 83.

⁹⁰ Ibid, paragraph 52.

⁹¹ Evidence C Skals, 15 October 2020, paragraph 29.

they are consequences of the application (if granted) and an integral part of the traffic management plan. However, confirmed issues arising in regard to those matters can (and should) be addressed through the TMP process. That is the reason for the proposed condition requiring post-event reviews.

211. Other concerns, such as frustration with local access arrangements, the ability (or otherwise) for emergency service workers to transit the area expeditiously, or trucks idling while stationary creating both noise and fumes, are amenable to practical solutions, are under the Trust's control, but are not, in themselves, reasons for declining the application. Furthermore, all of these concerns presently arise from the authorised use of Eden Park (whether historical or more recent), are in effect known to the Trust and therefore able to be incorporated into operational event planning.
212. We also heard no evidence that the measures currently employed for managing traffic and effects on the local transportation network arising from large sporting events would be ineffective for managing the same effects arising from concerts at Eden Park. The nature of the activity occurring at the park does not change the character of the resulting transportation effects.
213. While we heard contrary arguments about the extent to which traffic issues were or were not problematic for residents, and we have no doubt that issues have and will arise periodically, we heard no traffic or transportation evidence that contradicted the fundamental conclusions of Mr Langwell and Mr Clark to the effect that the roading and public transport network can accommodate the levels of activity anticipated; that concert pack in, pack down and pack out is a well-rehearsed, professional activity that, at this level, operates typically with military-style precision; and that local inconvenience can and should be able to be minimised to a reasonable level with good communication and responsiveness both prior to and during the event duration. In that respect, we agree with Mr Wadams' conclusion⁹² that:

... these issues can be minimised by the measures contained in the Community Consultation and Communications Management Plan together with pre-event briefing meetings as required by the recommended conditions of consent in section 19 of my report.

Lighting effects

214. Lighting associated with the proposed concerts will include the use of theatrical lighting directed towards the performance and audience, use of the stadium floodlights for egress and feature lighting on the stadium grandstand facades. The EPP provides for a specified number of 'Special Lighting Events' to be held at Eden Park with a 70,000 cd luminous intensity limit. The proposal will effectively increase the number of 'Special Lighting Events' within the EPP by six.
215. Mr McKensey, the Trust's lighting expert advised that:⁹³

⁹² s42A report, section 12.5.2.3 (Hearing Agenda page 41).

⁹³ Evidence J McKensey, 15 October 2020.

- (a) Concert performance lighting is theatrical and by its nature has the potential to produce some effects beyond the site, particularly at locations to the east and west of the stadium. However, given the short cumulative duration of any light spill, these effects would be minimal.
 - (b) The use of curtains or blinds by residents would adequately control lighting effects to ensure very little disruption to indoor amenity.
 - (c) The stadium floodlighting will be used for egress only and will be switched down to an average of nominally 300 lux on the field at the concert finish time for up to 45 minutes. The added lighting effects of this 15 minute exceedance of the 11pm curfew would be minimal.
 - (d) The additional skyglow effects generated by a concert would be minimal.
216. In conclusion, it was Mr McKensley's opinion that based on the nature of the lighting and the duration of the event, the adverse lighting effects on the surrounding neighbourhood would be negligible.
217. Mr Wright, a lighting peer-reviewer engaged by the Council, agreed with Mr McKensley's assessment. He noted that some neighbouring persons may experience internal amenity disturbance, particularly where curtains or blinds are not used, but that these effects would be temporary and transient due to the nature of theatrical lighting, and therefore of minimal effect. In considering the cumulative lighting effects, taking into account those existing lighting effects already generated by Eden Park's existing and consented activities, Mr Wright concluded that the cumulative lighting effects would be reasonable and acceptable overall.
218. At the outset of the hearing, there was a technical disagreement between Mr McKensley and Mr Wright as to the efficacy of one of the proposed conditions relating to the management of lighting effects, but by the conclusion of the hearing this matter had been resolved.
219. Although lay evidence in opposition to the proposal identified lighting effects of concerts as a concern, we accept the expert evidence that they will be minimal if concerts are undertaken in accordance with the conditions proposed.

Cumulative effects

220. A cumulative effect is an effect that "*arises over time or in combination with other effects*"⁹⁴ and are a relevant consideration in this case on the basis that the proposed concerts would add to the overall quantum of events/activities presently authorised to occur at Eden Park in any 12 month period. This triggers the first aspect of the definition noted above rather than the second, because the proposal does not envisage a concert being staged at Eden Park contemporaneously with another large sporting event.
221. As described above, the proposal would bring the total potential number of large night-time events able to be held at Eden Park each year to 31, leading potentially

⁹⁴ s3(d).

to 35 nights of activity, a 23% increase overall in night-time activity. If they were spread evenly throughout the year, that would equate to just under three per month. Based on the evidence that the concerts sought to be accommodated would occur around the first quarter of the year (due to international scheduling availability and NZ's summer season), it is unlikely though that concerts would be distributed evenly throughout the year, and would have a more compressed frequency over that period.

222. Three specific conditions are offered to manage the cumulative effects of the proposal. The first is the total cap (of 6) concerts in any 12 month period (condition 6); the second is the limitation that no more than four concerts can be held in any four -week period (condition 7); and the third is condition 8 which states:⁹⁵

There must [be] at least one weekend (inclusive of Friday night) in every 35-day period that is free of any concert or organised sports and recreation undertaken during the night-time on the number 1 field.

223. Whereas condition 6 is intended to control the overall number of events, conditions 7 and 8 work in tandem to control the maximum frequency or intensity at which the concerts can be held and provide a respite period in every 35-day period from any night-time activity on the Number 1 field. We note that condition 8 will work in conjunction with condition 4(6) of LUC60126194, which limits night time sporting events to four in any 35 day period, with the effect that the Number 1 field must not be used for any event at least one weekend out of five.

224. Our assessment of whether the cumulative effects of the proposal are acceptable starts from our findings in relation to the event specific effects that we have discussed above, namely crowd disturbance, social, noise, traffic and lighting effects. Taken together we find that the adverse effects of one concert would not generate unreasonable or unacceptable effects if conducted in accordance with the specific event-related conditions proposed.

225. We accept that at some point the regularity of disturbance by night-time concerts (in combination with night-time sporting events) would itself become problematic and a source of complaint, however, it is difficult to define the point at which the number of concerts per year might start to give rise to an adverse cumulative effect.

226. The reason why only six concerts is sought by this application appears to be that this is the number provided for as a discretionary activity in the EPP and any more than that would be non-complying. Bearing in mind the different levels of scrutiny to be applied to activities classified as such⁹⁶ it could be inferred that six per annum is potentially acceptable (in a cumulative sense), but more than six is not. However, we are reluctant to read too much into that. We prefer instead to focus on the proposal as presented, including its conditions, and carefully consider it in the context of the site in question, the expectations of its purpose and the nature of the receiving environment. On that analysis, we are satisfied that six concerts per annum is acceptable and will avoid any adverse cumulative effects from night-time activities at Eden Park (i.e., considered together with other authorised activities).

⁹⁵ Note these references are to the condition numbers in the s 42A report, not those in Schedule 2.

⁹⁶ Refer *Cabra Rural Developments Ltd et ors v Auckland Council* [2020] NZEnvC 153; AUP Chapter A.

227. The proposed respite period condition (condition 8) provides for there to be one weekend in five free of any concerts or organised sporting activity at Eden Park. Bearing in mind all we have said above, we are satisfied, with one minor exception, that in combination with the other event specific performance conditions and conditions 6 and 7, this condition will be adequate to avoid and mitigate the potential adverse cumulative effects that might arise from the over-intensive use of the stadium throughout the year.
228. The exception we refer to above concerns the advice note to proposed condition 8 that deems 'pack-in' and 'pack-out' activities associated with concerts to be excluded from the respite period. The effect of this would be to allow such concert related activities to occur over a weekend, even if the concert did not take place on a weekend day. We are not satisfied that this is appropriate, as it would undermine the intent (and mitigatory benefits of) the respite period proposed. It is accepted that such 'pack-in' and 'pack-out' activities will have to comply with the standards for permitted activities in the EPP and that in isolation (or as a 'one-off') they are likely to be acceptable. But the issue we are concerned with here is the overall cumulative effect of the use of Eden Park for large events on an annual basis. Having regard to the amenity of surrounding properties, to manage that effect, we conclude that it is necessary to ensure that no concert related activity is allowed to take place on a respite weekend.
229. To ensure that outcome we have included a specific definition of "concert" for the purposes of the consent, clarifying that it includes 'pack-in' and 'pack-out' activities (which was how it was presented in the application and assessed by the Council). We have also modified the advice note to condition 8 to ensure clarity on this issue.

ISSUE (D) – PLAN PROVISIONS

230. We had the benefit of expert planning evidence from three experienced planners (Mr Vinall for the Trust, Mr Wadams for the Council and Mr Wren for the Eden Park Neighbours Association), as well as legal submissions from two experienced counsel, both of whom addressed the differing plan interpretation issues arising from the competing planning evidence. We record that we have been helpfully assisted by the detailed and thoughtful analyses provided.
231. We have set out above the policy and plan provisions that we consider to be relevant to our consideration of the application, as well as the approach we have taken to them (in terms of the relative weight to be given to them in the course of our s104 assessment). In this part of our decision, we focus on a specific issue in contention in relation to the interpretation and application of the MRFZ and EPP objectives and policies to the proposal and set out our findings on this issue. We then address the core issue of how the application 'performs' in relation to these provisions. Before we do so, however, we consider it necessary to set out our understanding of the phrases "provide for" and "enable" when used in provisions of the AUP.
232. AUP policy H26.3(2) directs precincts within the MRFZ to "*provide for a range of appropriate accessory and compatible activities within the precincts*". Precinct description I310.1 records that the "*Eden Park Precinct provides specific planning controls for the use, development and redevelopment of Eden Park*". In the Activity

Table that follows, a range of different activities are listed with activity statuses ranging from permitted to non-complying. Rule I310.4.1(A15) lists 'up to 6 concerts in any 12 month period' as a 'compatible activity' with the activity status identified as 'D' (discretionary). For those activities classified as permitted, controlled or restricted discretionary, I310.6 sets out 15 standards that must be met.

233. Classification of an activity as discretionary does not mean that it is not provided for under the AUP.⁹⁷ In this regard, Rule I310.4.1(A15) achieves the direction in policy H26.3(2), as do all the activities identified as 'compatible activities' in Table I310.4.1. As noted at A1.7 of the AUP:

There is a hierarchy of the classes [of activities] in terms of both the basis for assessment and the nature of conditions that may be imposed on any grant of consent. The hierarchy runs from the most enabling permitted status to the most restrictive prohibited status. The Plan has been prepared on the basis of this classification and consenting hierarchy. The following statements are provided to assist users of the Plan to understand how this hierarchy has been applied.

234. Accordingly, the purpose of the status of an activity (other than a permitted activity) is to direct the scope of assessment of it and has nothing to do with whether the plan is favourably disposed to it or not. We therefore approach our consideration of the application on the basis that it is provided for in the EPP as an activity that is compatible with the recognised primary activities of that precinct, subject to full assessment (as a discretionary activity) of its effects and its accordance with the relevant plan provisions.
235. The imperative direction 'enable' is used frequently in the wording of AUP policies. It is our understanding that in the context of an application under Part 6, this directive is not to be treated as merely an expression of the architecture of the planning provisions, or as a reference to permitted activities only. Rather, the direction also speaks to the consent authority considering applications made under those provisions for activities that are not simply permitted.⁹⁸
236. Taking EPP policy I310.3(3) as a case in point, the "range of accessory and compatible activities" provided for in Table I310.4.1 is not confined to permitted activities and contemplates that applications for consent for such activities will be made and assessed against the relevant provisions of the plan. The direction in the policy to "enable" therefore provides guidance to the consent authority that an exercise of its discretion in favour of such a compatible activity, where the bottom-lines of the policy (I310.3(3)(a) and (b)) are met, would achieve the policy and the objectives of the plan it is tasked with achieving.

⁹⁷ *Kumeu Property Limited v Auckland Council* [2018] NZEnvC 27, at [107].

⁹⁸ HW closing comment

Interpretation of key planning provisions

237. It was common ground amongst the planning witnesses that there were two overriding policy outcomes sought by the EPP (and the MRFZ) of relevance to the application.
238. The first was that the application should not result in a situation where the primary activities comprising Eden Park's long-standing operations (organised sports and recreation, informal recreation and day time non-sporting activities) would be displaced. This outcome arises from the principal objective of the EPP that Eden Park be "protected" as a venue for its primary activities and the related policy that compatible activities be of a character and scale which will not displace the primary activities.
239. The meaning of this policy direction was accepted, however the application's ability to achieve it was disputed. We consider the competing evidence we heard on this matter below.
240. The second policy outcome concerns the approach to the management of the effects of non-primary but compatible activities undertaken in the EPP. That is, what is the appropriate level of effects sought to be achieved for activities undertaken in the EPP? Before turning to the competing opinions in this regard, we summarise the guidance provided by the Auckland wide, MRFZ and EPP provisions.
241. Chapter E24 Lighting directs that the "*adverse effects of outdoor lighting on the environment and safety of road users are limited*" and that the intensity, location and direction of artificial lighting is controlled "*to avoid significant glare and light spill onto adjacent sites, maintain safety for road users and minimise the loss of night sky viewing*".
242. Chapter E25 Noise and vibration seeks that "*people are protected from unreasonable levels of noise and vibration*" and that "*the amenity values of residential zones are protected from unreasonable noise and vibration, particularly at night*". Where practicable, noise and vibration is to be minimised at its source or on the site from which it is generated "*to mitigate adverse effects on adjacent sites*".
243. MRFZ objective H26.2 uses the conventional yet unhelpful approach to effects management, simply seeking that "*adverse effects generated by the operation ... of major recreation facilities are avoided, remedied, or mitigated*" albeit with the qualification "*as far as is practical*". The objective is achieved (in part) by policy H26.3(4), which states: "*Avoid, remedy or mitigate the adverse effects of major recreation facilities on adjacent development*".
244. The EPP provisions are more helpful in relation to the effects issue. Objective I310.2(3) states:

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

245. EPP Policies (3), (4) and (5) are relevant to this objective. They state:

(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.*

246. The issue of interpretation, raised by Mr Wren, is whether the acknowledgement in objective (3) (reiterated in policy (5)), that the primary activities at Eden Park will generate adverse effects on surrounding land uses provides an 'effects threshold' for non-primary activities. Mr Wren states:⁹⁹

These objectives and policies also spell out different expectations in terms of environmental effects. There is a recognition that the adverse effects of the primary activities may not be able to be fully internalised (Obj I310(3)). With respect to non-primary activities the bar is set higher in that effects must be avoided, remedied or mitigated with no allowance for treating these on an 'as far as practical' basis. Therefore the policy setting is that there is a recognition that the primary activities may not be able to fully avoid, remedy or mitigate adverse effects but the same policy setting does not apply to compatible activities. There is no recognition provided in respect of the compatible activities, for example, that they cannot fully internalize their effects. The AUP has not allowed the same trade-off for non-primary activities.

247. An implication of this interpretation is that the threshold for effects arising from non-primary activities (i.e., concerts) is lower than that recognised for primary activities; that is, that the former must therefore be internalised, whereas the latter do not.

248. Mr Vinall, the Trust's planning expert, disagreed with this interpretation.¹⁰⁰ He argued that the key effects policy for compatible activities, policy 3(a), gives no direction as to the extent to which adverse effects are to be avoided, remedied or mitigated, and nor does it direct the focus of the effects consideration. Mr Vinall argued that this was consistent with how the effects related objectives and policies in the MRFZ were expressed. In essence, whether or not the effects of the proposal achieve the relevant provisions will come down to a contextual assessment in the normal way, without any particular threshold of effect to be met. In that regard, in relation to compatible activities 'avoid, remedy or mitigate adverse effects' and 'manage the adverse effects' were the policy requirements.

⁹⁹ Evidence D Wren, 22 October 2020, paragraph 7.9.

¹⁰⁰ Rebuttal Evidence M Vinall, RE, paragraphs 10 – 25.

249. In Mr Wadams opinion the recognition in objective 3 and policy 5, that primary activities will have adverse effects on surrounding land uses which cannot be internalised is merely an observation about the primary activities: it says nothing about how the effects of non-primary activities are to be addressed. He said:¹⁰¹

In my view, this explicit recognition cannot be read in reverse as requiring compatible activities to internalise adverse effects, nor as setting a higher bar for the level of mitigation required for the adverse effects of compatible activities. As a discretionary activity, which necessarily requires a broad consideration of the full range of adverse effects ..., it is rather a case of considering how the adverse effects of the activity can be best mitigated and whether that ultimately results in an environmental outcome that is acceptable.

250. We have considered the differing opinions in relation to these provisions and find that the recognition that the operation of Eden Park has adverse effects on surrounding land uses which cannot be internalised (objective 3 and policy 5), does not place a 'gloss' on the policy requirements for adverse effects generated by compatible activities to be considered as acceptable. In this regard, we agree with Mr Bartlett QC's submission in closing, that there is no general requirement in the RMA that activities internalise their effects.¹⁰² The phrases used in the policies ('avoid, remedy or mitigate adverse effects' and 'manage the adverse effects') plainly admit of the possibility that compatible activities may have adverse effects beyond the strict confines of the application site. Provided they are acceptable and sustainable though, that fact is not determinative of the application in our view.
251. Relevant to this issue, we note that even though compatible activities do not have the same 'effects on surrounding land uses' recognition as primary activities in the EPP provisions, General rule C1.8(2) directs us in considering this application to have regard to the standards for permitted activities at the site. Our understanding is that these standards authorise a range of adverse effects on the surrounding environment from activities at Eden Park. That is the context in which we must consider the effects of the application and its performance in relation to the policy guidance provided.

How does the application 'perform'?

252. Our findings in relation to the extent of the adverse effects that the current proposal would generate are set out earlier in this decision. We are satisfied that the general crowd disturbance related effects, effects of lighting and the effects of transport and traffic management arising from the proposal to hold concerts at Eden Park (on the conditions proposed) are avoided, remedied or mitigated as far as practicable and therefore achieve the direction in policy I310.3(a). In our view, these effects will be little different in the context of those provisions from those already arising from the lawful operation of Eden Park.
253. We have found that the noise levels that would be produced by concerts at Eden Park will be significantly greater than noise levels currently generated by activities at

¹⁰¹ H Wadams, closing comments, para 14

¹⁰² Closing Submissions for the Trust, 10 November 2020, paragraph 24.

Eden Park. Nevertheless, as set out in detail earlier, we are satisfied that the noise effects will be avoided and mitigated as far as practicable and, overall, will not have an unreasonable impact on the surrounding neighbourhood and its amenity values, even though some residents will undoubtedly find those effects unacceptable. We are therefore satisfied that the relevant policy provisions in Chapter E25, the MRFZ and the EPP as they relate to the management of noise at Eden Park are met.

254. In relation to the second core policy issue – non-displacement of the primary activities – we heard a variety of evidence.
255. For the Trust, both its Chair (Mr McKay) and CEO (Mr Sautner), assured us that the use of the stadium for concerts was easily able to be accommodated within current sporting schedules. They reminded us that a key aspect of the founding documents for the Trust requires it to ensure the facility is available to the Auckland Cricket Association and the Auckland Rugby Union, both of whom have a direct say on scheduling and their access to the grounds.
256. This evidence was supported by Mr Laxon, the CEO of for Auckland Cricket, and Mr Bear for The Auckland Rugby Union. Neither of these organisations identified any concerns with the ability for Eden Park to be available for their activities if concerts were allowed to take place as proposed.
257. In light of this evidence, and the clear wording of the founding documents of the Trust and the legal obligations it has with those organisations that provide the primary activities held at Eden Park, we are unable to accept the contrary assertion that the proposal would displace the Park’s primary activities. Accordingly, we find that this requirement in policy 3(b) is achieved by the proposal.

ISSUE (E) – CONDITIONS

258. By the close of the hearing, the Trust and the Council’s reporting team were agreed as to the final form of the conditions that ought to be imposed in the event that we were of a mind to approve the application. It was implicit from this position that the initially unresolved condition issues between the acoustic experts who had engaged on the detail of the conditions (Mr Day and Mr Styles) had been largely resolved. We are grateful for the approach taken by the experts (and EPT’s and Council’s advisers generally) to the issue of conditions.
259. Two condition related issues remained unresolved in our mind, however:
- (a) Should there be a condition controlling the content of concerts to be held?
 - (b) Should a reduced number of concerts be allowed, say on a two-year trial basis, with adaptive management conditions being imposed?

Conditioning content

260. In his acoustic peer review report on the application for the Council, Mr Styles expressed his view that some people will find certain genres/styles of music more

annoying than others and concerts involving them should be avoided.¹⁰³ He recommended a condition that concerts involving unusually heavy or consistent bass tones or styles of music that give rise to an appreciably higher level of annoyance in the community than performances that are generally known, popular or largely acceptable for receivers in the surrounding environment, be prohibited.¹⁰⁴

261. Despite accepting many of Mr Styles acoustic recommendations, Mr Wadams rejected this suggestion. In his view the issue raised by Mr Styles was confined to only a particular type of music and, when considered in the broader context of noise effects, together with the various mitigation measures and controls on the proposed concerts activity, he saw no need to specifically control it.¹⁰⁵ Mr Day endorsed this opinion, advising that because this was very much a subjective and emotional issue, it could not be included in any objective control (condition).¹⁰⁶
262. This issue was discussed with the experts and various lay witnesses who raised it throughout the hearing. In the end, Mr Styles maintained his view, as did Mr Wadams and Mr Day theirs. In his closing comments Mr Styles reiterated his position on what he referred to as “*particular styles of music that can generate significantly greater levels of adverse reaction compared to more mainstream pop, rock or similar.*”¹⁰⁷ In his view, although he accepted that drafting an effective condition to control this would be difficult or impossible to, he still recommended managing this issue, perhaps through a review condition.¹⁰⁸
263. We note that there is no explicit indication in the EPP provisions that the style of music at concerts is a relevant issue for consideration, with those provisions focusing on managing ‘adverse effects’ generally. For style to be a relevant consideration therefore it would need to give rise to an adverse effect on the environment, independent of the volume at which it is performed. Although we consider that it could in one very limited circumstance, we are nonetheless satisfied that controlling the style or genre of music able to be performed (to “mainstream pop, rock or similar” as suggested by Mr Styles) is not amendable to conditioning under the RMA. This is because it is simply too subjective.
264. The limited circumstance where the content of a concert might be considered to give rise to an adverse effect on the environment is where, from the perspective of the ordinary reasonable member of the community at large, it was offensive or objectionable to such an extent that it has or is likely to have an adverse effect. In such a case, enforcement action under the RMA is possible.¹⁰⁹ Allied with this is the general duty in s 17. Together, we find that these are more than sufficient incentive for the Trust to ensure that the style or genre of concerts is acceptable to an ordinary reasonable member of the community at large.¹¹⁰

¹⁰³ Hearing Agenda, p201

¹⁰⁴ Ibid, p216

¹⁰⁵ Ibid, p38

¹⁰⁶ Evidence C Day, 15 October 2020, paragraph 82.

¹⁰⁷ J Styles, Summary Statement, 5 November 2020, paragraph 17.

¹⁰⁸ Ibid.

¹⁰⁹ s 314. See *Watercare Services Limited v Minihinnick* [1998] 1 NZLR 294; *Zdrahal v Wellington City Council* [1995] NZLR 700.

¹¹⁰ Based on the evidence we heard from music tour promoters, who indicated that the venue would likely be attractive to only a handful of global touring artists, we are confident that likely performers at Eden Park would generally be popular, mainstream and of multi-generational appeal in any event.

265. For the avoidance of doubt, we expressly record for the purposes of s 319(2)(b) that in the unlikely situation where such an enforcement order was sought, we have not expressly recognised that the playing of offensive or objectional shows is contemplated under this consent.

Adaptive management

266. In her peer review report for the Council in relation to social effects, Dr Stewart recommended that if consent is granted it “*should consider a reduced number of concerts on a two-year trial basis, and that conditions be imposed on EPT to adapt its OMP to undertake a monitoring and evaluation regime to prove its case of generating benefits and mitigating negative social effects*”.¹¹¹ Although Mr Wadams supported the idea of post-concert evaluations that focused on the effectiveness of management measures as part of an ‘adaptive management approach’ to dealing with adverse effects generally,¹¹² he did not consider that Dr Stewart’s post event surveys and evaluations were appropriate. This was essentially because it would simply serve to open the opportunity for the use of Eden Park for concerts to be re-litigated.

267. We agree with Mr Wadams rejection of Dr Stewart’s recommendation. Determining whether or not the next concert could be held based on public opinion about the prior one is too susceptible to manipulation and gives the consent holder no certainty.

268. Moreover, we are satisfied in relation to the entire range of effects that might be generated by concerts that there is no need to reduce the number sought or construct a truly adaptive conditioning methodology.¹¹³ In our finding, on the conditions proposed, the effects of the application are acceptable and we see no need to limit the number of events able to be held (subject to some form of performance test being met), or to grant consent for a reduced term only. We record in this regard that the evidence from the Trust has discharged the greater burden of proof that we considered that it had (refer paragraph 67), in the absence of having undertaken a ‘dry run’ to test its systems.

269. We have, however, made some minor amendments to the monitoring and post-concert evaluation/reporting conditions to ensure that any lessons learned from the first events held are efficiently and effectively incorporated into the management systems to be used for future events.

ISSUE (F) – EXERCISE OF DISCRETION

270. We have considered the application and the submissions made on it under s 104 and found, in summary, that:

- (a) Subject to the proposed conditions of consent (as modified by us), the application is likely to have positive economic, cultural and social effects and that its adverse effects on the environment, including cumulative effects, arising from the impacts of concerts on neighbourhood amenity, noise,

¹¹¹ Hearing Agenda, p262.

¹¹² Ibid, p28.

¹¹³ See *Sustain our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 167.

traffic/transport, and lighting will be avoided, remedied or mitigated to an acceptable level;

- (b) A grant of consent would assist in the attainment of the objectives of the NPS:UD, and be consistent with the relevant objectives and policies relating to the management of social facilities in the RPS;
- (c) A grant of consent would be consistent with the objectives and policies of the MRFZ and the EPP, and in particular would enable and provide for a compatible activity with positive effects to take place within the EPP, in circumstances where the adverse effects of that activity are appropriately avoided, remedied or mitigated taking into account the amenity of the surrounding neighbourhood, and the primary activities are not displaced.

271. Our discretion in relation to the application must be exercised so as to achieve the statutory purpose of the RMA. Based on our findings above, we are satisfied that granting consent to the Trust's application would promote the sustainable management of natural and physical resources. That is, it would allow the use of an existing physical resource (Eden Park) in a way that would enable people and communities to provide for their social, economic, and cultural well-being while sustaining the potential for that resource to meet the reasonably foreseeable needs of future generations, safeguard natural resources and avoid, remedy or mitigate adverse effects on the environment.

272. In considering this discretion, we also record that on the conditions proposed, emissions of noise from concerts would not exceed a reasonable level, such that the duty in s 16 will be fulfilled.

I. DECISION

273. Based on our findings above, and the reasons supporting our discretion to do so, under s 104B we have decided to exercise our discretion in favour of the application and to grant consent, subject to the conditions included in **Schedule 2**, which we impose in accordance with s 108.



K R M Littlejohn (for and on behalf of the Commissioners)

Chairperson

15 January 2021

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Eden Park Trust's evidence

1. **Mr Renata Blair** (Trustee of the Trust, Ngāti Whātua). Mr Blair's evidence explained the significance of the Eden Park site to Māori. Mr Blair also discussed how the use of Eden Park for concerts would enable the expression of Māori culture and have economic benefits for Māori.
2. **Mr Douglas McKay, ONZM** (Chairman of the Eden Park Trust Board). Mr McKay's evidence explained the ownership and governance arrangements of Eden Park, described the Trust's intention in relation to holding concerts, and confirmed the Trust's commitment that sport would not be displaced from the Number 1 ground if it was used for concerts as proposed.
3. **Mr Nicholas Saunter** (Chief Executive Officer appointed by the Trust). Mr Saunter's evidence explained the proposal to hold up to six concerts at Eden Park in any 12-month period and went on to discuss in detail:
 - (a) The facilities and amenities at Eden Park that make it capable of hosting such events and, based on his experience with other venues, likely to attract concerts to Eden Park;
 - (b) The broader community role of Eden Park, emphasising the importance it placed on its relationships within the community;
 - (c) How Eden Park is currently underutilised, including the use of the Number 1 field over the last few summers, and the factors that influenced the variability in the calendar for use of the field;
 - (d) How concerts could fit into the summer calendar without displacing sporting fixtures from the Number 1 field;
 - (e) Confirmed the specific parameters of the proposal as amended in response to the s42A report.
4. **Mr Keith Parker** (Operations Manager at Eden Park with over 30 years' experience in stadium management). Mr Parker's evidence explained how the large events are run at Eden Park and how, consequently, concerts would be run in the event consent was granted. Mr Parker explained the use and role of the Operating Management Plan and Event Management Plans that are presently used to manage activities at the Park. He also explained the feedback loops in place that enable plans to adapt and improve based on their application on a case-by-case basis.
5. Mr Parker presented a draft event plan for a hypothetical concert, which set out a detailed draft of how a concert would be run from the time that the site was first handed over to a concert promoter to its hand back to Trust management.
6. **Mr Colin Skals** (self-employed production manager with 45 years' experience in the music industry, including coordinating the logistics for the production of live performances). Mr Skals' evidence:

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- (a) Explained how a tour schedule is established to set concert dates, including outlining the factors taken into account;
 - (b) Provided independent verification of the mock event plan prepared and presented by Mr Parker, confirming that it was an accurate and realistic representation of how a typical concert at Eden Park would be run;
 - (c) Confirmed the typical height of line arrays of speakers and the use of hire speakers;
 - (d) Explained the process of sound testing and balancing and the limitations on when that can and cannot occur;
 - (e) Explained the importance of measuring noise levels at the mixing console and the minimum required at that location for a successful concert.
7. **Mr Geoffrey Jones** (CEO of TEG Pty Limited and Australian based integrated entertainment company). Mr Jones' evidence explained what, in his opinion, made Eden Park a desirable venue for concerts and the range of acts that are likely to be attracted to Eden Park if it was available for such concerts. He also explained how a tour schedule is established to set concert dates, including outlining the factors that needed to be taken into account.
8. **Miss Greta Lawson** (Communications Manager at the Trust). Miss Lawson is responsible for stakeholder communications across the Trust's business which includes with hirers, patrons, commercial partners, media outlets and the local community, which encompasses residents and businesses. Miss Lawson's evidence explained the pre-lodgement engagement that was undertaken with the community to assist with tailoring the proposal and outlined the efforts made to encourage people to have their say during that process. Miss Lawson's evidence also explained the extent of community consultation and engagement that the Trust does and confirmed its commitment to continue that engagement in relation to concerts if consent were granted.
9. **Mr John McKensey** (Executive Engineer working for LPD Limited Electrical & Illumination Engineers). Mr McKensey's evidence was focussed on the lighting effects that would be associated with the proposal. His assessment concluded that such effects, if undertaken in accordance with proposed conditions, would be negligible. Mr McKensey had comments on two of the proposed conditions (52 and 53) recommending that they be deleted because they were unnecessary and unworkable in his opinion.
10. Mr McKensey also discussed various issues raised in submissions, including light spill, disruption to residential activity, impact on sleep and potential effects of mock army/police type activities. He provided his expert opinion on these matters confirming that in his view the lighting effects would be negligible.
11. **Mr Fraser Colgrave** (Managing Director of Insight Economics Limited, an economics consultancy in Auckland). Mr Colgrave provided a summary of the key findings of the work he had undertaken in support of the AEE for the application. His evidence also addressed submissions that were relevant to economic issues and addressed the Council's s42A report, particularly the specialist input from the Chief Economists Unit. In his opinion:
- (a) The proposal would generate significant net economic benefits to the region;

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- (b) Eden Park was well placed to host future concerts and that its unique set of attributes would enable it to attract concerts that might not otherwise have toured to New Zealand;
 - (c) The proposal would be unlikely to reduce property values in the locality;
 - (d) Eden Park is currently not financially viable and future concerts would assist in improving that situation;
 - (e) The use of Eden Park for Concerts would not end up displacing concerts from other Council venues.
12. **Dr Peter Phillips** (Managing Director of Dialogue Consultants Limited a planning consultancy specialising in social and economic research, consultation and strategic planning). Dr Phillips summarised the findings of his inputs to the application which were focussed on an assessment of the social effects of the proposal. His evidence also addressed submissions of relevance to his area of input and addressed the Council's s42A report, particularly the specialist input from Dr Stewart for the Council.
13. **Mr Chris Day** (Principal of Marshall Day Acoustics Limited). Mr Day has provided expert acoustic advice and assistance to Eden Park for a number of years, first being engaged to assist with the Park's applications for night games in 1993. He confirmed that his firm has been engaged for monitoring compliance of the conditions of Eden Park's various resource consents on an ongoing basis.
14. In respect of the current proposal Mr Day confirmed that he and his colleagues had carried out an extensive assessment of noise effects for the proposed concerts utilising detailed digital modelling. Mr Day's evidence summarised the key findings from that work and the engagement that had been undertaken with the Council's acoustics peer reviewer, Mr Jon Styles. Mr Day's overriding conclusion was that the holding of concerts at Eden Park would invariably upset some people while others would enjoy them. In his opinion though, the overall noise effects were reasonable considering the controls in relation to frequency, duration, finish time and the noise limits at the residential interface. Mr Day advised that these proposed controls were similar to concert venues at other major stadia in Auckland and New Zealand.
15. Mr Day also addressed various submissions of relevance to his area of expertise, including (in his rebuttal evidence) expert acoustic evidence provided by submitters (Mr Lloyd and Dr Welch).
16. **Mr Todd Langwell** (Director of Traffic Planning Consultants Limited). Mr Langwell has assisted Eden Park for over 17 years providing expert advice on traffic and transportation planning and management. Mr Langwell's evidence provided a summary of the findings of the assessment he prepared for the AEE and addressed the submissions that had been received that raised issues relevant to traffic and transportation. He also discussed the specialist input from Mr Ian Clark, included with the Council's s42A report.

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17. Mr Langwell's overall conclusions were that, from a transport perspective, the effects of a concert event at Eden Park would not be unlike any other major event staged at this facility. Specifically, the crowd's arrival and departure process would follow similar patterns to sports events, and the likely transport effects on the day of a concert event would be worse than no other sporting or recreational event on a weekday. In his view he expected that the arrival of a concert crowd would be more spread out, with earlier arrivals, reducing the intensity of any peak arrival periods and demand on the road and rail networks.
18. Mr Langwell considered that there was sufficient capacity on the road and rail networks on a weekend to allow for a larger crowd of up to 60,000 people to attend a concert and that the traffic management measures that are regularly employed by Eden Park to manage traffic activity in its environs during events can easily be designed to manage the effects of concert related traffic to ensure that traffic flow and pedestrian safety is maintained while minimising the impact that such management would have on the surrounding neighbourhood and its residents.
19. Specifically, with respect to the setup and disestablishment of the concert stage and related infrastructure, Mr Langwell considered that a suitable methodology was able to be devised that would ensure that transport effects on the surrounding environment would be limited to periods of truck movements to and from the site associated with setup and disestablishment. In Mr Langwell's view the proposed intensity of truck movements could be accommodated on the surrounding network with minimal adverse effect and that no further mitigation was required in that regard. Mr Langwell's advice was that the traffic effects of the proposal can be accommodated on the road network without compromising its function capacity and safety.
20. **Mr Steve Gillett** (owner of the Kingslander Bar at 470 New North Road and Chairman of the Kingsland Business Association), **Ms Marie Broad** (Principal of Kowhai Intermediate School), **Ms Connie Phillips** (resident of 33 Walters Road), **Mr Jonathan Burton** (resident of 23 Altham Avenue), **Ms Kathryn Marshal** (resident of 17 Walters Road), **Ms Mary O'Donnell** (resident of 2 Cricket Avenue), **Mr Rob Williamson** (resident of 12 Cricket Avenue), **Ms Sally Peterson** (resident of 18 Shaw Street) and **Mr Warren Sharp** (resident of 3 Reimers Avenue): all these witnesses indicated their support for the proposal and the reasons for that which included, their positive relationship with the Eden Park Trust, that having being developed over many years due to their close proximity; the enjoyment that they perceived they could obtain from the range of activities at Eden Park being expanded to include concerts; the benefits that concerts would bring generally for Auckland.
21. **Mr Mark Vinall** (Director of Tattico Limited, an independent planning consultant based in Auckland). Mr Vinall has consulted to the Trust for a number of years and was principally responsible for the preparation of the AEE for the application. Mr Vinall's evidence covered the usual range of matters including site and surrounding environment, planning context, a description of the proposal, the consent requirements for statutory consideration, issues raised in submissions, evaluation, comments on the hearing report and conditions of consent, response to submissions, concluding with an analysis of the proposal in relation to Part 2 of the Resource Management Act 1991.
22. In his conclusion, Mr Vinall confirmed his opinion that the proposal would have both positive and adverse effects. The positive effects in his view primarily related to regional and local

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economic benefits and the social benefits of providing an opportunity to attend music performances at Eden Park, making more efficient use of this physical resource. In Mr Vinall's assessment, based on the conclusions of the other expert advisers for the application, the proposed concert activity would generate adverse effects that could not be fully internalised within the venue. The noise effects would be loud, noticeable, and disruptive and annoying to some. However, the limits placed on the number, frequency, duration and timing of such events would be sufficient to mitigate those effects to a reasonable and acceptable level. Mr Vinall considered that the various management plans, including traffic, community consultation and communications and pre- and post- event plans would assist to mitigate the adverse effects of concert activity on the surrounding neighbourhood to an acceptable level. Mr Vinall concluded by making several recommendations for amendments to part of the consent conditions.

23. The Trust presented rebuttal evidence by Mr Chris Day, Dr Peter Phillips, Mr Todd Langwell and Mr Mark Vinall.
24. After considering the expert evidence provided in opposition from Mr Lloyd and Dr Welch, **Mr Day** reiterated his opinion that there was no dispute that people around Eden Park would hear music and crowd noise from concert events and that for some people it would be loud and annoying. Despite that, his view remained that the controls to be put in place in relation to frequency, duration and finish times, together with the proposed noise standards to be achieved at residential boundaries, would be reasonable for the same reason that they were considered reasonable in the context of other venues in Auckland and around New Zealand.
25. **Dr Phillips'** rebuttal evidence addressed several social issues raised by Mr Wren, an expert planning consultant called by EPNA. In his rebuttal evidence, Dr Phillips provided a detailed response to claims about the number of people usually resident in the vicinity of Eden Park vs Western Springs, and further discussed the evidence in respect of behaviour of people attending concerts in contrast to those attending sporting events.
26. In his rebuttal evidence, **Mr Langwell** responded to matters also raised in the evidence of Mr Wren in relation to the appropriate parking standard, the impacts of road closures, and a concern about weekday events and their potential impact on peak hour commuter times.
27. **Mr Vinall's** rebuttal evidence responded to planning issues raised by Mr Wren relating to the effects of the proposal and policy framework. Mr Vinall provided a contrary view on the examples provided by Mr Wren in relation to Western Springs and Mt Smart, confirming that in his view the examples did not provide a full picture of the level of noise activity that is otherwise permitted at other major recreation facilities and in public places across Auckland. Mr Vinall also responded to Mr Wren's opinion that the addition of concerts would contribute to the overall noise environment, confirming that, despite them being noticeable for those in surrounding properties, the noise effects in particular would be reasonable and mitigated to an acceptable level given the various controls that were proposed.
28. Mr Vinall also responded to Mr Wren's analysis of the relevant objectives and policies in terms of the policy threshold of effects management applicable to non-primary but otherwise compatible activities at Eden Park under the EPP provisions. In summary, Mr Vinall did not agree with Mr Wren's analysis of the provisions to the effect that the ability

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to have effects beyond the boundaries of the site, as acknowledged in the provisions, was not an allowance given to non-primary compatible activities. Mr Vinall's view was that the policy framework did not support such an analysis. Compatible activities in Mr Vinall's view were simply required to avoid, remedy or their effects, and that this did not require internalisation.

Submitters' evidence

29. Due to the considerable number of submissions and representations made we do not intend and have not provided a summary by individuals or associations. The issues raised are comprehensively identified in the s42A report prepared for the hearing by Mr Wadams (in summary in section 10 and in Attachment 6) and are discussed as individual topics in this decision. In the following we simply provide an overview of the evidence and representations made by submitters at the hearing.

Submissions in support

30. Submissions in support generally noted that, in their experience, EPT managed large events well (acknowledging acts of individual bad behaviour); communicated effectively and in a timely manner with locals; responded to requests for assistance; managed traffic effectively (acknowledging the inevitability of inconvenience); provided significant opportunities for community engagement by way of market events, opening the facility for celebrations, supporting local school events etc.
31. Special mention was frequently made of Mr Sautner's engagement in and with community and the manner in which EPT has become a more integral part of the neighbourhood. The importance of that relationship was not lost on us.
32. Submitters also welcomed the prospect of concerts, noting that the demographic of the area has changed, with many submitters having moved into the area quite deliberately over the past several years to be close to Eden Park and to enjoy the facility and what it offers. Few submitters in support considered the occasional inconvenience of noise and traffic congestion other than a passing irritation at worst.
33. Unsurprisingly, submitters from the sporting world were enthusiastic about the prospect, seeing that as an important way of boosting EPT's finances and helping to ensure the endurance of Eden Park as a premier world sporting venue.
34. Local businesses generally welcomed the prospect noting that existing large sporting events already boosted their revenue significantly and this could be expected to increase further given the longer "residency" time that concertgoers typically exhibit before and after events.
35. Submitters also noted the way in which the uptake in use of public transport has had a positive effect, and which is expected to increase further once the CRL loop is completed in 2024 (or thereafter).
36. Submitters from the entertainment sector were again, unsurprisingly, enthusiastic noting its superiority over other Auckland venues for large concert events given its

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international status and ease of access for setting up and taking down the necessary infrastructure.

37. Finally, we note that submitters with disabilities noted that the facilities at Eden Park were superior for their needs and that concerts at Eden Park presented them with accessible choices that were not otherwise available (specific mention being made of such deficiencies in both Western Springs and Mt Smart Stadium) in terms of matters such as choice of non-segregated seating, independence of movement around the venue and mobility parking.

Submissions in opposition

38. Submissions in opposition generally noted that Eden Park is a sports facility; narrated the history of decisions rejecting large concert activity at Eden Park, including the Hearing Panel for the Auckland Unitary Plan; the incremental expansion of consented effects over time as EPT has made successive applications; the established built structure and nature of the Mt Eden / Sandringham neighbourhood in terms of older dwelling structures with less acoustic-absorbing characteristics; the essentially private nature of the EPT as opposed to other available public concert facilities and the potential loss of revenue to the public purse if those public venues are not used; sporting fixtures are typically televised public good events as opposed to concerts; the inconvenience (accepted) already experienced from the increasing number of night-time sporting fixtures; the elevated noise levels, frequencies and duration that would be experienced by receivers in the residentially zoned neighbourhood; the previous understanding that the Unitary Plan allows for individual packages of consents to be applied for specific artists and gigs, not an endless, non-specific bundle; problems of rapid egress for those resident workers engaged in urgent or emergency type occupations; adverse health effects from the stress caused by anticipating and /or experiencing an unwanted event; adverse reactions from pets;
39. Personal anecdotes were provided on a range of matters including: unacceptable behaviours; failures of traffic management and access controls; congestion and general rowdiness of patrons attending school ball and other non-sporting events; and sleep and general outdoor amenity disturbance.
40. A number of submitters challenged the accuracy, validity or reliability of the information provided by the applicant's team and supporters, generally distinguishing between EPT's experience with those shorter-duration sports games that attract larger crowds as opposed to the scale and duration of concerts proposed (including set-up and pack-down, sound checking etc).
41. Some submitters provided examples of where they considered EPT had either acted outside of their consent conditions or had not responded quickly enough to complaints about possible breaches of their conditions. This led some submitters to express doubt that EPT would abide conditions placed on the present consent if granted.

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Council reporting officers/specialists' further evidence

42. At the conclusion of the submitters' evidence two of the specialist reviewers who provided input to the s 42A report presented written "Summary Statements" for our consideration. The purpose of the statements was to address issues that had arisen during the hearing.
43. **Mr Clark's** summary statement confirmed that his opinion in relation to transport effects raised by the proposal had not altered, but some minor amendments to the conditions had come to mind in response to discussions about contingency planning for events. Mr Clark also commented on the effects of major concert events generally, noting that "Aucklanders are becoming used to relying on public transport for major events", and the role of Traffic Management Plans.
44. In his summary statement, **Mr Styles** also confirmed that nothing had arisen during the hearing that had fundamentally changed his position on the proposal per his peer review report included in the Hearing Agenda. Mr Styles provided comments on issues arising from the evidence that had been presented, namely noise effects generally, cumulative effects, noise limits, wind, sensitive receivers, historic exceedances of noise limits, monitoring, fireworks, crowd noise and music genre.
45. Finally, **Mr Wadams** presented a written "Closing Comments" document. Mr Wadams noted that, in his view: "*Consideration of this application is fundamentally about its effects, where a range of wider positive effects must be balanced with the adverse effects of the activity particularly upon the local community. I acknowledge that the proposal represents an expansion of the adverse effects currently generated by activities at Eden Park.*"
46. Mr Wadams provided his response on the issue of the interpretation of the objectives and policies of the EPP raised by Mr Wren, disagreeing with him and considering that the correct approach is to consider how the adverse effects of the activity can be best mitigated and whether that ultimately results in an environmental outcome that is acceptable. He noted that his approach to the application has been "*to contemplate all possible ways in which the noise effects of the activity could be mitigated*". In that regard he considered that the conditions proposed were adequate.
47. On the effects of the proposal, Mr Wadams concluded as follows:

In relation to all other adverse effects of the activity, these effects primarily relate to the movement of people into and out of the area. While acknowledging the large crowd size sought, these effects will generally be similar in nature to those generated by sporting activities. Accordingly, the Applicant sensibly adopts the management measures (adapted where necessary) that have been developed and continually refined over a long period of time.

Overall, I maintain my view that the adverse effects of the proposal will be adequately mitigated to a level that is reasonable and acceptable. I did note some quite powerful statements from submitters regarding what music, social interaction and Eden Park as a venue means to them, which if anything may have been understated in my assessment.

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48. Finally, Mr Wadams confirmed his opinion that, based on the evidence presented, concerts would not displace primary activities. He also noted that he had made a number of ‘tweaks’ to the recommended conditions, which he presented for our consideration.

Conditions

Under ss 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 shall be carried out in accordance with all information submitted with the application, detailed below, and all referenced by the Council as LUC60351212, except as otherwise modified by the conditions of consent:
 - (a) Application form signed by Mark Vinall on behalf of The Eden Park Trust;
 - (b) Assessment of Environmental Effects by Mark Vinall of Tattico Limited, dated February 2020; and
 - (c) The following reports and additional information:
 - Operating Management Plan – Concerts, dated December 2019;
 - Transport Assessment, prepared by Traffic Planning Consultants Limited, dated February 2020, Ref: 19240, Issue F;
 - Noise Assessment, prepared by Marshall Day Acoustic Limited, dated 3 February 2020, Rev: R03;
 - Lighting Assessment, prepared by LDP Limited, dated 14 February 2020;
 - Section 92 response, prepared by Tattico, dated 14 February 2020;
 - Section 92 response, prepared by Traffic Planning Consultants, dated 30 June 2020;
 - Section 92 response, prepared by Marshall Day Acoustics Limited, dated 3 July 2020; and
 - Section 92 response, prepared by Marshall Day Acoustics Limited, dated 31 August 2020.

Lapse of Consent

2. Pursuant to s125 of the RMA, this consent to hold up to six concerts in any 12-month period shall lapse 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.

Monitoring fee

3. The consent holder shall pay the Council an initial consent compliance monitoring charge of \$1,015 (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

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

Acoustic barrier

5. The East Stand shall be completed with the installation of an integrated acoustic barrier and digital screen prior to the first concert being held. This shall be in accordance with the design contained in the Certificate of Compliance (CER70016331) issued by Auckland Council on 13 December 2019, provided that minor changes can be made to that design where the Consent Holder obtains certification from a suitably qualified independent person that any such design changes do not increase the noise (rating) level as measured within the boundary of any residentially zoned site not owned by the Consent Holder.

Number and frequency of Concert Events

6. No more than six concert events may be held in any 12-month period.
7. No more than four concerts may be held in any four-week period.
8. There shall be at least one weekend (inclusive of Friday night) in every 35-day period that is free of any concert or organised sports and recreation undertaken during the night-time on the number 1 field.

Advice note:

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. Concerts may take place on Monday to Saturday (inclusive) and any Sunday that precedes a Public Holiday.

Concert on a weekday (other than a public holiday)

10. Any concert held on a weekday (other than a public holiday) is restricted as follows:
- (a) The gates to the number 1 field shall not open before 5:00pm;
 - (b) The concert shall not start before 6:30pm for supporting acts and 7:30pm for the main act;
 - (c) The concert shall finish no later than 10:30pm;
 - (d) The total duration of the concert, being time between the commencement of the first (or single) performance/act and the conclusion of the last (or single) performance/act, shall not exceed four (4) hours; and
 - (e) The crowd size shall not exceed 50,000 persons.

Concert on a Saturday or a Sunday preceding a public holiday

11. Any concert held on a Saturday or a Sunday preceding a public holiday is restricted as follows:
- (a) The gates to the number 1 field shall not open before 8:30am;
 - (b) The concert shall not start before 10:00am;
 - (c) The concert shall finish no later than 10:30pm;
 - (d) The total duration of the concert, 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 shall not exceed 60,000 persons.

Concert on a public holiday

12. Any concert held on a public holiday is restricted as follows:
- (a) The gates to the number 1 field shall not open before 8:30am;
 - (b) The concert shall not start before 10:00am;
 - (c) The concert shall finish no later than 10:30pm;

- (d) The total duration of the concert, being time between the commencement of the first (or single) performance/act and the conclusion of the last (or single) performance/act, shall not exceed six (6) hours; and
- (e) The crowd size shall not exceed 60,000 persons.

Multiple Concerts

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

Advice note:

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

Concert stage

14. The concert stage shall be on the Number 1 field. There are no other limitations on stage configurations.

Testing and balancing

15. Testing and balancing of all sound systems involving PA and/or vocal checks and/or rehearsals by performers for a concert shall:

- (a) not cumulatively exceed 3 hours;
- (b) not commence before 5pm on any weekday (other than a public holiday);
- (c) not commence before 10am on any Saturday, Sunday or public holiday;
- (d) be completed by 7pm; and
- (e) comply with the noise levels in Condition 17.

16. Where testing and balancing of sound systems involving PA and/or vocal checks and/or rehearsals by performers cannot be practicably undertaken after 5pm on any weekday, this may be undertaken between 10am and 5pm provided that:

- (a) the consent holder informs the Council and any care centre and education facilities in the vicinity of Eden Park of the start time for any such testing and balancing, no less than 24 hours before it commences; and
- (b) it does not cumulatively exceed 90 minutes; and
- (c) complies with the noise limit specified in Condition 17.

Advice note:

“The vicinity of Eden Park” is defined for the purposes of this consent as those properties bound by New North Road, Onslow Road, Dominion Road, Paice Avenue/Kenneth Avenue/Leslie Avenue and Morningside Drive, and any other property located adjacent to a TMP restriction.

Noise limits

17. The noise level from use of sound systems associated with concerts, sound checks and the balancing of sound systems and any pyrotechnics displays that form part of the concert performance shall not cumulatively exceed 75 dB $L_{Aeq(t)}$ and 80 dB $L_{Aeq(10min)}$ when measured within the boundary of any residentially-zoned site not owned by the Eden Park Trust.
18. Pack-in and pack-out activities occurring between the hours of 10.30pm and 8.00am, shall comply with noise limits of 40dB L_{Aeq} and 75dB L_{AFmax} . 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.

Advice note:

Pack-in and pack-out includes 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.

20. Professional fireworks displays that include an air-burst where the detonation or burst occurs in an airborne situation shall be excluded from any assessment of compliance with the noise limits specified in Condition 17, and shall instead be in compliance with Standard I310.6.13 of the AUP. Any such professional fireworks display associated with a concert must conclude by 10:30pm.
21. The noise level from all other activities (not covered by Conditions 17 to 20), including pack-in and pack-out activities, shall comply with the noise limits contained in the Eden Park Precinct Noise Standards in I310.6.1.1.
22. Noise levels shall 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 total duration amplified sound generated during sound checks and balancing of sound systems where gaps of no amplified sound of up to 15 minutes are included in the measurement; or
 - the total duration of live or pre-recorded amplified sound and pyrotechnic displays (that are not 'fireworks' subject to standard I310.6.13) generated during the concert event where gaps of no amplified sound of up to 15 minutes are included in the measurement.
 - (b) for the duration of 't' as applied in Condition 17, there shall be no adjustment for special audible character (in accordance with section 6.3 of NZS6802:2008) for amplified music or amplified voice and no adjustment for

duration (in accordance with section 6.4 of NZS6802:2008) for amplified music or amplified voice.

23. Crowd noise shall be excluded from any assessment of compliance with the noise limits specified in Condition 17.

Noise Monitoring

24. The consent holder shall engage a suitably qualified and experienced acoustic expert to carry out noise monitoring of every concert, except as provided by Condition 26 below. The objective of the monitoring shall be to accurately determine whether or not compliance with the noise limits in Condition 17 is achieved within the boundary of residentially zoned sites not owned by the Eden Park Trust that are most exposed to the noise from the concert, and to provide feedback to the concert Front of House (FoH) team / mixing desk in real time to ensure that compliance is achieved.

The noise monitoring shall involve:

- (a) Noise level measurements at the boundary of properties in the residential zone that are the most exposed to noise from the concert during sound checks and during the main concert. The measurement locations shall be varied initially or as necessary to determine the most exposed property to continue measurements from for the remainder of the sound check and concert.
 - (b) The use of equipment and methods that comply with the requirements of NZS6801:2008 and NZS6802:2008 and the conditions of this consent where they vary the requirements of either standard.
 - (c) There shall be no adjustments for special audible character or meteorological effects.
 - (d) The requirement for the person undertaking noise monitoring outside the venue to communicate directly with a nominated person at FoH / mixing desk inside the venue who has the authority to reduce noise levels at source if necessary, on the advice of the noise expert conducting the monitoring to ensure that compliance with the noise limits in Condition 17 is achieved at all times.
 - (e) Noise level measurements shall be conducted in contiguous 10 minute samples to determine the $L_{Aeq(10min)}$ for each 10 minute period, and the $L_{Aeq(t)}$ value shall 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 17.
25. The results of all noise monitoring shall 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 one week of the concert occurring. The report shall detail the results of all $L_{Aeq(10min)}$ and $L_{Aeq(t)}$ measurements, including locations, meteorological conditions and all adjustments

made for crowd noise or any extraneous noise sources. The report shall 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.

26. Following the monitoring of at least five concerts in accordance with Conditions 24-25, the Council may waive the requirement to monitor any individual concert where the consent holder can demonstrate to the Council's satisfaction in advance, in writing, and at least 15 working days prior to the concert, that the particular size, character or nature of an individual concert means that it is likely to comply with the relevant noise limits in the precinct standards and in Condition 17 with a high degree of certainty.

Community Liaison Group

27. 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

28. No less than one month prior to the first concert held in accordance with this consent, the consent holder shall prepare an Operating Management Plan – Concerts (OMPC) that combines a Community Consultation and Communications Management Plan, Event Management Plan, Pre and Post Event Management Plan and Transport and Traffic Management Plans (that vary depending on anticipated crowd size for an event and authorised by Auckland Transport) and submit it to the Council for certification. The OMPC shall be in accordance with the Draft OMPC dated December 2019 (referred to in Condition 1) and include any relevant requirements of the conditions of this consent.

The objective of the OMPC is to provide for the overall management of the effects of the concerts in an integrated document that specifies internal and external processes and procedures designed to:

- (a) provide a safe and compliant environment within the stadium; and
 - (b) mitigate, as far as practicable, the negative effects that concerts may have on surrounding residential amenity.
29. The consent holder shall maintain, to the satisfaction of the Council, an up-to-date OMPC that combines the Community Consultation and Communications Management Plan, Event Management Plan, Pre and Post Event Management Plan and Transport and Traffic Management Plans (that varies depending on anticipated crowd size for an event and authorised by Auckland Transport).

30. The OMPC 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 are to be certified by the Council in writing prior to implementation of any changes that the amendments are within scope of the consent, and once implemented would result in an outcome that is similar to, or better than that described in the original plan. Where any changes are certified by the Council, these shall be reported to all households in the vicinity of Eden Park prior to the next concert.
31. All concert events must be carried out in accordance with the OMPC.

Community Consultation and Communication Management Plan

32. The Community Consultation and Communication Management Plan shall include the following information:
- (a) details of the community communication procedures and the appointed Community Liaison Officer. The Community Liaison Officer shall be identified as being the main and accessible point of contact. The Community Liaison Officer's contact details shall be listed on the Eden Park and Auckland Council websites;
 - (b) details of the membership of the Community Liaison Group (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 Kingsland and Valley Road;
 - (v) the Council and relevant Council Controlled Organisations; and
 - (vi) the New Zealand Police.
 - (d) details of the responses to the request to participate within the Community Liaison Group;
 - (e) details of how the consent holder will provide all of the following to the Community Liaison Group:
 - (i) regular updates on scheduling of concerts;
 - (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; and
- (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 Community Consultation and Communication Management Plan, 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 concerts 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 shall 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 spectators and concerns over the management of concerts; and
- (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

33. The Event Management Plan shall include the following information:
- (a) procedures for ensuring the removal of litter from streets within the vicinity of Eden Park;
 - (b) measures in place to support Police enforcement of details of liquor bans in the vicinity of Eden Park (such as liquor checkpoints);
 - (c) Have an Alcohol Management Plan 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;
 - 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 patrons depart the precinct in a safe, efficient and orderly manner. This must include the deployment of security personnel at each stadium exit and within the surrounding streets;
- (g) portaloos to be placed in surrounding streets; and
- (h) a plan 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 the Eden Park.

Pre and Post Event Management Plan

34. The Pre and Post-Event Management Plan shall include the following information:
- (a) details of the Eden Park “hotline”, which shall 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;
 - (d) measures for ensuring that the relevant noise limits for sound checks are complied with; and
 - (e) measures for minimising light spill to adjacent residents from pack-in and pack-out activities and the testing/checking of concert performance lighting.

Traffic Management Plans

35. A base Traffic Management Plan (TMP) tailored to concerts shall be developed by the consent holder and be authorised by Auckland Transport. The authorised base TMP shall be provided to the Council. The base TMP shall form the basis of an event-specific TMP as required by Condition 37. The base TMP shall include measures in order 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 continue to function as far as practicable and do not experience undue congestion;
 - (c) strongly encourage patrons and staff to make use of public transport to access Eden Park by providing public transport information and making use of integrated ticketing where possible;
 - (d) maximise pedestrian safety particularly immediately before and after the concert event;
 - (e) ensure that emergency vehicle access both to the ground and the surrounding neighbourhood is maintained at all times;
 - (f) provide for the parking and movement of buses and coaches, including within Eden Park;
 - (g) manage traffic flows around Eden Park so as to facilitate rapid clearing of people and vehicles from the streets in the vicinity of Eden Park after concert events; and
 - (h) ensure that procedures are in place for communicating any unplanned network disruptions with patrons and relevant event staff.
36. The TMPs shall include the details of a traffic management specialist to be engaged by either the Consent Holder or Auckland Transport, 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.
37. An event-specific TMP, that incorporates the requirements of the base TMP authorised by Auckland Transport, shall be prepared by the consent holder and authorised by Auckland Transport prior to each concert. The consent holder shall co-operate with and provide all practical and reasonable assistance to Auckland Transport with the implementation of the TMP.
38. The consent holder shall meet the costs of implementing the TMPs, unless otherwise agreed with Auckland Transport.

Equipment and Containers

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

Heavy vehicle access

40. Heavy vehicles associated with concerts shall access and egress from Sandringham Road only, using Gate Q, the bus hub or temporary gates. No heavy vehicles associated with concerts may access, park or idle on Walters Road or Reimers Avenue.
41. Heavy vehicles may only enter the site between 8:00am and 10:30pm on any day, and on the day of the concert must be parked inside the tunnel under the south stand, or down the ramp forming the entrance to the south tunnel by 10:30pm.
42. No heavy vehicles may exit the site between 10:30pm and 8:00am, except as provided for by Condition 43.
43. Where pack-out activities commence immediately following the conclusion of a concert, no more than 17 heavy vehicles may exit the site between the hours of 10:30pm and 8:00am the next day. Any such heavy vehicle movements shall be controlled to exit the site, via the western end of the South Stand and onto Sandringham Road through the gate at the northwest corner of the Eden Park site, at no less than 15 minute intervals by a marshal at the departure point under the West Stand unless approval is obtained from all residents adjoining the Gate Q driveway to alternative egress arrangements.
44. The loading/unloading of heavy vehicles between the hours of 10:30 and 8:00am shall only occur inside the stadium, inside the tunnel under the South Stand, within the OB bay and under the western concourse.

Advice note:

For the purpose of Conditions 40 - 44, 'heavy vehicles' refers to 11m long rigid trucks or larger.

45. The use of forklifts, elevated working platforms or other mobile machinery between the hours of 10.30pm and 8.00am is limited to inside the stadium, inside the tunnel under the South Stand, within the OB bay and under the western concourse.
46. No steel work (dismantling of towers, steel stage structures and scaffolding) shall be undertaken between the hours of 10:30pm and 8:00am.

Hire Agreements

47. The Consent Holder shall 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 concerts which the hirer must accept and comply with.

Helicopters

48. No helicopter may land on or take off from the site on the day or night of a concert event.

Lighting

49. All concert performance lighting must cease by 10:30pm.
50. Following the conclusion of the concert, the stadium floodlights may operate in egress mode only and must be shut off no later than 45 minutes after the conclusion of the concert.
51. Concert lighting projectors shall 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

52. 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 promoters 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 shall 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.

53. No less than one week prior to any concert, the Consent Holder shall arrange an on-site meeting to be attended by the persons listed in Condition 52.
54. The purpose of this on-site meeting shall be to ensure that all required processes and management measures for efficient running of the concert event are in place to the satisfaction of the Council.

The following information shall be made available at the pre-start meeting:

- (a) A copy of this resource consent;
- (b) A copy of the approved Operating Management Plan – Concerts; and
- (c) The relevant Traffic Management Plan approved by Auckland Transport.

Post-concert evaluation

55. Within two weeks of the first concert being held under this consent, the consent holder shall invite all households within the vicinity of Eden Park to provide feedback on the effectiveness of the management measures implemented in accordance with the OMPC.
56. Subsequent feedback shall be sought, in accordance with Condition 55, at least annually where a concert has been held in the preceding 12-months for the duration of this consent.
57. The feedback provided, alongside data gathered from the noise monitoring and traffic management plan, hotline/ complaints process and the Community Liaison Officer, shall 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 shall be provided to all households invited to provide feedback. The minutes shall 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.
58. A summary of the feedback and minutes of the CLG meeting required by Condition 57(a), including the adoption or otherwise of any adaptive management measure, shall be provided to the Council's Compliance Monitoring Officer within ten working days of the CLG meeting.

Review condition

59. Under s128 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 6 concerts, and then after every 6 subsequent concerts following commencement of 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, crowd behaviour (both within and outside of the Stadium).

Decision on notification of an application to change conditions of a resource consent under section 127 of the Resource Management Act 1991



Application number(s): LUC60351212-A
Applicant: Eden Park Trust
Original consent number(s): LUC60351212
Site address: 42 Reimers Avenue, Kingsland
Legal description: Pt Allot 137 Sec 10 Suburbs of Auckland, DP 28687, Lots 2, 2, 6, 17 and 18 DP 3841, Part Lots 7, 12, 13 and 16 DP 3841, Lots 1 and 2 DP 83356, Lot 1 DP 45553 & Lot 3-4 DP 46401, Lots 1 and 2 DP 46401, Lots 19, 20 and 21 DP 4194, Part Lot 140-142 DP 3513, Part Lot 142-143 DP 3513, Part Lot 143 DP 3513, Part Lot 143 DP 3513, Part Lot 56 DP 4194, Lots 57, 58, 59 and 60 DP 4194, Part Lot 141 DP 3513, Part Lot 140 DP 3513, Lots 123, 124, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, and 139 DP 3513, Part Lot 125 DP 3513, Lot 126 and Part Lot 125 DP 3513, Lot 1 DP 132323

Proposal:

To change Conditions 1, 5 and 14 of resource consent LUC60351212 to use a temporary acoustic barrier for two concerts at Eden Park to be held between 23 – 25 April 2021 (ANZAC weekend). The application advises that it has not been possible to construct the permanent acoustic barrier as the finalisation of construction contracts were not possible until the consent was beyond challenge. It also advises that, due to the impact of COVID-19, there is uncertainty with the procurement and shipping of the steel required for the barrier, which has resulted in delays to the proposed construction timeline (with completion now expected by November/December 2021).

This discretionary activity under s127 of the Resource Management Act 1991 (RMA) is for changes to conditions of consent LUC60351212 involving the following amendments (with strikethrough for deletion, underline for insertions):

Activity to be undertaken in accordance with the application material

1. The activity shall be carried out in accordance with all information submitted with the application, detailed below, and all referenced by the Council as LUC60351212, except as otherwise modified by the conditions of consent:
 - (a) Application form signed by Mark Vinall on behalf of The Eden Park Trust;

- (b) Assessment of Environmental Effects by Mark Vinall of Tattico Limited, dated February 2020 and Section 127 application and Assessment of Environmental Effects prepared by Mark Vinall of Tattico Limited, dated March 2021; and
- (c) The following reports and additional information:
- Operating Management Plan – Concerts, dated December 2019;
 - Transport Assessment, prepared by Traffic Planning Consultants Limited, dated February 2020, Ref: 19240, Issue F;
 - Noise Assessment, prepared by Marshall Day Acoustic Limited, dated 3 February 2020, Rev: R03;
 - Lighting Assessment, prepared by LDP Limited, dated 14 February 2020;
 - Section 92 response, prepared by Tattico, dated 14 February 2020;
 - Section 92 response, prepared by Traffic Planning Consultants, dated 30 June 2020;
 - Section 92 response, prepared by Marshall Day Acoustics Limited, dated 3 July 2020; ~~and~~
 - Section 92 response, prepared by Marshall Day Acoustics Limited, dated 31 August 2020; ~~and~~
 - Noise Assessment, prepared by Marshall Day Acoustics Limited, dated 8 March 2021;
 - Structural letter, prepared by Cook Costello, dated 8 March 2021;
 - Plan prepared by Jasmax, Eden Park – Eastern Stand Acoustic Barrier, Drawing Number SK-006; and
 - Jasmax perspectives, corner Bellwood Avenue, corner Reimers Avenue, Cricket Avenue and mid-Cricket Avenue looking south.

Acoustic barrier

5. The East Stand shall be completed with the installation of an integrated acoustic barrier and digital screen prior to the first concert being held. This shall be in accordance with the design contained in the Certificate of Compliance (CER70016331) issued by Auckland Council on 13 December 2019, provided that minor changes can be made to that design where the Consent Holder obtains certification from a suitably qualified independent person that any such design changes do not increase the noise (rating) level as measured within the boundary of any residentially zoned site not owned by the Consent Holder, except that, for the concert performances held between 23 – 25 April 2021, a temporary acoustic barrier shall be installed for the duration of the concert performances. The temporary acoustic barrier shall be in accordance with the plans prepared by Jasmax, Eden Park – Eastern Stand Acoustic Barrier, Drawing Number SK-006 and the specifications in the acoustic assessment by Marshall Day Acoustics dated 8 March 2021.

Concert stage

14. The concert stage shall be on the Number 1 field. There are no other limitations on stage configurations, except for the concerts held between 23 - 25 April 2021 (ANZAC weekend), which will utilise an East stage (facing west) configuration.

Decision

I have read the application, supporting documents, and the report and recommendations on the application for a variation of the conditions applying to consent LUC60351212. I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on notification.

Public notification

Under s95A of the RMA, this application shall proceed without public notification because:

1. Under step 1, public notification is not mandatory as:
 - a. the applicant has not requested it;
 - b. there are no outstanding or refused requests for further information; and
 - c. the application does not involve any exchange of recreation reserve land under s15AA of the Reserves Act 1977.
2. Under step 2, public notification is not precluded as:
 - a. there is no plan rule or regulation in an NES that specifically precludes public notification of the application; and
 - b. the application is for activities other than those specified in s95A(5)(b).
3. Under step 3, public notification is not required as:
 - a. the application is for activities that are not subject to a plan rule or regulation in an NES that specifically requires it; and
 - b. the adverse effects on the environment as a result of the changes will be less than minor because:
 - The temporary acoustic barrier is of similar proportions to the permanent acoustic barrier, and the Council's acoustic specialist is satisfied that it will provide the same level of acoustic performance. The ability of the applicant to comply with the consented noise limits (which are not changing), particularly at residential receivers to the east, will not be compromised.
 - Construction and de-construction of the temporary acoustic barrier will be completed in a short period of time and in compliance with the relevant conditions of consent controlling construction activities that will remain unchanged. The additional vehicle movements the additional heavy vehicle movements are unlikely to compromise the

safe and efficient functioning of the road network, including the pedestrian environment.

- While the temporary acoustic barrier will be noticeable from the adjacent streets, it is a temporary structure that will be in place for a short period of time. It will be viewed in the context of the significant mass and form of Eden Park's existing stands and structures. The reduction to the existing levels of visual amenity enjoyed from the surrounding environment will be less than minor.
4. Under step 4, I am required to determine whether there are any special circumstances that warrant the application being publicly notified. Special circumstances are generally considered to arise where an application involves aspects that are:
- exceptional, abnormal or unusual, but something less than extraordinary or unique;
 - outside of the common run of applications of this nature; or
 - circumstances which make notification desirable, notwithstanding the conclusion that the adverse effects will be no more than minor.

Such matters have been considered in the notification report prepared by the Council's Principal Specialist – Planning, and I agree with his conclusion that there is nothing exceptional, abnormal or unusual about the application to suggest that public notification should occur. It is recognised that as a major recreational facility, there is general public interest in Eden Park and its activities. In addition, the original application attracted a large number of submissions (3166 in total), including submissions relating to the East stand acoustic barrier¹. However, this application to change conditions is for the purposes of two concerts only (over ANZAC weekend, 23 – 25 April 2021), where a temporary acoustic barrier will be put in place instead of a permanent acoustic barrier. The Council's consultant acoustic specialist has confirmed the conclusion of the applicant's assessment that the temporary acoustic barrier will provide the same level of acoustic performance as the permanent acoustic barrier. The noise limits and noise monitoring regime for the concerts will not change.

I am therefore satisfied that public notification would not elicit any new or further information that would assist the decision-making process, and it is my finding that there is nothing exceptional or unusual about the application to suggest that I should exercise my discretion to require public notification.

Limited notification

Under s95B of the RMA, this application shall proceed without limited notification because:

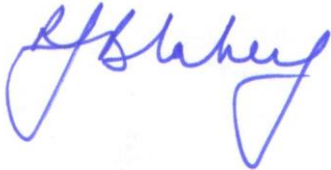
1. Under step 1, limited notification is not mandatory as:
 - a. there are no protected customary rights groups or customary marine title groups affected by this proposal, and

¹ Submission no's 7399, 7400, 7534, 7572, 7743, 8074, 8110 and 8752

- b. no person to whom a statutory acknowledgement is made is adversely affected by this proposal.
2. Under step 2, limited notification is not precluded as:
 - a. there is no plan rule or regulation in an NES that specifically precludes limited notification of the application, and
 - b. the application is for an activity other than that specified at s95B(6)(b).
 3. Under step 3, limited notification is not required as:
 - a. this application is not for a boundary activity; and
 - b. there are no persons (including persons owning and occupying adjacent land and persons who made a submission on the original application) who are adversely affected by the changes because:
 - The proposal does not seek to permanently remove the requirement for permanent acoustic barrier, rather it seeks to utilise a temporary acoustic barrier for two concerts (over ANZAC weekend, 23 – 25 April 2021) where construction of the permanent acoustic barrier has not been completed.
 - The Council's consultant acoustic specialist is satisfied that the temporary acoustic barrier will achieve the same level of acoustic performance as the permanent acoustic barrier. The east stage configuration for the ANZAC weekend concerts provides an additional level of assurance that the consented noise limits will be complied with for residential receivers to the east. The applicant has also accepted the recommendation of the Council's acoustic specialist that post-construction certification is necessary and appropriate and a condition to this effect has been proffered by the applicant.
 - Construction and de-construction of the temporary acoustic barrier will be completed in a short period of time and in compliance with the conditions of consent controlling construction activities that will remain unchanged.
 - When the temporary acoustic barrier is viewed by persons from properties with a line of sight to the East stand (particularly those located on the eastern side of Cricket Avenue), this will be in the context of the existing Eden Park stands and structures, including the North, South and East stands and the digital screen. Due to the temporary and short-term use of the barrier, and its similar proportions to the permanent acoustic barrier (for which the applicant holds a certificate of compliance) the reduction to the level of visual amenity enjoyed by persons at these properties will be less than minor.
 - Access for persons to and from properties adjacent to the stadium will not be compromised by the changes because of the low number of additional heavy vehicle movements and because unloading and loading will take place within the stadium and off the public roads.

4. Under step 4, there are no special circumstances that warrant the application being limited notified to any persons because there is nothing exceptional, abnormal or unusual about the application to suggest that notification to any other persons should occur.

Accordingly, this application shall proceed on a **NON-NOTIFIED** basis.



Richard Blakely

Duty Commissioner

15 March 2021

Decision on an application to change conditions of a resource consent under section 127 of the Resource Management Act 1991



Application number(s): LUC60351212-A
Applicant: Eden Park Trust
Original consent number(s): LUC60351212
Site address: 42 Reimers Avenue, Kingsland
Legal description: Pt Allot 137 Sec 10 Suburbs of Auckland, DP 28687, Lots 2, 2, 6, 17 and 18 DP 3841, Part Lots 7, 12, 13 and 16 DP 3841, Lots 1 and 2 DP 83356, Lot 1 DP 45553 & Lot 3-4 DP 46401, Lots 1 and 2 DP 46401, Lots 19, 20 and 21 DP 4194, Part Lot 140-142 DP 3513, Part Lot 142-143 DP 3513, Part Lot 143 DP 3513, Part Lot 143 DP 3513, Part Lot 56 DP 4194, Lots 57, 58, 59 and 60 DP 4194, Part Lot 141 DP 3513, Part Lot 140 DP 3513, Lots 123, 124, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, and 139 DP 3513, Part Lot 125 DP 3513, Lot 126 and Part Lot 125 DP 3513, Lot 1 DP 132323

Proposal:

To change Conditions 1, 5 and 14 of resource consent LUC60351212 to use a temporary acoustic barrier for two concerts at Eden Park to be held between 23 – 25 April 2021 (ANZAC weekend).

This discretionary activity under s127 of the Resource Management Act 1991 (RMA) is for changes to conditions of consent LUC60351212 involving the following amendments (with strikethrough for deletion, underline for insertions):

Activity to be undertaken in accordance with the application material

1. The activity shall be carried out in accordance with all information submitted with the application, detailed below, and all referenced by the Council as LUC60351212, except as otherwise modified by the conditions of consent:
 - (a) Application form signed by Mark Vinall on behalf of The Eden Park Trust;
 - (b) Assessment of Environmental Effects by Mark Vinall of Tattico Limited, dated February 2020 and Section 127 application and Assessment of Effects prepared by Mark Vinall of Tattico Limited, dated March 2021; and
 - (c) The following reports and additional information:
 - Operating Management Plan – Concerts, dated December 2019;

- Transport Assessment, prepared by Traffic Planning Consultants Limited, dated February 2020, Ref: 19240, Issue F;
- Noise Assessment, prepared by Marshall Day Acoustic Limited, dated 3 February 2020, Rev: R03;
- Lighting Assessment, prepared by LDP Limited, dated 14 February 2020;
- Section 92 response, prepared by Tattico, dated 14 February 2020;
- Section 92 response, prepared by Traffic Planning Consultants, dated 30 June 2020;
- Section 92 response, prepared by Marshall Day Acoustics Limited, dated 3 July 2020; and
- Section 92 response, prepared by Marshall Day Acoustics Limited, dated 31 August 2020;
- Noise Assessment, prepared by Marshall Day Acoustics Limited, dated 8 March 2021;
- Structural letter, prepared by Cook Costello, dated 8 March 2021;
- Plan prepared by Jasmax, Eden Park – Eastern Stand Acoustic Barrier, Drawing Number SK-006; and
- Jasmax perspectives, corner Bellwood Avenue, corner Reimers Avenue, Cricket Avenue and mid-Cricket Avenue looking south.

Acoustic barrier

5. The East Stand shall be completed with the installation of an integrated acoustic barrier and digital screen prior to the first concert being held. This shall be in accordance with the design contained in the Certificate of Compliance (CER70016331) issued by Auckland Council on 13 December 2019, provided that minor changes can be made to that design where the Consent Holder obtains certification from a suitably qualified independent person that any such design changes do not increase the noise (rating) level as measured within the boundary of any residentially zoned site not owned by the Consent Holder, except that, for the concert performances held between 23 – 25 April 2021, a temporary acoustic barrier shall be installed for the duration of the concert performances. The temporary acoustic barrier shall be in accordance with the plans prepared by Jasmax, Eden Park – Eastern Stand Acoustic Barrier, Drawing Number SK-006 and the specifications in the acoustic assessment by Marshall Day Acoustics dated 8 March 2021.

Concert stage

14. The concert stage shall be on the Number 1 field. There are no other limitations onstage configurations, except for the concerts held between 23 - 25 April 2021 (ANZAC weekend), which will utilise an East stage (facing west) configuration.

Decision

I have read the application, supporting documents, and the report and recommendations on the application for variation. I am satisfied that I have sufficient information to consider the matters required by the Resource Management Act 1991 (RMA) and make a decision under delegated authority on the application.

Under ss 104, 104B, 127 and Part 2 of the RMA, this application to change conditions of resource consent LUC60351212 is **GRANTED**.

Reasons

The reasons for this decision are:

1. The proposal is appropriately considered under s127 as the changes will not result in a fundamentally different activity or materially different effects.
2. In accordance with an assessment under s104(1)(a)-(ab) and s127(3) of the RMA, the actual and potential effects of proposal will be acceptable as:
 - a. The temporary acoustic barrier is for two ANZAC weekend concerts only, and so does not remove the requirement to construct a permanent acoustic barrier (for which the applicant holds a certificate of compliance) prior to any future concerts beyond ANZAC weekend.
 - b. The temporary acoustic barrier is of similar proportions to the permanent acoustic barrier, and the Council acoustic specialist is satisfied that it will provide the same level of acoustic performance. The ability of the applicant to comply with the consented noise limits (which are not changing), particularly at residential receivers to the east, will not be compromised. The ANZAC weekend concerts will utilise an East stage (west-facing) configuration which provides an additional level of assurance that the consented noise limits will be complied with at these receiver locations.
 - c. Construction and de-construction of the temporary acoustic barrier will be completed in a short period of time and in compliance with the relevant conditions of consent controlling construction activities that will remain unchanged. The additional vehicle movements the additional heavy vehicle movements are unlikely to compromise the safe and efficient functioning of the road network, including the pedestrian environment and access to properties.
 - d. The temporary barrier acoustic barrier will be a short-term visual element in this environment. While the temporary acoustic barrier will be noticeable from the adjacent streets and properties to the east due to its lack of visual integration, it is of similar proportions to the permanent acoustic barrier (for which the applicant holds a certificate of compliance) and it will be viewed in the context of the significant mass and form of Eden Park's existing stands and structures. The amenity values of the surrounding area will generally be retained.

3. In terms of positive effects, the supports proposal financial position of the applicant and the economic wellbeing of local hospitality providers, particularly where other major sporting events at the venue have recently been cancelled.
4. In accordance with an assessment under s104(1)(b) and s127(3) of the RMA, the proposal is consistent with the relevant statutory documents. In particular, the proposal is consistent with the following objectives and policies of the AUP:
 - I310 Eden Park Precinct – Objective I310.2 (3) and Policies I310.3 (3) and (4);
 - H25 Major Recreation Facility Zone – Objective (2) and Policies (3) and (4); and
 - E25 Noise and Vibration – Objectives (1) and (2) and Policies (2) – (5).

The general theme of both the Eden Park Precinct and the Major Recreation Facility zone objectives and policies are that use of major recreation facilities is to be enabled where adverse effects are mitigated and managed.

The proposal ensures that the adverse effects of concerts will continue to be adequately mitigated and managed by the use of a temporary acoustic barrier for the ANZAC weekend concerts (23 – 25 April 2021), which the Council’s acoustic specialist is satisfied will achieve the same level of acoustic performance as the permanent acoustic barrier. The temporary acoustic barrier will be short-term visual element that is seen in the context of Eden Park’s existing stands and structures, and can be constructed and de-constructed in compliance with the relevant conditions of consent controlling construction activities that will remain unchanged.

5. In accordance with an assessment under s104(1)(c) and s127(3) of the RMA, the proposal supports the applicant in achieving its requirement under Eden Park Trust Act and the Trust Deed.
6. In the context of this application, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.
7. Overall, the proposal is acceptable and appropriate in the context of the relevant plan provisions.

Conditions

Under ss 108 and 108AA of the RMA, this decision is subject to the following additional condition:

Certification of the Temporary Acoustic Barrier

- 5A. No less than two days prior to the concert performances held between 23 – 25 April 2021, the consent holder shall provide certification by a suitably qualified acoustic expert that the temporary acoustic barrier has been constructed in a manner that:
- (a) has minimised gaps as far as practicable, including for seismic purposes; and
 - (b) will achieve the same level of acoustic performance as the permanent acoustic barrier design as detailed in Certificate of Compliance CER70016331.

Advice notes

1. *A copy of the consolidated set of conditions of consent as amended is included as Attachment 1 to this decision.*
2. *The consent holder is reminded that the decision on this s127 application does not affect the lapse period for resource consent LUC60351212.*
3. *This decision is to be read in conjunction with any other relevant approved resource consent(s) and does not negate the consent holder's requirement to continue to comply with the conditions of any previously granted resource consent(s) that have been implemented.*



Richard Blakey

Duty Commissioner

15 March 2021

Attachment 1: Consolidated consent conditions as amended

Activity to be undertaken in accordance with the application material

1. The activity shall be carried out in accordance with all information submitted with the application, detailed below, and all referenced by the Council as LUC60351212, except as otherwise modified by the conditions of consent:
 - a. Application form signed by Mark Vinall on behalf of The Eden Park Trust;
 - b. Assessment of Environmental Effects by Mark Vinall of Tattico Limited, dated February 2020 and Section 127 application and Assessment of Effects prepared by Mark Vinall of Tattico Limited, dated March 2021; and
 - c. The following reports and additional information:
 - Operating Management Plan – Concerts, dated December 2019;
 - Transport Assessment, prepared by Traffic Planning Consultants Limited, dated February 2020, Ref: 19240, Issue F;
 - Noise Assessment, prepared by Marshall Day Acoustic Limited, dated 3 February 2020, Rev: R03;
 - Lighting Assessment, prepared by LDP Limited, dated 14 February 2020;
 - Section 92 response, prepared by Tattico, dated 14 February 2020;
 - Section 92 response, prepared by Traffic Planning Consultants, dated 30 June 2020;
 - Section 92 response, prepared by Marshall Day Acoustics Limited, dated 3 July 2020;
 - Section 92 response, prepared by Marshall Day Acoustics Limited, dated 31 August 2020;
 - Noise Assessment, prepared by Marshall Day Acoustics Limited, dated 8 March 2021;
 - Structural letter, prepared by Cook Costello, dated 8 March 2021;
 - Plan prepared by Jasmax, Eden Park – Eastern Stand Acoustic Barrier, Drawing Number SK-006; and
 - Jasmax perspectives, corner Bellwood Avenue, corner Reimers Avenue, Cricket Avenue and mid-Cricket Avenue looking south.

Lapse of Consent

2. Pursuant to s125 of the RMA, this consent to hold up to six concerts in any 12-month period shall lapse 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.

Monitoring fee

3. The consent holder shall pay the Council an initial consent compliance monitoring charge of \$1,015 (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

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

Acoustic barrier

5. The East Stand shall be completed with the installation of an integrated acoustic barrier and digital screen prior to the first concert being held. This shall be in accordance with the design contained in the Certificate of Compliance (CER70016331) issued by Auckland Council on 13 December 2019, provided that minor changes can be made to that design where the Consent Holder obtains certification from a suitably qualified independent person that any such design changes do not increase the noise (rating) level as measured within the boundary of any residentially zoned site not owned by the Consent Holder, except that, for the concert performances held between 23 – 25 April 2021, a temporary acoustic barrier shall be installed for the duration of the concert performances. The temporary acoustic barrier shall be in accordance with the plans prepared by Jasmax, Eden Park – Eastern Stand Acoustic Barrier, Drawing Number SK-006 and the specifications in the acoustic assessment by Marshall Day Acoustics dated 8 March 2021.

Certification of the Temporary Acoustic Barrier

- 5A. No less than two days prior to the concert performances held between 23 – 25 April 2021, the consent holder shall provide certification from a suitably qualified acoustic expert that the temporary acoustic barrier has been constructed in a manner that:
- (a) has minimised gaps as far as practicable, including for seismic purposes; and
 - (b) will achieve the same level of acoustic performance as the permanent acoustic barrier design as detailed in Certificate of Compliance CER70016331.

Number and frequency of Concert Events

- 6. No more than six concert events may be held in any 12-month period.
- 7. No more than four concerts may be held in any four-week period.
- 8. There shall be at least one weekend (inclusive of Friday night) in every 35-day period that is free of any concert or organised sports and recreation undertaken during the night-time on the number 1 field.

Advice note:

For the purposes of condition 8 a concert event includes the pack in and packout 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. Concerts may take place on Monday to Saturday (inclusive) and any Sunday that precedes a Public Holiday.

Concert on a weekday (other than a public holiday)

- 10. Any concert held on a weekday (other than a public holiday) is restricted as follows:
 - (a) The gates to the number 1 field shall not open before 5:00pm;
 - (b) The concert shall not start before 6:30pm for supporting acts and 7:30pm for the main act;
 - (c) The concert shall finish no later than 10:30pm;
 - (d) The total duration of the concert, being time between the commencement of the first (or single) performance/act and the conclusion of the last (or single) performance/act, shall not exceed four (4) hours; and
 - (e) The crowd size shall not exceed 50,000 persons.

Concert on a Saturday or a Sunday preceding a public holiday

- 11. Any concert held on a Saturday or a Sunday preceding a public holiday is restricted as follows:

- (a) The gates to the number 1 field shall not open before 8:30am;
- (b) The concert shall not start before 10:00am;
- (c) The concert shall finish no later than 10:30pm;
- (d) The total duration of the concert, 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 shall not exceed 60,000 persons.

Concert on a public holiday

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

Multiple Concerts

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

Advice note:

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

Concert stage

14. The concert stage shall be on the Number 1 field. There are no other limitations on stage configurations, except for the concerts held between 23 - 25 April 2021 (ANZAC weekend), which will utilise an East stage (facing west) configuration.

Testing and balancing

15. Testing and balancing of all sound systems involving PA and/or vocal checks and/or rehearsals by performers for a concert shall:
- (a) not cumulatively exceed 3 hours;
 - (b) not commence before 5pm on any weekday (other than a public holiday);
 - (c) not commence before 10am on any Saturday, Sunday or public holiday;
 - (d) be completed by 7pm; and
 - (e) comply with the noise levels in Condition 17.

16. Where testing and balancing of sound systems involving PA and/or vocal checks and/or rehearsals by performers cannot be practicably undertaken after 5pm on any week day, this may be undertaken between 10am and 5pm provided that:
- (a) the consent holder informs the Council and any care centre and education facilities in the vicinity of Eden Park of the start time for any such testing and balancing, no less than 24 hours before it commences; and
 - (b) it does not cumulatively exceed 90 minutes; and
 - (c) complies with the noise limit specified in Condition 17.

Advice note:

“The vicinity of Eden Park” is defined for the purposes of this consent as those properties bound by New North Road, Onslow Road, Dominion Road, Paice Avenue/Kenneth Avenue/Leslie Avenue and Morningside Drive, and any other property located adjacent to a TMP restriction.

Noise limits

17. The noise level from use of sound systems associated with concerts, sound checks and the balancing of sound systems and any pyrotechnics displays that form part of the concert performance shall not cumulatively exceed 75 dB LAeq(t) and 80 dB LAeq(10min) when measured within the boundary of any residentially-zoned site not owned by the Eden Park Trust.
18. Pack-in and pack-out activities occurring between the hours of 10.30pm and 8.00am, shall comply with noise limits of 40dB LAeq and 75dB LAFmax. 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.

Advice note:

Pack-in and pack-out includes 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.

20. Professional fireworks displays that include an air-burst where the detonation or burst occurs in an airborne situation shall be excluded from any assessment of compliance with the noise limits specified in Condition 17, and shall instead be in compliance with Standard I310.6.13 of the AUP. Any such professional fireworks display associated with a concert must conclude by 10:30pm.
21. The noise level from all other activities (not covered by Conditions 17 to 20), including pack-in and pack-out activities, shall comply with the noise limits contained in the Eden Park Precinct Noise Standards in I310.6.1.1.
22. Noise levels shall 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 LAeq(t) is specified, ‘t’ is:

- the total duration amplified sound generated during sound checks and balancing of sound systems where gaps of no amplified sound of up to 15 minutes are included in the measurement; or
 - the total duration of live or pre-recorded amplified sound and pyrotechnic displays (that are not 'fireworks' subject to standard I310.6.13) generated during the concert event where gaps of no amplified sound of up to 15 minutes are included in the measurement.
- (b) for the duration of 't' as applied in Condition 17, there shall be no adjustment for special audible character (in accordance with section 6.3 of NZS6802:2008) for amplified music or amplified voice and no adjustment for duration (in accordance with section 6.4 of NZS6802:2008) for amplified music or amplified voice.

23. Crowd noise shall be excluded from any assessment of compliance with the noise limits specified in Condition 17.

Noise Monitoring

24. The consent holder shall engage a suitably qualified and experienced acoustic expert to carry out noise monitoring of every concert, except as provided by Condition 26 below. The objective of the monitoring shall be to accurately determine whether or not compliance with the noise limits in Condition 17 is achieved within the boundary of residentially zoned sites not owned by the Eden Park Trust that are most exposed to the noise from the concert, and to provide feedback to the concert Front of House (FoH) team / mixing desk in real time to ensure that compliance is achieved.

The noise monitoring shall involve:

- (a) Noise level measurements at the boundary of properties in the residential zone that are the most exposed to noise from the concert during sound checks and during the main concert. The measurement locations shall be varied initially or as necessary to determine the most exposed property to continue measurements from for the remainder of the sound check and concert.
- (b) The use of equipment and methods that comply with the requirements of NZS6801:2008 and NZS6802:2008 and the conditions of this consent where they vary the requirements of either standard.
- (c) There shall be no adjustments for special audible character or meteorological effects.
- (d) The requirement for the person undertaking noise monitoring outside the venue to communicate directly with a nominated person at FoH / mixing desk inside the venue who has the authority to reduce noise levels at source if necessary, on the advice of the noise expert conducting the monitoring to ensure that compliance with the noise limits in Condition 17 is achieved at all times.
- (e) Noise level measurements shall be conducted in contiguous 10 minute samples to determine the $L_{Aeq(10min)}$ for each 10 minute period, and the $L_{Aeq(t)}$ value shall 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 17.

25. The results of all noise monitoring shall 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 one week of the concert occurring. The report shall detail the results of all $L_{Aeq(10min)}$ and $L_{Aeq(t)}$ measurements, including locations, meteorological conditions and all adjustments made for crowd noise or any extraneous noise sources. The report shall 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.
26. Following the monitoring of at least five concerts in accordance with Conditions 24- 25, the Council may waive the requirement to monitor any individual concert where the consent holder can demonstrate to the Council's satisfaction in advance, in writing, and at least 15 working days prior to the concert, that the particular size, character or nature of an individual concert means that it is likely to comply with the relevant noise limits in the precinct standards and in Condition 17 with a high degree of certainty.

Community Liaison Group

27. 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

28. No less than one month prior to the first concert held in accordance with this consent, the consent holder shall prepare an Operating Management Plan – Concerts (OMPC) that combines a Community Consultation and Communications Management Plan, Event Management Plan, Pre and Post Event Management Plan and Transport and Traffic Management Plans (that vary depending on anticipated crowd size for an event and authorised by Auckland Transport) and submit it to the Council for certification. The OMPC shall be in accordance with the Draft OMPC dated December 2019 (referred to in Condition 1) and include any relevant requirements of the conditions of this consent.

The objective of the OMPC is to provide for the overall management of the effects of the concerts in an integrated document that specifies internal and external processes and procedures designed to:

- (a) provide a safe and compliant environment within the stadium; and
 - (b) mitigate, as far as practicable, the negative effects that concerts may have on surrounding residential amenity.
29. The consent holder shall maintain, to the satisfaction of the Council, an up-to-date OMPC that combines the Community Consultation and Communications Management Plan, Event Management Plan, Pre and Post Event Management Plan and Transport and Traffic Management Plans (that varies depending on anticipated crowd size for an event and authorised by Auckland Transport).

30. The OMPC 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 are to be certified by the Council in writing prior to implementation of any changes that the amendments are within scope of the consent, and once implemented would result in an outcome that is similar to, or better than that described in the original plan. Where any changes are certified by the Council, these shall be reported to all households in the vicinity of Eden Park prior to the next concert.
31. All concert events must be carried out in accordance with the OMPC.

Community Consultation and Communication Management Plan

32. The Community Consultation and Communication Management Plan shall include the following information:
- (a) details of the community communication procedures and the appointed Community Liaison Officer. The Community Liaison Officer shall be identified as being the main and accessible point of contact. The Community Liaison Officer's contact details shall be listed on the Eden Park and Auckland Council websites;
 - (b) details of the membership of the Community Liaison Group (CLG);
 - (c) details of how all of the following have been invited to participate with in 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 Kingsland and Valley Road;
 - (v) the Council and relevant Council Controlled Organisations; and
 - (vi) the New Zealand Police.
 - (d) details of the responses to the request to participate within the Community Liaison Group;
 - (e) details of how the consent holder will provide all of the following to the Community Liaison Group:
 - (i) regular updates on scheduling of concerts;
 - (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; and
- (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 Community Consultation and Communication Management Plan, 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 concerts 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 shall 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 spectators and concerns over the management of concerts; and
- (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

33. The Event Management Plan shall include the following information:

- (a) procedures for ensuring the removal of litter from streets within the vicinity of Eden Park;
- (b) measures in place to support Police enforcement of details of liquor bans in the vicinity of Eden Park (such as liquor checkpoints);
- (c) Have an Alcohol Management Plan 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;
 - 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 patrons depart the precinct in a safe, efficient and orderly manner. This must include the deployment of security personnel at each stadium exit and within the surrounding streets;
- (g) portaloos to be placed in surrounding streets; and
- (h) a plan 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 the Eden Park.

Pre and Post Event Management Plan

34. The Pre and Post-Event Management Plan shall include the following information:
- (a) details of the Eden Park “hotline”, which shall be operated for the duration of pack-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;
 - (d) measures for ensuring that the relevant noise limits for sound checks are complied with; and
 - (e) measures for minimising light spill to adjacent residents from pack-in and pack-out activities and the testing/checking of concert performance lighting.

Traffic Management Plans

35. A base Traffic Management Plan (TMP) tailored to concerts shall be developed by the consent holder and be authorised by Auckland Transport. The authorised base TMP shall be provided to the Council. The base TMP shall form the basis of an event-specific TMP as required by Condition 37. The base TMP shall include measures in order 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 continue to function as far as practicable and do not experience undue congestion;
 - (c) strongly encourage patrons and staff to make use of public transport to access Eden Park by providing public transport information and making use of integrated ticketing where possible;
 - (d) maximise pedestrian safety particularly immediately before and after the concert event;

- (e) ensure that emergency vehicle access both to the ground and the surrounding neighbourhood is maintained at all times;
 - (f) provide for the parking and movement of buses and coaches, including within Eden Park;
 - (g) manage traffic flows around Eden Park so as to facilitate rapid clearing of people and vehicles from the streets in the vicinity of Eden Park after concert events; and
 - (h) ensure that procedures are in place for communicating any unplanned network disruptions with patrons and relevant event staff.
36. The TMPs shall include the details of a traffic management specialist to be engaged by either the Consent Holder or Auckland Transport, 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.
37. An event-specific TMP, that incorporates the requirements of the base TMP authorised by Auckland Transport, shall be prepared by the consent holder and authorised by Auckland Transport prior to each concert. The consent holder shall co-operate with and provide all practical and reasonable assistance to Auckland Transport with the implementation of the TMP.
38. The consent holder shall meet the costs of implementing the TMPs, unless otherwise agreed with Auckland Transport.

Equipment and Containers

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

Heavy vehicle access

40. Heavy vehicles associated with concerts shall access and egress from Sandringham Road only, using Gate Q, the bus hub or temporary gates. No heavy vehicles associated with concerts may access, park or idle on Walters Road or Reimers Avenue.
41. Heavy vehicles may only enter the site between 8:00am and 10:30pm on any day, and on the day of the concert must be parked inside the tunnel under the south stand, or down the ramp forming the entrance to the south tunnel by 10:30pm.
42. No heavy vehicles may exit the site between 10:30pm and 8:00am, except as provided for by Condition 43.
43. Where pack-out activities commence immediately following the conclusion of a concert, no more than 17 heavy vehicles may exit the site between the hours of 10:30pm and 8:00am the next day. Any such heavy vehicle movements shall be controlled to exit the site, via the western end of the South Stand and onto Sandringham Road through the gate at the northwest corner of the Eden Park site, at no less than 15 minute intervals by a marshal at the departure point under the West Stand unless approval is obtained from all residents adjoining the Gate Q driveway to alternative egress arrangements.

44. The loading/unloading of heavy vehicles between the hours of 10:30 and 8:00am shall only occur inside the stadium, inside the tunnel under the South Stand, within the OB bay and under the western concourse.

Advice note:

For the purpose of Conditions 40 - 44, 'heavy vehicles' refers to 11m long rigid trucks or larger.

45. The use of forklifts, elevated working platforms or other mobile machinery between the hours of 10.30pm and 8.00am is limited to inside the stadium, inside the tunnel under the South Stand, within the OB bay and under the western concourse.
46. No steel work (dismantling of towers, steel stage structures and scaffolding) shall be undertaken between the hours of 10:30pm and 8:00am.

Hire Agreements

47. The Consent Holder shall 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 concerts which the hirer must accept and comply with.

Helicopters

48. No helicopter may land on or take off from the site on the day or night of a concert event.

Lighting

49. All concert performance lighting must cease by 10:30pm.
50. Following the conclusion of the concert, the stadium floodlights may operate in egress mode only and must be shut off no later than 45 minutes after the conclusion of the concert.
51. Concert lighting projectors shall 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

52. 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 promoters 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 shall 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.

53. No less than one week prior to any concert, the Consent Holder shall arrange an on-site meeting to be attended by the persons listed in Condition 52.
54. The purpose of this on-site meeting shall be to ensure that all required processes and management measures for efficient running of the concert event are in place to the satisfaction of the Council.

The following information shall be made available at the pre-start meeting:

- (a) A copy of this resource consent;
- (b) A copy of the approved Operating Management Plan – Concerts; and
- (c) The relevant Traffic Management Plan approved by Auckland Transport.
- (d) Management Plan approved by Auckland Transport.

Post-concert evaluation

55. Within two weeks of the first concert being held under this consent, the consent holder shall invite all households within the vicinity of Eden Park to provide feedback on the effectiveness of the management measures implemented in accordance with the OMPC.
56. Subsequent feedback shall be sought, in accordance with Condition 55, at least annually where a concert has been held in the preceding 12-months for the duration of this consent.
57. The feedback provided, alongside data gathered from the noise monitoring and traffic management plan, hotline/ complaints process and the Community Liaison Officer, shall 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 shall be provided to all households invited to provide feedback. The minutes shall 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.
58. A summary of the feedback and minutes of the CLG meeting required by Condition 57(a), including the adoption or otherwise of any adaptive management measure, shall be provided to the Council's Compliance Monitoring Officer within ten working days of the CLG meeting.

Review condition

59. Under s128 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 6 concerts, and then after every 6 subsequent concerts following commencement of 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, crowd behaviour (both within and outside of the Stadium).

Resource Consent Notice of Works Starting

Please email this form to monitoring@aucklandcouncil.govt.nz at least **5 days** prior to **work starting** on your development or post it to the address at the bottom of the page.

Site address:				
AREA (please tick the box)	Auckland CBD <input type="checkbox"/>	Auckland Isthmus <input type="checkbox"/>	Hauraki Gulf Islands <input type="checkbox"/>	Waitakere <input type="checkbox"/>
Manukau <input type="checkbox"/>	Rodney <input type="checkbox"/>	North Shore <input type="checkbox"/>	Papakura <input type="checkbox"/>	Franklin <input type="checkbox"/>
Resource consent number:			Associated building consent:	
Expected start date of work:			Expected duration of work:	

Primary contact	Name	Mobile / Landline	Address	Email address
Owner				
Project manager				
Builder				
Earthmover				
Arborist				
Other (specify)				

Signature: Owner / Project Manager (indicate which)	Date:
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Once you have been contacted by the Monitoring Officer, all correspondence should be sent directly to them.

SAVE \$\$\$ minimise monitoring costs!

The council will review your property for start of works every three months from the date of issue of the resource consent and charge for the time spent. You can contact your Resource Consent Monitoring Officer on 09 301 0101 or via monitoring@aucklandcouncil.govt.nz to discuss a likely timetable of works before the inspection is carried out and to avoid incurring this cost.