

HGI Plan Review: section 32 report for temporary activities

1.0 Executive summary

This report summarises the evaluation undertaken by the council of proposed district plan provisions relating to temporary activities on the Hauraki Gulf islands, in terms of section 32 of the Resource Management Act.

The main conclusions are:

- Temporary activity rules must provide for a variety of activities which are by their nature only occur for a short period of time;
- The rules must ensure that these temporary activities do not have significant adverse effects on neighbouring properties;
- The noise arising from temporary activities that use amplified entertainment needs to be controlled by restrictions on the start and finish time, the length of time amplified entertainment can occur and limitations on the use of outdoor venues when amplified entertainment is used.

2.0 Introduction

2.1 Purpose of this report

This report is to meet the section 32 requirements of the Resource Management Act.

2.2 Proposed plan provisions

The plan provisions seek to control temporary activities on the Hauraki Gulf Islands. This will be achieved by limiting the time periods for the use of ancillary structures and the storage of materials associated with construction activities, and by limiting the time period for the use of temporary structures for the construction of boats, caravans and other objects in the open air as a leisure time activity. The duration of events and associated structures will be limited and noise controls and time limits are proposed where amplified entertainment is provided as part of an event.

2.3 Consultation

This section of the report briefly outlines the consultation that the council has undertaken to date and identifies any issues raised of particular relevance to the issue of temporary activities.

2.3.1 Consultation to date

The council undertook consultation in 2005 in preparation for drafting the proposed Plan.

Initial consultation

The main consultation period was from April to July 2005. Consultation during that period consisted of:

- public meetings, workshops, nga hui, and one on one meetings
- a photographic exercise on Waiheke
- inviting written feedback on a consultation document which contained issues and options papers on a wide range of topics.

Focus groups

At the close of consultation, the council analysed the feedback forms received. From these, key issues were identified that subsequently became topics for focus groups on Waiheke. The four topics for the focus groups were:

- landscape
- transport
- sustainability
- future planning (including subdivision, growth, and providing for business activity).

An additional workshop was also held on Great Barrier to give a further opportunity to discuss issues raised through the feedback forms.

Telephone survey

The council commissioned an independent research company to undertake a phone survey in late 2005. The survey was of a randomly selected sample of 1002 on-island residents and off-island ratepayers of Waiheke, Great Barrier and Rakino. The questionnaire used for the survey was designed to get responses on the key issues that had emerged from the consultation process and stakeholder feedback.

The survey provided a means of canvassing the views of a wide range of people who may not have been previously involved in the consultation process.

Consultation with other stakeholders

During the preparation of a proposed plan, the council has also consulted with the following parties:

- the Auckland Regional Council ('ARC')
- the Department of Conservation ('DOC')
- tangata whenua
- network utility authorities
- Ministry for the Environment (MfE).

Public notification

Notification of the Plan provides an opportunity for further public participation through the formal submission and appeal process.

2.3.2 Issues raised during consultation

An issues and options papers on temporary activities and small buildings was released for public comment in 2005. It raised the issue that if intensification occurs around traditional venues for concerts and festivals these activities may fail to meet the noise controls of the operative Plan. One of the possible approaches suggested was to introduce noise levels, duration and time limits for concerts and other temporary activities based on rules in the isthmus and central area sections of the Auckland City District Plan. Of the people/groups that addressed temporary activities, five of the seven supported the introduction of noise levels for concerts and other temporary activities together with duration and time limits. One suggested disallowing intensification around traditional temporary activity venues, requiring consent for temporary activities (within limits) and only allowing them 4-5 times a year. It was also suggested that lower noise limits than the Isthmus should be specified because of the lower background noise levels. Another person/group giving feedback suggested that allowances be made for exceedances of noise levels for concerts through consent but no more than 4 hours of duration, 4 times a year.

3.0 Resource management issues and objectives

3.1 Issues

The main issue is how to provide for a variety of activities, which are temporary, whilst at the same time, imposing rules on these activities so that they remain by nature temporary, and do not have adverse effects on neighbouring properties. Temporary activities may include performances, events or functions on private or public land, buildings and the storage of goods and materials ancillary to construction or demolition activities, the placement of display suites or show homes and the temporary storage of materials, as well as the outdoor construction of boats, caravans or other artefacts as a leisure activity.

Section 16 of the Resource Management Act 1991 requires every occupier of land to adopt the best practicable option to ensure the emission of noise does not exceed a reasonable level. Controls on the duration of performances, events or functions and the use of temporary buildings and structures on private or public land, and limits on the start and finishing times and duration of events when amplified music is used, will limit their adverse effects include the amount of noise produced.

3.2 Objectives

The objective for temporary activities is: to permit activities that occur for relatively short periods of time, while limiting their effects on neighbouring properties.

4.0 Statutory requirements under part II, sections, 16, 31, 32, 72, 74, 76 and 326 of the Resource Management Act

Section 16 of the RMA outlines the duty to avoid unreasonable noise. Section 16 states:

- (1) Every occupier of land (including any premises and any coastal marine area) shall adopt the best practicable option to ensure the emission of noise from that land does not exceed a reasonable level.
- (2) Subsection (1) does not limit the right of any local authority or consent authority to prescribe noise emission standards in plans made, or resource consents granted, for the purposes of any of sections 9, 12, 13, 14, 15, 15A and 15B.

Section 31 sets out the council's functions for the purpose of giving effect to the Act. The council's functions include:

- (a) The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
- (d) The control of the emission of noise and the mitigation of the effects of noise.

Section 72 states as follows:

The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

Section 74(1) of the RMA states as follows:

A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part II, its duty under section 32, and any regulations.

The following provisions of section 76 are also relevant:

- (1) A territorial authority may, for the purpose of –
 - (a) Carrying out its functions under this Act; and
 - (b) Achieving the objectives and policies of the plan, - include rules in a district plan.
- ...
- (3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect.

Section 326 defines the meaning of excessive noise:

1. In this Act, the term "excessive noise" means any noise that is under human control and of such a nature as to unreasonably interfere with the peace, comfort, and convenience of any person (other than a person in or at the place from which the noise is being emitted), but does not include any noise emitted by any—
 - (a) Aircraft being operated during, or immediately before or after, flight; or
 - (b) Vehicle being driven on a road (within the meaning of section 2(1) of the Land Transport Act 1998); or
 - (c) Train, other than when being tested (when stationary), maintained, loaded, or unloaded.
2. Without limiting subsection (1) "excessive noise"—
 - (a) includes noise that exceeds a standard for noise prescribed by a national environmental standard; and
 - (b) may include noise emitted by
 - (i) a musical instrument; or
 - (ii) an electrical appliance; or
 - (iii) a machine, however powered; or
 - (iv) a person or group of persons; or
 - (v) an explosion or vibration.

In achieving the purpose of the Act, the council must carry out an evaluation under section 32 of the RMA before publicly notifying a district plan or a plan change. Section 32(3) and (4) state as follows:

- (3) An evaluation must examine –
 - (a) the extent to which each objective is the most appropriate way to achieve the purpose of the Act; and
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives
- (4) For the purposes of this examination, an evaluation must take into account –
 - (a) the benefits and costs of policies, rules, or other methods; and
 - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

The statutory requirements, including section 32 matters, are assessed below under the following headings:

- The extent to which each objective is the most appropriate way to achieve the purpose of the Act
- Whether the policies, rules, or other methods are the most appropriate for achieving the objectives
 - having regard to their efficiency and effectiveness
 - taking into account the benefits and costs of policies, rules, or other methods

- taking into account the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

4.1 The extent to which each objective is the most appropriate way to achieve the purpose of the Act

4.1.1 The purpose of the Act

Section 5 states that the purpose of the Act is ‘to promote the sustainable management of natural and physical resources’. Section 5(2) states:

- (2) In this Act, “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 wellbeing 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.

Environment is defined in Section 2 of the RMA as including:

- (a) Ecosystems and their constituent parts, including people and communities; and
- (b) All natural and physical resources; and
- (c) Amenity values; and
- (d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:

Section 6 of the RMA identifies matters of national importance, which need to be recognised and provided for in achieving the purpose of the Act. There are no matters of particular relevance to the proposed controls on temporary activities.

Section 7 deals with ‘other matters’ which, in achieving the purpose of this Act, persons exercising functions and powers under the Act shall have particular regard to. The matters of are of particular relevance to temporary activities are identified below:

Clause		
(a)	Kaitiakitanga	
(aa)	The ethic of stewardship	
(b)	The efficient use and development of natural and physical resources	
(ba)	The efficiency of the end use of energy	
(c)	The maintenance and enhancement of amenity values	✓
(d)	Intrinsic value of ecosystems	
(f)	Maintenance and enhancement of the quality of the environment	✓
(g)	Any finite characteristics of natural and physical resources	
(h)	The protection of the habitat of trout and salmon	
(i)	The effects of climate change	
(j)	The benefits to be derived from the use and development of renewable energy	

Section 8 provides that in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti O Waitangi).

4.1.2 Appropriateness in achieving the purpose of the Act

The objective for temporary activities is:

“To permit activities that occur for relatively short periods of time, whilst limiting their effects on neighbouring properties.”

The objective is consistent with section 5(2) of the Act, because controls on temporary activities will avoid or mitigated any adverse effects of temporary activities on the environment. Limiting the effects of temporary activities on neighbouring properties will also be consistent with section 7(a) of the Act, which requires the maintenance and enhancement of the quality of the environment.

4.2 Whether the policies, rules, or other methods are the most appropriate for achieving the objectives

The proposed policies are:

1. by limiting the time periods for the use of ancillary structures and the storage of materials associated with a construction activity;
2. by limiting the time period for the construction of boats, caravans and other objects in the open air as a leisure activity;
3. by limiting the duration of events;
4. by setting noise standards for temporary activities that use electronically amplified entertainment and controlling the start and finishing times, duration and the frequency at which such entertainment can be used outdoors at any one venue.

The proposed policies are the most appropriate means of achieving the objective because they permit activities of a temporary nature including those that may produce high levels of noise while limiting their effects on the environment and in particular neighbouring properties.

The policies recognise that some activities are by their nature temporary e.g., the construction of buildings, caravans and boats which may involve the construction or use of temporary structures and the storage of materials for these construction activities. The policies also recognise that the community will accept temporary activities such as concerts, parades, sporting events, markets, fairs etc if their duration is limited to a reasonable time. Events and other temporary activities which use amplified entertainment may cause more complaints than activities that don't, so it is proposed to set noise standards for these events to allow them to happen, but at a level that is not excessively loud given their duration. Start times, finish times and duration limits on the use of amplified entertainment are also proposed, to ensure that the noise produced is not unreasonable or excessive. It is also proposed to limit how often amplified entertainment can be used outdoors at any one venue, so that the use of that venue does not become unreasonable.

The following options are the main alternatives, which the council has considered as a means of achieving the objective:

4.2.1 Option 1

Do nothing - have no provision in the district plan to address temporary activities and rely only on sections 16 and 326 – 327 or the RMA to control noise from temporary activities.

Benefits	Costs
Would potentially not limit temporary activities – would allow promoters to have multiple or on-going events and concentrate them on one site if they desired.	Resource consents may be required to provide construction site offices, portaloos, to erect scaffolding for construction activities, to erect show homes or display

	suites and to store materials on land or to have structures to build boats, caravans etc outdoors as a recreation activity. Stages and other temporary structures for events would also require consent. Expensive for applicants and time consuming for Council
	Protection of amenity less likely without district plan rules on the duration of temporary activities and noise standards where amplified entertainment is used.
	In the absence of numerical standards subjective response would be applied to noise complaints and there would be inconsistency in the application of sections 16, 326 and 327(issue and effect of excessive noise direction).
	Noise complaints and enforcement costs would likely increase markedly because no standards on start or finish times or duration of events. Lack of numerical standards to determine how much noise can be made or what is an acceptable level to be subjected to would also create more complaints. More time would be spent in court disputing abatement notices.
	No community input into what would be standards for the start, finish and duration of temporary activities or reasonable levels of noise for activities using amplified entertainment.

The risk of acting or not acting

The risk of acting on this option would be potentially a lack of control on temporary activities and the subjective assessment of whether the noise arising from temporary activities is unreasonable or excessive. There would be a lack of community input into noise levels through submissions because of the absence of numerical standards and a general uncertainty both for those who wish to use amplified music and those who would be subjected to the noise. Similarly, the lack of certainty on what are reasonable start times and finish times when amplified entertainment was provided, and what is an acceptable duration for temporary activities would create uncertainty for the promoter, the public, the council and complainants.

The risk of not acting on this option is that section 327 could still be used to control the noise from temporary activities.

4.2.2 Option 2

Requiring all temporary activities to obtain resource consents.

Benefits	Costs
Council would have complete control over all temporary buildings, structures, storage	Costly for both land owners and the council to review consent applications and to grant

Benefits	Costs
of material, and events	consent where appropriate
	Many temporary activities are likely to have little or no effect on the environment and requiring a resource consent would not achieve an improvement in the outcome.

The risk of acting or not acting

The risk of acting on this option could be costly for anyone wanting to hold an event, to use temporary structures on sites for construction activities, to display any show home or suite or to temporarily store materials on their property. Individuals who wanted to build a structure outdoors on their property to construct a boat, caravan or other object as a leisure time activity might also be required to obtain a resource consent for the activity.

The risk of not acting on this option is that the proposed rules may not address some activities, which because of their scale and/or location should be a discretionary activities and more completely controlled through conditions on a resource consent.

4.2.3 Option 3

Option 3: Use of the proposed objective, policies and rules.

Benefits	Costs
Provides certainty to those who want to undertake a temporary activity such as undertake construction work, store materials or construct something in their back yard for a limited period of time or to organise an event.	Controls may require a resource consent for very large scale events or for long running events.
Provides certainty to those who may be affected by a temporary activity in providing start and finish times, limits on duration and noise standards if amplified entertainment used.	
Noise levels proposed and time limits proposed are an easy means of determining whether the council considers the noise of an event is excessive.	
Public can have input into the standards for temporary activities.	

The risk of acting or not acting

The risk of not acting on this option would be the lack of certainty on what are reasonable time periods over which an event can occur, and lack of certainty on what are reasonable time periods and noise levels when amplified entertainment is used. There would also be lack of certainty on what is a suitable time period for the temporary use of buildings and structure for construction projects, difficulties in placing show homes or display suites on sites and unreasonable controls on the temporary storage of goods and materials on private land. The proposed controls will also

remove uncertainty as to the outdoor construction of boats caravans and other objects associated with private pleasure time and the use of any temporary structures for that purpose.

The risk of acting on this option is that there may be complaints regarding the levels of noise that can be produced under the permitted activities rules, or affects on the amenity of the activity if the complainant has a dislike for the nature of the temporary activity.

4.2.4 Conclusion

Option 3 is considered the most appropriate means to achieve the requirements section 5, 7, and 31 of the Act. Option 3 will allow defined temporary activities to occur without undue restriction, whilst preventing undue adverse effects (principally noise) from causing adverse effects on the environment.

4.3 Whether the proposed rules assist the council to carry out its function of control of actual or potential effects of the use, development or protection of land

The proposed rules will help to control the effects of the use and development of land for temporary activities, will assist in the management of land use activities to ensure that adverse effects are avoided, remedied or mitigated and are the most appropriate way to achieve the purpose of the Act.

5.0 National planning documents

5.1 National and NZ coastal policy statements

Section 75(3) of the RMA states:

- (3) A district plan must give effect to –
 - (a) any national policy statement; and
 - (b) and any New Zealand coastal policy statement; and
 - ...

These documents are not of relevance to temporary activities.

6.0 Regional planning documents

6.1 Regional policy statement

Section 75(3) and (4) of the RMA state:

- (3) A district plan must give effect to –
 - ...
 - (c) any regional policy statement.
- (4) A district plan must not be inconsistent with –
 - ...
 - (c) a regional plan for any matter specified in section 30(1).

There are no references to temporary activities in the Auckland Regional Policy Statement or Regional Plan: Coastal.

7.0 Other documents

Health Act 1956

Section 29 of the Health Act defines nuisances and includes “where any noise or vibration occurs in or is emitted from any building, premises, or land to a degree that is likely to be injurious to health. Section 30 of the Act outlines the penalties for permitting or causing a nuisance.

Essentially Waiheke

Essentially Waiheke – A Village and Rural Communities Strategy is a non-statutory strategic document, which sets out a community approved framework for Waiheke’s development. It was adopted by Council in 2000, after extensive consultation with the Waiheke community.

The five central principles of Essentially Waiheke are:

- principles of environmental protection
- principles of economic development and employment
- principles for strong communities
- principles to protect and enhance Waiheke’s character
- principles of location.

The objective, policies and rules proposed for temporary activities are consistent with these principles. In particular the rules will protect the high environmental qualities of the island, temporary activities will allow the cultural diversity within the Waiheke community to be recognised and celebrated and will permit the holding, supporting and encouragement of events that support the unique character of Waiheke.

8.0 Procedures for monitoring

The council will monitor the effectiveness of the proposed provisions as a means of achieving the objectives and policies by:

- Monitoring complaints about temporary activities ;
- Monitoring resource consents including the number of applications granted consent, compliance with consent conditions, and the effectiveness of those conditions;

Conclusions

Temporary activity rules must provide for a variety of activities which by their nature only occur for a short period of time and have negligible effects on the environment. The rules proposed must ensure that these temporary activities do not have significant adverse effects on neighbouring properties by limiting their duration. The noise arising from temporary activities that use amplified entertainment needs to be controlled by restrictions on the start and finish time, the length of time amplified entertainment can occur and limitations on the use of outdoor venues when amplified entertainment is used.