

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision No. [2020] NZEnvC 221

IN THE MATTER of the Resource Management Act 1991
(RMA)

AND of an appeal pursuant to s 120 of the Act

BETWEEN OAK HILL VINEYARD LIMITED
(ENV-2020-AKL-000178)

Appellant

AND AUCKLAND COUNCIL

Respondent

AND DEAN BUTCHERS

DAVID LINANE

s 274 parties

Court: Alternate Environment Judge L J Newhook

Hearing: 22 December 2020

Appearances: S Grant for Appellant
S Quinn for Respondent
D Butchers for himself and D Linane

Date of Decision: 22 December 2020

Date of Issue: 23 December 2020

**DETERMINATION OF THE ENVIRONMENT COURT ON APPLICATION UNDER
s116 OF THE ACT FOR PARTIAL COMMENCEMENT OF CONSENT**

A: Application granted on conditions.

B: Costs reserved.

OAK HILL VINEYARD v AUCKLAND COUNCIL



REASONS**Introduction**

[1] On 9 December 2020 the application for partial commencement of consent was lodged subsequent to the company's appeal against four of the conditions of consent.

[2] Two conferences were held before an Environment Judge, and the application needed refinement.

[3] An amended application was filed and served on 18 December, which was supported by affidavits earlier made by acoustic engineer Mr P A Ibbotson and by Mr A F Grant.

[4] At this stage the council appointed senior counsel who filed and served a memorandum on 21 December.

[5] On 22 December I conducted a half-day hearing that examined aspects of a settlement proposal by the appellant and comments by the council, together with comments by the s 274 parties.

[6] Ultimately there was full agreement about conditions upon which the court could make an order under s 116. I attach the agreed document entitled "Schedule 1 Orders", embodying the orders themselves and the conditions agreed and now imposed.

[7] Costs are unlikely to be an issue but are reserved to be dealt with if necessary upon finalisation of the substantive proceedings in due course.

[8] The parties have agreed to attend mediation in the New Year. I recommend expert conferencing by the acoustic engineers as a preliminary step.



L J Newhook
Alternate Environment Judge



SCHEDULE 1 Orders

COMMENCEMENT ORDER PURSUANT TO SECTION 116 OF THE ACT

1. The Registrar has received:
 - (a) An interlocutory application for a commencement order under section 116 of the Resource Management Act 1991 (the **Act**);
 - (b) Affidavits sworn by Anthony Frederick Grant and Peter Alexander Ibbotson;
 - (c) A memorandum of counsel in support of the application; and
 - (d) The draft order attached to the interlocutory application.
 2. Having read and considered the application and supporting documents as described above and after hearing counsel and the parties' representatives, the Court is satisfied that granting a commencement order will serve the purpose of the Act in the circumstances.
 3. In particular the Court is satisfied that:
 - (a) the appeal only relates to the conditions and terms of the consents, not to whether or not they should be granted;
 - (b) no adverse effects on the environment will arise from the granting of the orders sought;
 - (c) granting the order will not prejudice the hearing of the appeal; and
 - (d) those who live in the locality will not be potentially disadvantaged in the event that the appeal is not upheld.
 4. Therefore, pursuant to section 116 of the Act this Court Orders that the resource consent lodged with the consent authorities under application number LUC60332143 shall commence prior to the determination of this appeal subject to the conditions that:
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(a) The premises at 38-40 Omaha Flats Road, Matakana, Auckland will operate for restricted activities between 9am and 10pm;

(b) Restricted activities means the following activities:

(i) The operation of restaurant activities, kitchens and food service on site will be between 9am and 10pm, to allow for the operation of restaurant/café, sculpture gardens, conference /meeting room, art galleries and wine tasting: public access 9am-10pm, with amplification of voice and background music (as that term is defined in s11(b) of the Consent Decision for LUC60332143 (**Consent Decision**) subject to conditions 20 and 21 in LUC 60333143, and only in the Restaurant and Function Room until 10pm, Freddie's café, the Off-Licence area, the Wine Caravan and Quench Bar until 8pm, all as shown on Attachment 2, and Marquee sites 2 and 3, including the outdoor areas associated with those Marquee sites, as shown on Attachment 1 until 8pm, and on the hillside areas in the vineyard on 40 Omaha Flats Road marked on Attachment 3, until 8pm;

(ii) The operation of restaurant/café, sculpture gardens, conference /meeting room, art galleries and wine tasting: public access 9am-10pm with amplification of voice and background music subject to conditions 20 and 21 in LUC 60333143;

(iii) Up to 30 Special Functions (as that term is defined in LAN63763 (**2015 Consent**)) can be held prior to the hearing of the Appeal, in the Restaurant and Function Room and concluding by 10pm, no more than 2 in any seven day period, with amplification of voice and background music subject to conditions 20 and 21 in the Consent Decision;

(iv) Restricting the sale and supply of alcohol outside of the restaurant/café and Function Room to between 9am - 8pm and to the Freddie's Café, the Off-Licence Area, Wine Caravan, Quench Bar and Marquee sites 2 and 3 as described in paragraph 4(b)(i) above including allowing patrons to carry a beverage around the Sculpture Gardens;



- (v) The activities excluded from the definition of an “Event” in Condition 11(a) of the Consent Decision with amplification of voice and background music subject to conditions 20 and 21 in LUC 60333143.
- (c) The activities listed in (a) and (b) are subject to all the conditions contained in the 2015 land use consent LAN 63763, other than:
 - (i) Condition 6) Hours of Operation (replaced by the hours under clause 4(b) of this order); and
 - (ii) Condition 7 (replaced by clause 4(d) of this order to allow the playing of background amplified music)

and the conditions of the 2020 land use consent LUC60332143, other than:

- (iii) The following conditions under appeal:
 - (1) Condition 4 – Surrender of 2015 land use consent LAN 63763;
 - (2) Conditions 10(b) relating to hours of operation;
 - (3) Condition 11(a) as to the definition of an “Event”;
 - (4) Condition 13(b) relating to number of events to be held after 10pm;
 - (5) Condition 13(f) relating to the prohibition against holding events on public holidays;
- (iv) The following conditions that are not triggered as the relevant events referred to in the Consent Decision will not be held:
 - (1) Condition 14, event register.
 - (2) Conditions 15 and 16, Traffic and Parking Management.



- (3) Condition 25, Amplified sound limiter settings.
- (4) Conditions 26, 27, 28, compliance noise monitoring.
- (5) Condition 29, notification of events to neighbours.
- (v) The following pre-commencement conditions:
 - (1) Condition 30 and 31, Acoustic fence and its maintenance;
 - (2) Condition 32 and 33, 34, 35, relating to the preparation of a noise management plan;
 - (3) Conditions 36-37, noise contingency;
 - (4) Condition 38, review condition.
- (d) The hosting of “typical wedding ceremonies” (with amplification of voice and acoustic music) on any part of the site at 38-40 Omaha Flats Road, other than in the no wedding ceremony zone marked on Attachment 1, is permitted between 9am and 8pm subject with amplification of voice and background music subject to conditions 20 and 21 in LUC 60333143.
 - (i) “typical wedding ceremonies” is defined as the proceedings of the official part of the wedding whereby the wedding is officiated and the register signed, not a function and reception component that may follow a wedding ceremony, for which specific consent has been sought.
- (e) Hosting dinners, lunches or breakfasts (including amplified speeches and amplified background music subject to conditions 20 and 21 in LUC 60333143) in the marquees and/or seated/standing outdoors at the Marquee sites as shown as “Marquee Sites 2 to 3” shown on Annexure 1 between 9am and 8pm .



- (f) Traffic movements in the carpark areas are permitted between 9am and 10pm subject to the consent-holder complying with the AUP noise standards.
- (g) Marquee Sites 2 and 3 shall be unoccupied and closed by 9pm.
- (h) Staff shall have closed the facilities and departed by 11pm.
- (i) The PVC blinds on the north-east façade of the restaurant must be lowered from 6pm on Sundays.
- (j) Notice of all Special Functions is to be given monthly to Council and to the s274 parties, on the first of each month, and if further Special Functions are booked after the first of each month, then at least 48 hours' notice of any Special Function shall be given;
- (k) The making of this order does not restrict the Appellant from holding Temporary Activities under Chapter E40 of the Auckland Unitary Plan.
- (l) This commencement order applies until it is amended by a consent order or the appeal is otherwise disposed of. The making of this order is not a concession by any party in relation to the Appeal and is made without prejudice to all parties' rights, and does not pre-empt argument as to the status of "Temporary Activities".

