

07 August 2023

PO Box 645 Nelson 7040
Phone: 03 546 0200
Fax: 03 546 0239

Nelson City Council
C/- Planscapes (NZ) Ltd
Po Box 99
Nelson 7040

Resource Consent Number: 225208
Contact: Rosalind Squire
Email: rossquire@gmail.com
www.nelson.govt.nz

Dear Sir/Madam

DECISION ON NOTIFIED RESOURCE CONSENT APPLICATION NO. RM225208

Pursuant to Section 114 of the Resource Management Act 1991 ("the Act"), please find enclosed a copy of the Council's decision and other documents relating to your application for resource consent referred to above.

The attached documents are as follows:

1. Resource Consent Decision, which states the nature and location of the activity and lists the consent conditions that you must comply with;
2. Report of the Nelson City Council, which explains the reasons for the Council's decision on your application and summarises the Council's proceedings in hearing your application, the matters raised during these proceedings, and the Council's finding on each of these matters.

Section 120 of the Act provides you with the right to lodge an appeal with the Environment Court in respect of this decision and/or any associated conditions. Section 121 of the Act requires that any such appeal:

1. Be made in the prescribed form;
2. Must state the reasons for the appeal, the relief sought; and
3. Be lodged with both the Environment Court (PO Box 5027 Wellington 6145; Phone (04) 918 8480) and the Council within 15 working days of receiving this letter. A copy of your appeal must also be served on all persons who made a submission on the consent application within five working days of your appeal being lodged with the Environment Court.

If you receive a copy of an appeal from another party and you wish to be involved in the appeal process (i.e. be a "party to the proceedings"), then you need to advise the Environment Court of this within 30 working days. Section 274 of the Act outlines the process to become a party to the appeal proceedings.

At this stage the Council has not calculated the final costs of processing your application. You will receive an invoice shortly regarding the final costs of processing your application.

Please note that under Section 125 of the Act, your consent will lapse in five years unless you have given effect to it before then.

Please feel free to contact me if you have any questions regarding any aspect of your consent or its conditions. My contact details are listed at the top of this letter.

Yours faithfully



P.P.

Rosalind Squire
Consultant Planner

RESOURCE CONSENT DECISION

Resource Consent number: RM225208

Pursuant to section 104 B and section 104D (with respect to the Church Steps/1903 Square/Upper Trafalgar Street Area) of the Resource Management Act 1991 ("the Act"), the Nelson City Council ("the Council") hereby **GRANTS** resource consent to:

Nelson City Council.

The activity to which this decision relates:

To allow special events on nominated public reserves and open spaces (Trafalgar Park, Trafalgar Centre, Rutherford Park, Saxton Stadium, Saxton Oval Pavilion, Tahunanui Reserve, Botanics Playing Field and Reserve, Fairfield Park and the Church Steps/1903 Square/Hardy Street/Upper Trafalgar Street area) and on limited occasions per year, where the use of electronically amplified sound, noise levels, closing times and ancillary structures breach specified rules in the Nelson Resource Management Plan.

Location details:

Address of property: Hardy Street, Nelson

Legal description: Trafalgar Park - Part Sec 239A Nelson SO 9463, Pt Sec 239A Nelson SO 112 SO 6667, Sec 242A Nelson A274, Sec 10 Block H Wakatu A274, Sec 1162 Nelson SO 6796, Pt Sec 11 and 12 Block H Wakatu A274, Pt Lot 3 DP;

Rutherford Park and Trafalgar Centre - Pt Sec 1126 Nelson SO 1131, Pt Sec 1178 Nelson SO 2207, Pt Sec 1167 SO 2207, Pt Lot 3 DP 11014, Pt Sec 148MR Nelson SO 7620, Pt Sec 148MR Nelson DP 1473, Sec 1168 Nelson SO 7187, Pt Sec 1178 Nelson SO 7733, Part Road, Part Maitai River;

Saxton Field and Stadium, Saxton Oval Pavilion - Pt Sec 76 Waimea East DP 3154, Pt Sec 76 Waimea West SO 1210 SO 9878, Pt Sec 75 Waimea East SO 1210 SO 9878, Pt Sec 75 Waimea East DP 3154, Lot 2 DP 3926, Pt Lot 2553;

Tahunanui Reserve - Lot 1 DP 7075, Lot 6 DP 7075, Lot 7 DP 7075, Pt Sec 85 Suburban South, Lot 4 DP;

Botanics Playing Field and Reserve - Section 1219 Nelson SO 9331, Lot 1 DP 7425 Pt Lot 1 DP 8194, Section 1219 Nelson SO 9931, Lot 1 DP 12660 Sec 367A Nelson A296, Sec 367 MR Nelson DP 1425, Pt Lot 69 DP 2806, Pt Sec 370 Nelson SO112;

Fairfield Park - Section D City of Nelson SO112;

Church Steps/1903 Square/Upper Trafalgar Street Area - Pt Sec 1179 Nelson DP 1112, Road Reserve, Pt Lot 2 DP 15732

Expiry: This consent is granted for an unlimited duration.

CONDITIONS

Pursuant to Section 108 of the Act, this consent is issued subject to the following conditions:

1. The activity shall be carried out in general accordance with the application lodged with Council on 3 August 2022, further information received on 20 October 2022 and the following conditions of consent.

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

2. The consent holder shall advise the Council's Monitoring Officer in writing, at least 5 working days prior to works commencing on site, so that monitoring of the conditions of this consent can be undertaken. Please email regulatory@ncc.govt.nz and advise the consent number, RM225208.

Note: Failure to notify the Council as stated in the above condition may result in enforcement action.

Note: A monitoring charge of \$197 has been included in your invoice, as conditions of consent requiring monitoring have been imposed. This charge covers the costs involved in the first hour of monitoring compliance with the consent conditions. Where additional monitoring costs are required to determine that conditions have been met, these will be charged as provided in the Council's Fees and Charges Schedule.

3. For the purposes of this consent, an 'event' is defined as any activity involving electrically amplified sound undertaken in accordance with this consent. The definition of event shall include sound checks, even where sound checks occur on the day prior to the event itself, provided any such sound checks take place cumulatively for no longer than 3 hours between the hours of 10am-5pm. Sound checks shall be undertaken for the sole purpose of preparing for an event authorised by this consent and shall comply with noise limits set out in this consent for each event.

Note: excluding sound checks, an event is defined as being held on a single day. Where an event e.g. a music festival, occurs over 2 days this will count as 2 total events being held. For clarity holding a sound check on the day prior to an event will not count as holding 2 total events, but as 1 event only.

4. The Consent Holder shall ensure that at each of the locations listed in Table 1 events shall only be conducted under this consent if:
 - a) the number of events does not exceed the stated number of events per year at each location;
 - b) all sound from events on a site (excluding sound from spectators) complies with the stated noise limit within any residentially zoned site, and in the case of Saxton Pavilion at the notional boundary of any rural dwelling, when measured and assessed in accordance with NZS 6801:2008 Acoustics – Measurement of Environmental Sound and NZS 6802:2008 Acoustics – Environmental Noise, except that the duration adjustment or correction for special audible characteristics provided for in sections 6.3 and 6.4 of NZS6802:2008 shall not be applied;
 - c) events and electrically amplified sound only occur between the times stated on the days stated;

- d) the event is operated in accordance with a Site Noise Management Plan (SNMP) or Event Noise Management Plan (ENMP) as specified;
- e) Authorised events operating simultaneously on Trafalgar Park and Rutherford Park beyond 7pm shall not take place more than once per calendar year;
- f) Authorised events taking place simultaneously on Trafalgar Park and Rutherford Park during daytime (prior to 7pm on any day) shall be limited to not more than 4 four hours in duration; and
- g) Events taking place on the same site after 7pm on consecutive days of the week shall occur not more than once per calendar year.

Venue	Event Days Per Year	Noise Limit	Times	Days	Proposed Management Plan
Trafalgar Park (sporting or recreational events)	7	65 dB LAeq (15min)	11am–10pm	Any	SNMP
Trafalgar Park (music and cultural performances)	2	75 dB LAeq (15min)	2pm–10pm	Any	SNMP
	1	75 dB LAeq (15min)	5pm–11pm	Friday Saturday	ENMP
Trafalgar Centre	4	50 dB LAeq (15min)	5pm–11pm	Any	SNMP
Rutherford Park	4	65 dB LAeq (15min)	2pm–10pm	Any	SNMP
	2	70 dB LAeq (15min)	5pm–11pm	Friday Saturday	SNMP
Tahunanui Reserve	4	65 dB LAeq (15min)	2pm–10pm	Any	SNMP
	2	70 dB LAeq (15min)	5pm–11.30pm	Friday Saturday	SNMP
Tahunanui Reserve (New Year's Eve)	1	70 dB LAeq (15min)	7pm–1am	Any	ENMP
Fairfield Park	3	65 dB LAeq (15min)	2pm–10pm	Any	SNMP
Church Steps /1903 Square /	5	65 dB LAeq (15min)	10am–5pm	Any	SNMP

Upper Trafalgar Street	4	60 dB LAeq (15min)	2pm–10pm	Any	SNMP
	8	65 dB LAeq (15min)	2pm–10pm	Any	SNMP
	1	65 dB LAeq (15min)	10am–11pm	Friday Saturday	SNMP
	1	65 dB LAeq (15min)	7pm–12.30am	Friday Saturday	SNMP
Church Steps /1903 Square / Upper Trafalgar Street (New Year's Eve)	1	65 dB LAeq (15min)	7pm–1am	Any	SNMP
Church Steps / 1903 Square / Hardy Street/ Upper Trafalgar Street (Masked Parade)	1	Refer Condition 6		Friday Saturday	ENMP
Botanics Playing Field and Reserve	1	70 dB LAeq (15 min)	2pm–10pm	Any	SNMP
Pavilion and Saxton Stadium (indoor events)	3	50 dB LAeq (15min)	5pm–11pm	Any	SNMP

Table 1 – Venues and event days per year

5. Sound from events after 10pm shall comply with a noise limit of 85 dB LAFmax within any residentially zoned site, or in the case of the Church Steps, 1903 Square & Upper Trafalgar Street, measured 1 metre from any external wall of any Residential Unit or Short Term Accommodation Unit in the Inner City Zone, when measured and assessed in accordance with NZS 6801:2008 Acoustics - Measurement of Environmental Sound and NZS 6802:2008 Acoustics - Environmental Noise.
6. Sound from all ancillary activities outside the times stated in Table 1 shall comply with a noise limit of 45 dB LAeq (15min) within any residentially zoned site, and in the case of Saxton Pavilion at the notional boundary of any rural dwelling, when measured and assessed in accordance with NZS 6801:2008 Acoustics - Measurement of Environmental Sound and NZS 6802:2008 Acoustics - Environmental Noise.

Specific conditions for the Masked Parade Carnival

7. The Masked Parade Carnival shall be subject to the following conditions in relation to noise limits and time of day:
 - a) The event may have three stages. In addition to the Main Stage, a Second Sound Stage shall be positioned to the West of the Hump at the Hardy St/Hope St Intersection. The Third Sound Stage shall be located at 1903 Square; and

- b) The Noise Generating Event for the Masked Parade shall comply with the following noise levels within any residentially zoned site, or 1 metre from any external wall of any Residential Unit or Short-Term Accommodation Unit in the Inner City Zone.

Location and Time	Noise Level
Main Stage - Public address during Parade from 5pm	65dB LAeq (15min) 85dB LAFmax
All Stages - Entertainment 6.30pm-10pm	65dB LAeq (15min) 85dB LAFmax
Outside these times	Daytime 53dB LAeq(15min) 75dB LAFmax Night time 43dB LAeq(15 min) 75dB LAFmax

Venue Administration Plan

8. Within three months following the granting of consent, the Consent Holder shall prepare a Venue Administration Plan (VAP) for all events and shall submit the Plan to Council's Compliance Officer for the acceptance of Council's Manager, Consents and Compliance.

The purpose of the VAP is to put in place a procedure for event proposers at the venues shown in Table 1 to engage with the Consent Holder, and for prospective events to be reviewed and approved, and records kept of events which have taken place and any learnings.

9. As a minimum, the VAP shall include:
- a) A process for determining if a specific proposed event should operate under this resource consent;
 - b) A reference table of expected sound emission levels for a typical range of events;
 - c) A schedule of sites that are subject to this consent, including each site's previous use for events, preferred locations for events within the site, anticipated size of events at each site, proximity to residentially zoned sites; and notes regarding any specific noise control issues and noise mitigation measures from previous events;
 - d) An event booking form to be used for all events including the following details and written confirmation that event proposers understand and acknowledge the manner in which the event must be conducted and are aware of their responsibilities:
 - (i) General Site Management
 - event name and location;
 - proposer name and contact details;
 - date of event;
 - start and finish times of the event;

- start and finish times of amplified sound (including sound checks);
- anticipated number of participants;
- description of the type of event;
- anticipated number of participants;
- details for traffic management and the timing of the removal of any structures that restrict recreational access to public areas and commuters in the vicinity of the site;
- security;
- litter; and
- any other related matters.

(ii) Noise Management

- details of the proposed sound system(s);
 - description of proposed use of the sound system;
 - sketch and description of proposed sound system layout in relation to residentially zoned sites and buildings housing noise sensitive activities, including the number, location, height and orientation of loudspeakers and other significant sound sources;
 - name and contact details of sound system operator;
 - name and contact details of sound system contractor;
 - sound system calibration requirements and the process for sound checks and sound system calibration;
 - name and contact details of the designated noise liaison person who will be onsite during any event and who is responsible for ensuring the noise limits are met throughout the event;
 - details of how amplified sound will be managed and what noise control measures will be carried out to reduce the noise impact;
 - details of any other potentially noisy activities that are proposed to occur on site as part of the event;
 - noise monitoring requirements; and
 - procedures for noise complaint recording, mitigation and reporting.
- e) the process for assessing compliance of each event with conditions 4-7, on the basis of the information provided in b), c) and d);
- f) the process for advising event proposers of acceptance or rejection of an event;
- g) information to be provided to proposers of accepted events, as a minimum including:
- responsibilities of the event proposer;
 - best practice advice on minimising noise emissions;
 - start and finish times of amplified sound (including sound checks);

- the noise limit;
 - noise monitoring requirements;
 - sound system calibration requirements;
 - details for access, lighting, car parking, security, litter, and other related matters;
 - complaint reporting, and reporting of any other noise control issues or noise mitigation measures to the Consent Holder at the completion of the event;
 - contact details for Nelson City Council noise control and the Consent Holder; and
 - How this information is to be provided to the Consent Holder.
- h) Procedures outlining how the Consent Holder is to store the information provided in accordance with condition 9(g);
- i) Requirements for SNMPs and ENMPs as outlined in accordance with conditions 13, 14, 18 and 19 of this consent; and
- j) Copies of all SNMPs and ENMPs.

10. The Consent Holder shall keep a log of all events held including:

- a) Event name and organiser;
- b) Event location, date and actual start and stop times;
- c) Summary of noise monitoring results and actions taken to reduce any exceedance of the noise limits; and
- d) Details of any complaints and actions taken to address the complaints.

11. The Consent Holder shall maintain the VAP and authorise events in accordance with the VAP.

12. The VAP shall be reviewed every 5 years in order to re-evaluate and review latest best practice and procedures to minimise the adverse effects of noise.

Site Noise Management Plan

13. At least 21 days prior to any event at each location that require a Site Noise Management Plan (SNMP) in Table 1, the Consent Holder shall submit a SNMP prepared by an acoustics specialist to Council's Compliance Officer for acceptance of Council's Manager, Consents and Compliance.

The purpose of the SNMP is to ensure that the event proposers understand the manner in which events shall be conducted at the site, and to ensure that those conducting events are aware of their responsibilities.

14. As a minimum a SNMP shall include:

- a) Details of the numbers of events, noise limits, hours and days of operation for the location;
- b) A description of expected activities and sound sources associated with each activity type, including sound system(s);

- c) A site plan that is prepared in accordance with best practice showing areas where loudspeakers and other significant sound sources should be located and directed to mitigate noise effects, including orientating the stage away from residential areas as far as practicable;
- d) Details of best practice noise mitigation methods (including but not limited to orientation of speakers) to be used to control noise from events to comply with noise limits at the following:
 - within any residentially zoned site,
 - in the case of Saxton Pavilion at the notional boundary of any rural dwelling; and
 - in the case of the Church Steps, 1903 Square & Upper Trafalgar Street measured 1 metre from any external wall of any Residential Unit or Short Term Accommodation Unit.
- e) A plan identifying nearby residentially zoned sites and buildings housing noise sensitive activities;
- f) Requirements for notifying the Council's Compliance Officer about the details of each event, including the noise limit, start and finish times, noise monitoring to be undertaken, contact details for the event proposers noise liaison person and the time and duration of sound checks;
- g) Requirements for contacting Council's Compliance Officer following each event to determine if any noise complaints were made, with the Consent Holder to be notified of any noise complaints received;
- h) Requirements for notifying neighbours about details of each event, including expected start and finish time, the time and duration of sound checks, contact details for the event proposers noise liaison person and the Nelson City Council after hours noise complaint telephone number;
- i) Procedures and requirements for noise monitoring and reporting compliance with the relevant noise limit;
- j) Procedures for addressing complaints; and
- k) Clear directions in plain English for those conducting events to reference during events which:
 - sets out the key noise management principles that were established during the planning of the event, to be followed during the set-up, sound checks, the event itself and pack up; and
 - includes a requirement for a record to be kept during and after the event documenting the success of the noise management plan and reporting requirements to the Consent Holder.

15. Notwithstanding condition 14, the SNMP for Tahunanui Reserve shall include a requirement to orientate speakers (excluding "fold-back" speakers) away from residentially zoned sites.

Note: "Fold-back" speakers are speakers set up on stage pointed back towards a performing band so they can hear the music they are playing.

16. The SNMP shall be reviewed every 5 years in order to re-evaluate the proximity of the sensitive receivers listed below, and to incorporate (if applicable) latest best practice and procedures to minimise the adverse effects of noise on the sensitive receivers. The sensitive receivers are:

- nearby residentially zoned sites and buildings housing noise sensitive activities;
- in the case of Saxton Pavilion surrounding rural dwellings; and
- in the case of the Church Steps, 1903 Square & Upper Trafalgar Street surrounding Residential Units and Short Term Accommodation Units.

17. A copy of the SNMP shall be submitted to the Council's Compliance Officer and a copy shall be held at the event venue and made available to Council staff as, and when required.

Event Noise Management Plan

18. At least 21 days prior to any event that requires an Event Noise Management Plan (ENMP) in Table 1, the Consent Holder shall submit an ENMP prepared by an acoustics specialist to Council's Compliance Officer for acceptance by the Manager, Consents and Compliance.

The purpose of the ENMP is to ensure that the event proposers understand the manner in which events must be conducted at the site, and to ensure that those conducting events are aware of their responsibilities.

19. As a minimum an ENMP shall include a description of how the event is to be conducted, including:

- a) The noise management details outlined in condition 9 d) provided in the event booking form;
- b) Requirements for notifying the Council's Compliance Officer about the details of each event, including the noise limit, start and finish times, noise monitoring to be undertaken, contact details for the event proposers noise liaison person and the time and duration of sound checks;
- c) Requirements for contacting Council's Compliance Officer following each event to determine if any noise complaints were made, with the Consent Holder to be notified of any noise complaints received;
- d) Requirements for notifying neighbours about details of events, to include expected start and finish times, the time and duration of sound checks, contact details for the event proposers noise liaison person and the Nelson City Council after hours noise complaint telephone number;
- e) Procedures and requirements for noise monitoring and reporting compliance with the relevant noise limit; and
- f) Clear directions in plain English for those conducting events to reference during events which:
 - sets out the key noise management principles that were established during the planning of the event, to be followed during the set-up, sound checks, the event itself and pack up; and

- includes a requirement for a record to be kept during and after the event documenting the success of the noise management plan and reporting requirements to the Consent Holder.

20. A copy of the ENMP shall be submitted to the Council's Compliance Officer and a copy shall be held at the event venue and made available to Council staff as, and when required.

Independent Monitoring and Reporting

21. Notwithstanding the noise monitoring required in accordance with conditions 9, 14 and 19, the Consent Holder shall engage a suitably qualified and experienced noise expert to undertake noise monitoring of at least one noise event (selected randomly) per annum to assess event compliance with the noise compliance limits in conditions 4 to 7 as applicable.

22. Within one month of undertaking the monitoring outlined in condition 21, the Consent Holder shall supply a Noise Monitoring Report to the Council's Compliance Officer. The Noise Monitoring Report shall include:

- (a) The results of the monitoring outlined in condition 21;
- (b) Any noise issues identified, including non-compliance with the noise limits imposed on the consent;
- (c) Actions that were taken or need to be undertaken to address any issues identified;
- (d) Other recommendations as appropriate to address noise issues generated on the event site.

Record Keeping

23. The Consent Holder shall keep a record of all noise complaints received and any noise monitoring results for each event.

Review Condition

24. The Consent Authority may, during the months of July or August of any year, review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the following purpose:

- (a) to deal with any adverse effect on the environment which may arise from the exercise of this consent, and which it is appropriate to deal with at a later stage;
- (b) to require the Consent Holder to adopt the best practicable option to remove or reduce any adverse effect on the environment;
- (c) to allow, in the event of substantiated concerns about adverse noise effects, the reduction in duration of events, total number of events, or noise limits listed in Table 1, imposition of compliance standards, monitoring regimes and monitoring frequencies and to alter these accordingly; or
- (d) to change the compliance standards imposed by conditions of this consent to standards that are consistent with any relevant Regional Plan, District Plan, National Environmental Standard, or Act of Parliament where

considered necessary by a suitably qualified expert to deal with any adverse effect on the environment.

ADVICE NOTES

1. In respect of Condition 22 'substantiated concerns' is defined as being in the joint opinion of Council's Monitoring Officer and an Appropriately Qualified Noise Professional.
2. In respect of Condition 22 it is clarified that the Consent Holder cannot seek to increase the number of events or add additional venues to Table 1 via Condition 22.
3. Conditions of this consent have been imposed pursuant to Section 108 of the Act.
4. This is not a building consent, and the Consent Holder shall meet the requirements of the Council for all Bylaws, Regulations and Acts.
5. This resource consent authorises only the activity described above. Any matters or activities not consented to by this consent or covered by the conditions above must either:
 - a) comply with all the criteria of a relevant permitted activity in the Nelson Resource Management Plan; or
 - b) be allowed by the Resource Management Act 1991; or
 - c) be authorised by a separate resource consent.
6. This consent is granted to the Consent Holder, but Section 134 of the Act states that such land use consent "attach to the land", and accordingly, may be enjoyed by any subsequent owners and occupiers of the land. Therefore, any reference to "Consent Holder" in any conditions shall mean the current owners and occupiers of the subject land. Any new owners or occupiers should therefore familiarise themselves with the conditions of this consent, as there may be conditions that are required to be complied with on an ongoing basis.
7. The Consent Holder should note that this resource consent does not override any registered interest on the property title.
8. Section 357A of the Act provides you with the right to lodge an objection with the Council in respect of this decision and/or any associated conditions. Section 357B provides a right of objection to any additional charges. Any objection must be made in writing setting out the reasons for the objection and be lodged with the Council within 15 working days of receiving this letter. The administration cost for an objection under section 357A is a fixed fee of \$390.00 (GST inclusive).
9. In addition to objection rights section 120 of the Act provides you with the right to lodge an appeal with the Environment Court in respect of this decision and/or any associated conditions. Section 121 of the Act requires that any such appeal must be made in the prescribed form, must state the reasons for the appeal, the relief sought, state any matters required by regulations and must be lodged with both the Environment Court and the Council within 15 working days of receiving this letter.

REPORT OF THE NELSON CITY COUNCIL

Description of the proposed activity

To allow special events on nominated public reserves and open spaces (Trafalgar Park, Trafalgar Centre, Rutherford Park, Saxton Stadium, Saxton Oval Pavilion, Tahunanui Reserve, Botanics Playing Field and Reserve, Fairfield Park and the Church Steps/1903 Square/Hardy Street/Upper Trafalgar Street area) and on limited occasions per year, where the use of electronically amplified sound, noise levels, closing times and ancillary structures breach specified rules in the Nelson Resource Management Plan (NRMP).

STATUTORY CONSIDERATIONS

Section 104 of the Resource Management Act (the Act) is the principal provision I need to have regard to when determining the application. I note that the Section 104 matters are subject to the purpose and principles of the Act as set out in Part II.

The relevant matters from section 104(1) have been identified in the section 42A Report (s42A Report). These are:

- (a) any actual and potential effects on the environment of allowing the activity; and
- (b) any relevant provisions of the NRMP;

I accept these are the relevant matters for me to consider under section 104(1).

Under section 104(2), when forming an opinion for the purposes of subsection 104(1)(a), I may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

Section 5.3 to 5.4 of the s42A Report identifies activities that generate noise and that are permitted in the NRMP subject to compliance with noise limits.

Section 5.5 of the s42A Report states that consideration may also be given to the effects of the activity in the context of intermittent or temporary noise generated by permitted activities that are a normal part of living in a residential zone, including traffic noise, private events and parties and noise generated by house maintenance and construction.

Ms Squire considered (paragraph 5.8) it "appropriate to take into account the permitted baseline and the existing environment in the assessment of this application because they provide the context against which this application needs to be considered – both with respect to what is permitted and is fair and reasonable to expect at these sites and venues and on the other hand [emphasis added], when considering the cumulative effects of this application in the context of permitted activities and existing consents."

I found Ms Squire's summation to be confusing with reference to the requirement of section 104(2) as it appears to split the permitted baseline off from the existing environment (whereas the permitted baseline is part of the existing environment) and uses the phrase "and on the other hand". However, I have determined that what Ms Squire was driving at is that the activities that generate noise and that are permitted by the NRMP should not be

disregarded as they are part of the existing environment. This is the approach that I have adopted for my decision.

Under section 104(3) I must not have regard to any effect on a person who has given written approval to the application. There were no written approvals provided.

I have had regard to the requirements of Section 104B, 104D, 108, and 108AA and 113 of the Act when preparing this decision.

With the exception of the addition of six new events at Rutherford Park, the Applicant seeks resource consent to renew or replace both RM125012V2 and RM155195V1 (masked parade) with a new consent in advance of their expiry dates. Section 124 of the RMA allows the consent holder to continue operating under the existing consents until the new consent is either granted or declined and all appeals are determined.

In my decision I have had regard to the value of the investment of the existing consent holder under s104(2A).

NOTIFICATION AND SUBMISSIONS

The application was publicly notified on Friday 16 December 2022. The submission period closed on Thursday 9 February 2023. Ten submissions were received by the closing date. Four parties requested to be heard. Pursuant to Section 100 of the Act, the Nelson City Council (NCC or the Council) was required to hold a hearing.

A summary of the submissions was included in Table 3 of the s42A Report and I adopt this as an accurate overview of the issues of concern to submitters.

At the hearing a submission was tabled from Jane Martin. This was not included in the s42A Report as it was not received by Ms Squire until after the s42A Report was drafted. This was because the submission was provided to the Council on a public consultation form not a resource consent application submission form. It was dated 8 February 2023. Therefore, it was received before the submission period closed.

I provided all parties present with the opportunity to comment on whether or not they were happy for the submission to be accepted. All parties were in favour of allowing the submission to be accepted. I accepted the submission. I consider this raised no natural justice issues. Ms Squire provided an overview of the issues raised by Ms Martin in her s42A Report Addendum (paragraph 1.2). I adopt this overview of the issues of concern.

HEARING

I was appointed to hear the application and a hearing was held at Trafalgar Pavilion, 30 Trafalgar Street on Wednesday 7 June 2023. The hearing commenced at 9.00am and was adjourned at 3.30 pm that day to enable the applicant to provide a written Right of Reply.

I stated at the hearing that I am familiar with the Application sites having lived in Nelson for 22 years; and therefore, I had not undertaken any site visits. However, I did walk the perimeter of Hathaway Court at the lunch adjournment to gain a better understanding of issues raised by submitters in relation to Hathaway Court.

In Attendance:

For the Applicant:	Antoinette Besier, Legal Counsel; Axel de Maupeo, Team Leader Events - NCC (on zoom); Fiona Wilson, Chief Executive - Nelson Regional Development Agency; Malcolm Hunt, Principal – Malcolm Hunt Associates; Tom McKnight, Planning and Resource Management Consultant – Planscapes NZ Ltd;
Submitters in opposition	Steve Cross, Resident – 8 Bisley Ave, Nelson; Jill Southon, Resident – 8 Bisley Ave, Nelson; Gaile Noonan, Resident - 9 Hathaway Court, Nelson;
Reporting Officers:	Rosalind Squire, Consultant Planner; Dr Jeremy Trevathan, Principal Acoustic Engineer – Acoustic Engineering Services (AES);
In attendance:	Stu Dalton, Venues and Events Manager – NCC; Rebecca Leach, Events Lead – Nelson Regional Development Agency; Dennis Tebbs, 16 Hathaway Court, Nelson. Ms Tebbs appeared in support of Ms Noonan and was a submitter but did not wish to be heard.

1. Procedural Matters

I addressed a procedural matter relating to the evidence of Ms Martin above. There were no other procedural matters to address.

2. Evidence of the Applicant

Ms Besier presented her opening legal submissions and conducted the Applicant's case. This included addressing procedural matters, introducing witness, coordinating responses to questions, and summarising evidence in response to Minute 1. She also provided the Applicant's Right of Reply and further Right of Reply relating to cumulative effects.

Mr de Maupeou's evidence described the role and responsibilities of the NCC Events Team, the background to the consent sought, and the existing environment. He discussed the Council feedback or complaints system with respect to events held on Council parks and facilities. This includes direct calls from members of the community to the designated contact person in charge of the PA during the event, and calls to Council that are recorded through the Service Request system and processed by Environmental Inspections Ltd (EIL). He discussed complaints history over a ten year period as provided in Appendix A of his evidence.

Mr De Maupeou outlined the NCC event assessment process (with reference to Appendix B of his evidence (the Amplified Sound Application Form), why Rutherford Park was included in the Application, the consent duration, and the reasons for the number of events sought.

Ms Wilson described the “purpose of the NRDA is to unlock the economic potential of Nelson Tasman to enable our people and places to thrive”. She discussed the contribution that events make to the Nelson Tasman economy and the role that the NRDA have in liaising with event operators and supporting events. The focus of her evidence was to outline the benefits that events bring to the Nelson Tasman area. This included reference to Appendix A of her evidence that provided a list of events and the estimated economic impact (\$’s) of the events. Whilst the events were not specific to the events listed in the Application, they demonstrated the significant contribution events make to the local economy.

Mr Hunt’s evidence discussed the proposal, LAeq versus LA10 noise units, his assessment of noise effects based upon a noise assessment report he prepared for the Application in August 2022¹, and proposed changes to noise management plans and the number of events. He also discussed noise generated by the Bay Dreams Event, cumulative noise effects, the submissions received and the s42A Report.

Mr Hunt also provided a response to a request for more information (dated 20 October 2022).

Mr McKnight’s evidence outlined the background to the proposal, including NRMP consenting requirements. He responded to the s42A Report noting that he generally agreed with the assessment and recommendations made in it. He provided response to specific matters raised by the s42A Report including: cumulative effects associated with 6 new events at Rutherford Park; limited consent duration; the need for a robust review condition; specificity around sound checks (with reference to the definition of event); and limits on event numbers at upper Trafalgar Street. He provided some amendments to conditions to address these concerns and responded to submissions.

Further details with respect to the evidence of the witnesses is outlined below in the principal issues in contention and the relevant statutory and plan provisions sections of my decision. I asked several questions of the witnesses in relation to their evidence. The witness responses are outlined in the remainder of this decision report as appropriate.

3. Evidence of the Submitters

Ms Southon’s evidence raised concerns about ineffective noise complaint reporting and ineffective responses to noise complaints by NCC. This included failure to respond to

¹ Assessment of Noise Effects – Renewal of NCC Resource Consents RM125012 and RM155195. Malcolm Hunt Associates. August 2022.

noise complaints. She provided examples of this in her evidence. She discussed the adverse noise effects of events on residents near the Tahunanui Reserve and considered that speakers at events in this area should be pointed away from residents.

Mr Cross focused his evidence on lack of compliance management by the Council. He provided a specific example demonstrating this. He considered that any resource consent agreed to should have an independent review process that is transparent. NCC acting in its compliance role needs to have an accurate complaints recording process in place and to improve the management of the NCC noise inspection consultants. He referenced concerns about the effectiveness of EIL.

Ms Noonan outlined concerns about the notification process and the review process suggested in the conditions. She considered the consent should be for a limited duration if it is granted. Ms Noonan addressed the NRMP residential zone and policies, stating that her home is zoned residential and that she and other residents should enjoy the amenity provided by the residential provisions in the Plan. She stated that nuisance effects (light spill, traffic congestion, parking, antisocial behaviour, and litter) are not addressed by the proposal and have not been included in the cumulative effects assessment. Her concerns relate to noise effects, nuisance effects and cumulative effects which can be addressed by limiting the number of events.

She considered the effects outlined in her submission have not be addressed by the conditions proposed.

I have had regard to the matters raised by submitters in identifying the principal issues in contention and these matters are discussed in more detail below. I asked several questions of the witnesses in relation to their evidence. The witness responses are outlined in the remainder of this decision report as appropriate

4. Reporting Officers

This section of my decision is a brief overview of the reporting officers I heard from and the topics they covered in their evidence. I address their evidence in more detail in the principal issues in contention and relevant statutory and plan provisions section of my decision.

Ms Squire provided the s42A Report covering the proposal including relevant rules, the relevant NRMP provisions, a detailed summary of submissions including principal issues raised by submitters, and an evaluation of the relevant zones rules and associated assessment criteria with reference to Dr Trevathan's evidence. She provided a summary of the overall adverse effects taking into account mitigation measures specified, and an analysis of the NRMP objectives and policies. The s42A Report also addressed part 2 of the Act and section 104D considering that it is fair, reasonable and appropriate in the circumstances to unbundle the activities in upper Trafalgar Street (that are non-complying activities) from the remainder of the activities (that are discretionary) and to consider them separately under section 104D. I accept this.

Ms Squire recommended the consent be granted subject to conditions that were attached to the s42A Report.

She also provided an Addendum to her s42A Report (the s42A Report Addendum) at the hearing based on the evidence she heard from the Applicant and submitters. The s42A Report Addendum commented on the submission from Ms Martin, outlined amendments to the s42A Report relating to Table 1, commented on Mr De Maupeou's evidence, and recommended amendments to the conditions in the s42A Report. Finally the Addendum commented on the duration of consent, and cumulative effects at Trafalgar/Rutherford Park.

Dr Trevathan spoke to his report dated 17 May 2023. His report (included as Attachment A to the s42A) provided a review of the noise assessments (August and October) undertaken by Mr Hunt. This included comments on the approach to assessing noise effects, the complaints record, noise monitoring records and number of events which have been occurring, and the conditions proposed by the Applicant. He also provided commentary on the s92 response by Mr Hunt and some of the submission points.

At the hearing, Dr Trevathan provided an addendum to his report based on the evidence he heard from the Applicant and submitters. This covered the proposed Venue Administration Plan, the definition of 'event' and controls around sound checks, noise monitoring and the six additional Rutherford Park events.

5. Applicants Right of Reply

The Right of Reply was provided by Ms Besier and addressed many of the issues raised at the hearing. This included the Bay Dreams Event, the quality of enforcement undertaken by the consent authority, provisions for "feedback loop" to take place post an event, availability of Saxton Stadium and Saxton Pavilion, Appendix A of Ms Wilson's evidence, the duration of the consent, and the proposed review condition. It replied to concerns raised regarding Tahunanui Reserve and use of the Site Noise Management Plan, events mentioned by the submitters at the hearing and compliance with noise standards, and the proposed six additional events at Rutherford Park. Further amendments and refinements were made to the volunteered conditions and a track change version of these was provided for my consideration.

I noted that the Right of Reply contained new information (in paragraph 5) that was relevant to the cumulative effects assessment. The new information was "the Applicant was advised by the organisers of the Bay Dreams Event that this event is to be discontinued".

Paragraph 22 of the Right of Reply noted that Mr Hunt and Mr McKnight did not have an opportunity to respond to Dr Trevathan's statement (in response to my questioning of proposed condition 4) that in his view, the measure proposed in that condition regarding the timing and duration of events did not sufficiently mitigate the cumulative effects to a minor level. With regard to the procedural matter associated with this concern, I noted that the Right of Reply is an appropriate juncture for Mr Hunt and Mr McKnight to

respond, and they could have done so. However, I issued directions in Minute 1 providing all parties with further opportunity to respond to this cumulative effect matter.

I received further information on this matter from submitters Anne Chilcott, Gaile Noonan, and Denise Tebbs. Ms Squire and Dr Trevathan provided a response. Ms Besier provided the Reply submissions on this matter, supported by expert evidence from Mr Hunt and Jane Hilson. Whilst Ms Hilson was not party to the proceedings, she works in the same firm as Mr McKnight who was on paternal leave and could not provide evidence.

Ms Hilson was providing a planning opinion on the matter outlined in Minute 1 only. This information was provided to assist me with my decision. I know that Ms Hilson is a suitably qualified and experienced Resource Management Consultant. I consider there are no natural justice issues associated with including her evidence.

Also included in the Reply was a letter from Mr Dalton (who attended the hearing but did not speak) regarding the Bay Dreams contract with the Council.

I discuss this further information in more detail below in the principal issues in contention section of my decision.

The Hearing adjourned at 3.30 pm on 7 June 2023.

The Hearing was formally closed on 18 July 2023 following receipt of the further information outlined in Minute 1.

REASONS FOR THE DECISION

Plan Rules Affected

According to the Nelson Resource Management Plan, the following apply to the subject property:

Zoning: Open Space Recreation, Inner City and Rural;

Rules: OSr.37.3 – Noise, OSr.24.3 - Closing Times – services to the public, ICr.42.3 – Night-Time Noise Limits, ICr.43.3 – Noise Generating Activities, ICr.52.3 - Structures on Road Reserve, RUr.47.3 – Noise.

Status: Activities at all venues (with the exception of Church Steps /1903 Square / Upper Trafalgar Street) are discretionary activities. Activities at Church Steps /1903 Square / Upper Trafalgar Street are non-complying activities.

Principal Issues and Main Findings

The principal issues associated with the proposed activity involve the actual and potential effects on the environment and matters related to these effects. In determining the principal issues I have had regard to paragraph 4.4 of the s42A Report that identified that a number of matters raised by submitters were considered to be not relevant in determining the application. In summary these were:

- Security;
- Parking;
- Intoxication;
- Availability of Water;
- Rubbish management, cleaning and volume of litter

Mr McKnight agreed with the s42A Report on this matter. I accept these matters are not relevant in determining the application and do not consider them further.

Concerns raised in submissions and submitter evidence relating to enforcement of consent conditions is not a matter I am able to address under the Act. Ms Besier made the point in the Right of Reply (paragraph 7) that fundamentally, the Applicant is entitled to expect that the consent authority will duly enforce the conditions of consent in accordance with its responsibilities under the Act. I accept this. Hence, I will not address this matter further.

The principal issues in contention for the proposal were:

- Noise effects on residential properties from individual events;
- Cumulative effects of noise events at Rutherford Park, Trafalgar Centre and Trafalgar Park;
- Sound checks;
- Noise complaint procedures and monitoring;
- Duration of consent.

Noise effects on residential properties from individual events

This issue was addressed by the noise experts and the submitters. Ms Squire also provided an assessment of this issue in paragraph 5.20 to 5.23 of the s42A Report which I accept. She suggested amendments to the volunteered conditions that provide more specificity to the volunteered conditions, more certainty and clarity for nearby residents and to further mitigate the adverse effects arising from the exercise of the consent. The Applicant took these recommendations into account in the final volunteered conditions of consent.

Ms Squire concluded in section 6 of the s42A Report that:

Having considered the information submitted with the application and the specialist acoustic assessment from Dr Trevathan, I consider that, subject to the amendments to the volunteered conditions and further refinements following the submission and hearing of evidence, the adverse effects arising from the renewal of the existing consent can be appropriately mitigated. However, there remains the outstanding matter of the cumulative effects on nearby residents of the 6 additional events proposed for Rutherford Park and the appropriateness of them in the context.

This position was not amended by her s42A Report Addendum having heard evidence from the Applicant and Submitters. I discuss the cumulative effects issue associated with Rutherford Park in more detail below.

I note that AES² reviewed noise complaint records and considered that it is likely that the noise levels were below the limit. However, they noted that in the examples provided the 'Best Practicable Option' to reduce noise effects may not have been chosen, including orientating the stage away from residential areas as far as practicable, regardless of compliance or otherwise. I have added the requirement to orientate the stage away from residential areas as far as practicable in the conditions of consent (Condition 14(c)).

Ms Southon explained the impacts of events on nearby residents from events at Tahunanui Reserve. She considered that the direction of speakers was an important consideration with regard to noise effects at this location.

The Applicant considered that this issue would be appropriately managed by the SNMP. However, I consider this does not provide sufficient certainty that the issue raised by Ms Southon will be appropriately addressed. Therefore, I have included a specific requirement for the SNMP for Tahunanui Reserve to orientate speakers (excluding "fold-back" speakers) away from residentially zoned sites. This is in addition to the requirement to orientate the stage away from residential area as far as practicable.

² S42A Report, paragraph 5.46.

Referring to my discussion on other principal issues below, I have made other amendments to the conditions that I consider will assist in mitigating the effects of noise on residential properties from individual events. I also note here that the amended review condition included in the final volunteered conditions addresses this issue.

Overall, with reference to the discussion above, and subject to the conditions of consent, I consider the effects of noise on residential properties from individual events will be appropriately avoided, remedied or mitigated.

Cumulative effects of noise events at Rutherford Park, Trafalgar Centre and Trafalgar Park

I heard from all parties that the noise events within the Trafalgar Centre were not an issue for the cumulative effects assessment.

According to the evidence, cumulative effects arise from two events being held concurrently, and from a number of events being held at the same site over a period of time.

Through the hearing process a question was raised regarding whether or not the Bay Dreams event should be included in a cumulative effects assessment (as provided for by consent number RM225086). In response to Minute 1 all parties were of the view that it should be included as part of the existing environment as RM225086 has not been withdrawn. Therefore, it is relevant to the cumulative effects assessment.

However, the Applicant provided evidence in response to Minute 1 that the scale of the event may be reduced. A letter from Mr Dalton confirmed that "Bay Dreams South" no longer have land owner permission to hold a large event at Trafalgar Park and that the organisers of "Bay Dream South" have indicated that they are looking to host smaller events inside the Trafalgar Centre and potentially in Rutherford Park.

Having regard to the information provided in response to Minute 1, the fact remains that RM225086 has not been withdrawn/surrendered and the conditions of consent have not been altered. Therefore, adopting a precautionary approach, I find that it is appropriate to include RM225086 as consented (i.e. a Bay Dreams type event of similar scale to last year) in the cumulative effects assessment. This recognises that landowner approval could still be sought and approved.

Mr Hunt provided draft conditions³ to address cumulative effects (volunteered conditions 4(e) to (g)) arising from events operating concurrently. These were refined during the hearing process but the intent of the conditions to minimise cumulative effects of concurrent events remained.

³ Paragraph 45 of his evidence.
RM225208

Dr Trevathan considered that the primary concern is cumulative effects exposure over the course of a year, not two events occurring at once.

On the basis of this discussion, I find that the adverse effects of noise from concurrent events is appropriately avoided, remedied or mitigated by the inclusion of conditions 4(e) to 4(g).

With respect to the total number of events occurring in a year, in his addendum evidence Dr Trevathan reiterated his main concern as outlined below:

"With regard to receivers such as Hathaway Court which will experience noise during all of the 19 Trafalgar Park and Rutherford Park events requested by the Applicant, in my 17 May 2023 letter I stated "for some residential receivers the number of higher noise events will progress from being subjectively observed as 'occasional' to being more constant (potentially close to an event every second weekend). The Bay Dreams Consent has already increased cumulative noise in the area beyond that considered during the original process for this Consent. It may be therefore appropriate for the total combined number of Trafalgar Park and Rutherford Park events to remain similar to what is currently permitted for Trafalgar Park alone."

At paragraph 13 of his Addendum evidence, Dr Trevathan replied to Mr De Maupeou's and Mr Hunts evidence in response to this matter. He noted that Mr de Maupeou explained that Rutherford Park is an attractive alternative to Trafalgar Park for reasons of turf management and cost, and Mr Hunt suggested that those receivers already "receive significant ambient noise", and Mr Hunt volunteered conditions relating to simultaneous events.

According to Dr Trevathan his primary concern relating to the total combined number of events was therefore not addressed, despite Mr de Maupeou appearing to confirm that Rutherford Park events were desirable as an alternative to Trafalgar Park, not in addition to it. However, Dr Trevathan considered the additional conditions proposed by Mr Hunt are of some benefit.

Dr Trevathan considered⁴ a combined 19 events⁵ generating between 65 to 75 dB LAeq with finishing times between 10 pm to 1 am would have an effect which is more than minor on the occupants of Hathaway Court (the closest residential receivers).

In response to this issue the Applicant reduced the total number of events to 16 by:

- Eliminating the Trafalgar Park New Year's Eve event which was proposed to be a 75dB event finishing at 1.00 am;

⁴ Addendum evidence, paragraph 15.

⁵ The number of events applied for at Trafalgar Park and Rutherford Park.

- Reducing the 75dB music and cultural performances scheduled to finish at 10.00 pm from 3 to 2;
- Reducing the 75dB musical and cultural performances scheduled to finish at 11.00 pm from 2 to 1.

Mr Hunt noted in his response to Minute 1 that this now means the number of events proposed to finish after 10 pm (the commencement of night time noise under the NRMP) is 3 per annum. This is significantly less than the 19 events referenced by Dr Trevathan.

When the reduced number of events is combined with the volunteered conditions of consent (which restrict the hours of operation), Mr Hunt considered the cumulative health or amenity effects experienced at any nearby residentially zoned site are less than minor.

I acknowledge Ms Besier's position in the Applicant's further right of reply (dated 13 July 2023) that Mr Hunt's evidence appropriately provides the connection between the assessment of noise and cumulative effects, whereas Dr Trevathan does not sufficiently set the basis for his concern that the cumulative effects are more than minor.

Overall, I prefer the evidence of Mr Hunt on this matter. His opinion is based on an assessment of 3 events per annum finishing after 10 pm which is an accurate account of the proposal. Whereas, Dr Trevathan's evidence is based on 19 events generating between 65 and 75 dB LAeq with finishing times between 10 pm to 1 am. Also, the Applicant has reduced the number of events that may occur in Trafalgar Park by 3 (taking into account submitter concerns).

On the bases of the discussion above, and subject to the conditions of consent, I find that the cumulative effects of events at Rutherford Park, Trafalgar Centre and Trafalgar Park will be appropriately avoided, remedied or mitigated such that they are less than minor.

Sound Checks

The s42A Report discussed the issues associated with sound checks as this was an issue raised by submitters. The final volunteered conditions of consent addressed concerns relating to this issue by clarifying that they are part of one event, that they may occur the day before the event commences but with a limit of cumulatively no longer than 3 hours, and they may only occur between the hours of 10am-5pm. They must also be undertaken for the sole purpose of preparing for an event authorised by the consent and they need to comply with noise limits set out in this consent for each event. I accepted this approach and have included this in the conditions of consent.

I find that the adverse effects associated with sound check will be appropriately managed by the final consent conditions.

Noise complaint procedures and monitoring

Paragraph 5.44 of the s42A Report stated that

"The application emphasised that there have been very few complaints arising from the exercise of the existing consents and therefore the management of the noise from events must be appropriate. However, the submissions and advice from the NCC compliance staff note that complaints have been made. Having said that though there seems to be a lack of clarity around the type of events that gave rise to complaints and whether they were undertaken in accordance with the permitted activity conditions of the zone, RM215272, RM135295, RM225086 or the consent that this application is replacing."

I also heard that the method of recording complaints and maintaining records of complaints was not effective. It was noted at the hearing that this is an important "feedback loop" for management of noise effects.

Potential issues with noise monitoring were also highlighted in submissions and at the hearing.

Ms Squire considered that the consent conditions volunteered at the hearing provide more certainty and clarity around the purpose of the plans, the processes and content with respect to the requirements for monitoring, reporting and responses to noise complaints.

Mr McKnight provided a detailed assessment of the noise complaint procedures and monitoring in his evidence⁶. He considered that the required SNMPs and ENMPs (subject to proposed condition amendments), provide an appropriate level of noise monitoring requirements and response procedures; and they stipulate appropriate noise monitoring requirements (including for sound checks) and they also require provision for contact details of the events noise liaison person to be provided to neighbours.

I have carefully reviewed the volunteered condition set offered in the Right of Reply and accept the evidence of Ms Squire and Mr Knight. However, I did note that the volunteered conditions did not include a requirement for independent monitoring as discussed at the hearing and in the evidence of Dr Trevathan⁷.

Hence, I have included a requirement for independent monitoring of one event per annum (selected at random) to assess compliance with the noise compliance limits in conditions 4 to 7 as applicable. I have also included a requirement to report the results of this monitoring to the consent authority. This is in addition to any event monitoring that the consent holder requires the event holder to undertake.

I consider that the conditions of consent provide an effective framework to address issues raised with regard to noise complaint procedures and noise monitoring.

⁶ In paragraph 27, which had a number of subsections.

⁷ Addendum evidence, paragraph 10 and 11.

Duration of consent

The s42A Report⁸ stated that limiting the duration of the consent and /or a periodic review of the conditions of consent has been raised by submitters as a means of reviewing the effectiveness of the conditions in mitigating the adverse effects as far as practicable. The submissions also highlighted that the intensity of development in the vicinity of the venues will change and the effects of these events on nearby residents should be reviewed from time to time.

The opening legal submissions stated that the NCC Events Team has invested a lot of time and resources into internal processes attracting and managing events and not limiting the duration of the consent will provide certainty to that investment. Furthermore, the legal submissions considered it will allow the NCC Events Team to plan ahead with certainty in regard to attracting new events to Nelson City. The legal submissions also considered it is costly to rate payers to regularly renew consents.

Ms Squire noted⁹ that an option for the duration of consent could be a date that aligns with relevant rules in the Whakamahere Whakatū Nelson Plan (or equivalent), or a Plan Change that addresses the events, becoming operative. The reason for this are that the draft Plan includes proposed rules that are not dissimilar to the application.

Mr McKnight commented on the matter of a limited duration consent. The main reason for the 10-year consent duration specified on the original consents was the fact the Draft Nelson Plan was anticipated to be operative within this period (with associated benefited rules in regard to amplified sound), as opposed to any serious concerns regarding the need to monitor specific noise effects. He considered that it has largely been demonstrated that noise effects have been managed as anticipated and there has been no serious concerns raised which warrant the need to impose another limited duration consent. With the implementation of the review condition (that was volunteered), it is his opinion that the effectiveness of the conditions of consent can reasonably be addressed and as such a limited duration consent is not required.

The review condition referred to by Mr McKnight is a Section 128 review provision enabling the consent authority to review any or all of the conditions of the consent pursuant to Section 128 of the Resource Management Act 1991 for all or any of the purposes stated in the condition. I note this includes the following reason:

"To allow, in the event of substantiated concerns about adverse noise effects, the reduction in duration of events, total number of events, or noise limits listed in Table 1, imposition of compliance standards, monitoring regimes and monitoring frequencies and to alter these accordingly;"

⁸ Paragraph 5.60.

⁹ S42 Report Addendum, paragraph 5.1.

“Substantiated concerns” is defined as being in the joint opinion of Council’s Monitoring Officer and an Appropriately Qualified Noise Professional.

I note this provides the ability to reduce the number of events, not to increase them.

The Right of Reply considered that the Applicant (future consent holder) faces uncertainty with respect to those provisions, and given the resources expanded as part of this renewal process, submits that no duration to the consent is required. Also, it noted that in the event the new plan provides a workable framework for events, the consent may be surrendered, or the applicant may prefer to retain the consent for operational reasons.

I have considered the positions of all parties on this matter and note that there is no common ground. On the basis of the review clause discussed above which provides the ability to reduce the number of events at a venue if there are substantiated concerns I am persuaded by the Applicants reasons for not limiting the consent duration. I have also taken into account the consent conditions that I consider will appropriately avoid, remedy or mitigate adverse effects on the environment (which includes people and communities). This includes the conditions requiring a review of the VAP and SNMP every five years.

Hence, I have not limited the consent duration.

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions are I need to consider are the Nelson Regional Policy Statement (NRPS) and the NRMP. Ms Squire and Mr McKnight did not assess the NRPS. The objectives and policies in the NRPS relevant to the proposal are reflected in the provisions of the NRMP. Hence, I do not consider the NRPS further.

There are no provisions of a national environmental standard, other regulations, a national policy statement or the New Zealand Coastal Policy Statement that are applicable to this proposal.

Objective and Policy Framework

The sites that are the subject of this application are zoned Open Space Recreation (OSR), Inner City and Rural. Relevant NRMP objectives and policies that stem from these zones are set out in sections 5.70 to 5.84 of the s42A Report and in the Application.

With regard to OSR objectives and policies both planning assessments referenced the previous decision of the Commissioners for the activities that I am considering. This referred to policies OS1.2 and OS1.3 as being relevant. I accept this. I also consider the objective OS1 “Maintaining the social well-being and health of the community by recognising and enhancing opportunities for use of open space and recreation land” is relevant.

With respect to the Inner City zone the Application identified the relevant objectives and policies on page 19 and 20. Ms Squire generally agreed with the application assessment against the objectives and policies of the Inner City zone, and that she adopted that assessment for the purposes of her report. I accept the Inner City zone objectives and policies outlined in the Application are the relevant ones for me to consider.

Whilst the Application did not identify objectives and policies for the Rural zone, the s42A Report did. According to Ms Squire Objective RU3, and Policy RU3.3 are relevant. I accept this.

Mr McKnight's overall finding¹⁰ was that the activity sits comfortably with the objectives and policies for the relevant zones in the NRMP. Ms Squire generally agreed with the applicant's planning assessment. However, she noted there is some uncertainty as to whether the proposed activities are consistent with policy OS1.3 in the Trafalgar Centre, Rutherford Park and Trafalgar Park area. I have addressed the effects of noise in this area in detail above and found that the effects will be appropriately avoided, remedied or mitigated by the conditions of consent, which include the reduction in the total number of events volunteered in the Right of Reply.

I accept the planning experts' opinions that the activity sits comfortably with the objectives and policies for the relevant zones in the NRMP.

Section 104(1)(c)

Section 104(1)(c) requires me to have regard to any other matters I consider relevant and reasonably necessary to determine the application. There are no other matters I consider to be relevant and reasonably necessary for me to determine the application.

Overall Finding under Section 104

Following the hearing of evidence and having regard to all of the information in front of me, I now turn to my overall finding with regard to my assessment of the proposal under section 104(1) of the Act.

With regard to section 104(1)(a) I have found that subject to the conditions of consent, the adverse effects on the environment will be appropriately avoided, remedied or mitigated. With regard to section 104(1)(b) I have found that the activity sits comfortably with the objectives and policies for the relevant zones in the NRMP.

Part II Matters – Purpose and Principles of the Act

Section 104(1) RMA states that my consideration of the application is subject to Part 2 RMA, which covers ss 5 – 8, inclusive.

¹⁰ Paragraph 25, primary evidence.

The overall purpose of the RMA is “to promote the sustainable management of natural and physical resources”. In turn, “sustainable management” means:

“... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while –

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment”.

I consider that subject to the conditions outlined in the resource consent, that my decision meets the overall purpose of the RMA 1991. Granting the land use consent provides for the positive effects of the proposal whilst meeting the other requirements of section 5.

The s42A Report did not identify any Section 6 matters relevant to my decision. I accept this.

The s42A Report considered that the relevant section 7 matters are:

*(b) the efficient use and development of natural and physical resources; and
(c) the maintenance and enhancement of amenity values.*

I accept this. I have had particular regard to these matters when assessing the proposal. Referring to the findings in my assessment above, and subject to the consent conditions outlined below, I consider that my decision promotes efficient use and development of natural and physical resources whilst maintaining amenity values.

Section 8 requires me to take into account the principles of the Treaty of Waitangi. This section of the RMA recognises the relationship of Tangata Whenua with natural and physical resources and encourages active participation and consultation with Tangata Whenua. The application was publicly notified and copy of the application serviced on all Te Tau Ihu iwi, no submissions were received with respect to the application.

Section 104D – Gateway Test

Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either— (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or (b) the application is for an activity that will not be contrary to the objectives and policies of the NRMP.

I accepted that the activities in upper Trafalgar Street including Church Steps and 1903 Square are non-complying activities and that they may be unbundled from the other activities applied for. Therefore, the activities sought at the Church Steps, 1903 Square and Upper Trafalgar Street are subject to the "gateway test" explained above.

I received no specific evidence relating to the significance of the noise and other effects from activities at these locations. Therefore, I am unable to conclude that the adverse effects on the environment will be minor. However, on the basis of my findings with respect to the relevant objectives and policies I consider that the activities will not be contrary to the objectives and policies of the NRMP.

Therefore, I am not prevented from granting consent to the activity in these locations.

Section 104B of the Act (Determination of applications for discretionary or non-complying activities)

The Council may grant or decline applications for discretionary activities and non-complying activities. This resource consent has been granted with conditions imposed under section 108 of the Act.

Lapsing of consent(s)

Pursuant to section 125(1) of the Act, resource consents, by default, lapse in five years unless they are given effect to before then.

Decision

Having considered all of the matters above, I conclude that consent to allow special events on nominated public reserves and open spaces (Trafalgar Park, Trafalgar Centre, Rutherford Park, Saxton Stadium, Saxton Oval Pavilion, Tahunanui Reserve, Botanic Playing Field and Reserve, Fairfield Park and the Church Steps/1903 Square/Hardy Street/Upper Trafalgar Street area) and on limited occasions per year, where the use of electronically amplified sound, noise levels, closing times and ancillary structures breach specified rules in the Nelson Resource Management Plan can be **GRANTED** subject to conditions.

This resource consent is **granted** on 07 August 2023 under delegated authority from Nelson City Council by:



Craig Welsh
Commissioner