

Decision on notification of an application for resource consent under the Resource Management Act 1991



Discretionary activity

Application number:	R/LUC/2016/2140
Applicant:	Auckland Council – Community Facilities
Site address:	12R Milano Boulevard, Hingaia
Legal description:	Lot 707 DP 393795 (Identifier: 401418)
Proposal:	To establish and operate a children’s playground on land gazetted as a recreation reserve under the Reserves Act 1977 and zoned “Reserve” under the Operative Plan, which involves 247m ³ of earthworks over a land area of 625m ² .

The resource consents required are:

Auckland Council District Plan 1999 (Papakura Section)

- Resource consent is required for a **controlled activity** under Section Three, Rule 2.10.1.1 of the District Plan to undertake earthworks that exceeds a volume of 50m³.
- Resource consent is required for a **discretionary activity** under Section Three, Rule 8.8.2.3 of the District Plan to establish a playground activity that will result in noise that is predicted to exceed the night time limit (applied between the hours of 2200 and 0900), of 40 dBA L₁₀ at the nearest property boundary with residential zoning.

Proposed Auckland Unitary Plan 2013 (PAUP)

- Resource consent is required for a **restricted-discretionary activity** under Rule 3H.4.4.2 of the PAUP to undertake earthworks that exceed a land area of 501m².

Decision

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

Public notification

Under section 95A of the RMA this application shall proceed without public notification because:

1. The adverse effects on the environment will be no more than minor because:
 - Noise levels predicted from the likely number of children that are expected to be playing at the playground will be generally similar to the recorded ambient noise levels. The applicant’s acoustic engineer is of the opinion that the change from the

existing noise environment to when children are playing within the playground will be *“negligible to just noticeable.”*

- Children’s voices are part of the ambient noise environment of a residential area. Noise experienced at the front boundary of nearby residential properties, and arising from children playing at the playground, will generally be within the District Plan’s noise limit for activities occurring within the Residential 9 zone, being 45 dBA L₁₀, 0700 to 1800, Monday to Friday and Saturday 0800 to 1200. The limit of 45 dBA L₁₀ is intended to maintain a reasonable standard of amenity for residential sites and is also more-or-less in accord with the measured ambient noise levels.
 - Noise from up to 10 children playing at the playground is expected to comply with the daytime noise standards at the front boundary of all adjacent properties between the hours of 0900 and 2200.
 - The playground has been designed for pre-school children and will have no lighting, and therefore it is unlikely to be used late at night or very early in the morning when the owners/ occupants of adjacent properties are likely to be affected by noise interrupting sleep. For that reason, the noise assessment that the night time noise limit may be potentially exceeded by a small amount is unlikely to result in any adverse noise effects.
 - The primary outdoor areas for the adjacent residential properties are located to the rear of the property, behind dwellings. Dwellings are generally located a further 5m from the road boundary. The front yards of properties that are identified as being adjacent to the site, are not a part of the site that is likely to be used for residents enjoyment prior to 0900 hours.
2. There is no district or regional rule or national environment standard that requires public notification and the applicant has not requested it.
 3. Having regard to the general discretion to notify under section 95A(1) and the special circumstances discretion under section 95A(4), I find there are no relevant reasons to warrant public notification. The reserve forms part of a developing residential area where the future needs of the residents can reasonably be anticipated to include access to publicly provided play areas for children. It should be reasonably anticipated by any residents, both existing and future, that a local reserve will be used by a range of people and that some noise will be generated at different times of the day. The proposed activities are permitted under the reserve zoning rules and overall the proposal cannot be seen as unusual or out of the ordinary given the reserve status of the land and the nature of the proposed use in relation to supporting recreational activities providing for the surrounding residential area. Other informal recreation uses are not precluded by the proposal.

Limited notification

Under section 95B of the RMA this application shall proceed without limited notification because:

1. There are no adversely affected persons because:
 - The adverse effects relating to the construction and earthworks periods will be temporary and can be managed to mitigate adverse effects. The site is surrounded by

public roads and it is anticipated that private property is unlikely to be affected by waterborne sediment should the erosion and sediment control measures fail.

- The proposal will have a less than minor adverse effect upon the outlook of the owners and occupiers of adjacent properties because all of the equipment will be less than 3.5m in height and the playground will occupy less than a third of the reserve. The balance of the reserve will not be modified by this proposal. Furthermore, there are no identified or protected view shafts across the reserve.
 - Noise from the expected number of children playing on the playground is predicted to comply with the District Plan (reserve zoning) noise limit of 50 dBA L₁₀ that applies between 0900 and 2200 hours, seven days a week. Few, if any, children are expected to use the playground prior to 0900 hours or after 2200 hours when the lower District Plan limit of 40 dBA L₁₀ applies and accordingly noise is expected to be in general accord with the measured ambient noise level even though slight infringements of the 40 dBA L₁₀ standard have been predicted for that period.
2. There are no protected customary rights groups or marine title groups in the region adversely affected by this proposal.

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



Barry Kaye

Duty Commissioner

24 June 2016

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Proposed Auckland Unitary Plan 2013 (PAUP)

- Resource consent is required for a **restricted-discretionary activity** under Rule 3H.4.4.2 of the PAUP to undertake earthworks that exceed a land area of 501m².

Decision

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

Acting under delegated authority, under sections 104, 104B, and Part 2 of the RMA, the application is **GRANTED**.

1. Reasons

The reasons for this decision are:

1. The proposal has been supported by a professionally prepared acoustic report and engineering drawings and these have been peer reviewed by Council experts who support the application being granted.

2. The playground has been specifically designed for pre-school children. The playground is also of a small-scale and it is intended to serve the local community rather than functioning as a 'destination playground' serving the wider community. The playground use is consistent with the purpose of the reserve under the Reserves Act 1977 and is a permitted activity under the "Reserve Zone" rules of the Operative District Plan. Taking into account this regulatory framework, it is considered that the proposed playground will achieve an appropriate outcome for the northernmost portion of Milano Reserve. Any anti-social activities or use by other persons that may occur on the reserve can happen whether or not the playground exists and will generate noise effects which will form part of the anticipated noise environment.
3. The playground will occupy less than a half of the 3,877m² reserve and will not result in any physical changes to the southern portion of the site. The balance of the reserve will therefore continue to provide for informal recreation/ sport opportunities for the local community. The reserve is not subject to a reserve management plan; however it is understood that the reserve is not used for any organised sports/ activities.
4. In terms of Section 104(1)(a) of the Resource Management Act 1991 (RMA), the adverse effects resulting from the proposed development and activity will be appropriate and mitigated by way of its design and through the imposition of the recommended conditions of consent relating to the construction period and in particular, the implementing of erosion and sediment control measures in accordance with Council's best practice guidelines.

It has been predicted that children playing within the playground and on play equipment may generate noise that exceeds the night time acoustic level of 40 dBA L₁₀, which applies between the hours of 2200 and 0900. However, very few, if any, pre-schoolers are expected to use the play equipment during this time, and I consider it reasonable to assume that the playground is unlikely to be used at all by children between 2200 and 0700 hours primarily because no artificial lighting is proposed and also due to the age of children that the equipment is designed for. If night use did occur, the level of non-compliance with the night standard that applies between 0700 and 0900 hours is predicted to be very low, particularly noting the measured ambient acoustic levels for the locality which includes children playing outdoors in the front yards of private properties [or on the footpaths] which is expected within a residential area.

In terms of positive effects, the proposal provides recreational opportunities for young children that currently do not exist in residential area.

5. In terms of Section 104(1)(b) of the RMA, the proposal is considered to be generally consistent with the provisions of the District Plan because:
 - The playground is consistent with the strategic intent of the Reserve Zone, which is to provide for a range of recreational and community activities to become established within the Urban Reserve Zone (Objective 8.6.2). On balance, the proposal is also generally consistent with Objective 8.6.3 of the District Plan as the playground activity will enhance the amenity (and use opportunities) of the reserve for pre-school children and will retain over half of the reserve as a space for other informal recreation activities. The reserve does provide outlook amenity for adjacent

properties, however in this regard, the height and location of the play equipment complies with the bulk and location standards of the Urban Reserve Zone and the land surrounding the playground will be landscaped, as encouraged by Objective 8.6.3 and its supporting policies. While the land is zoned residential under the PAUP that appears to be an error noting the pre-existing reserve status of the land. In any event, the relevant PAUP rules have no weight.

- The proposed earthworks can be undertaken in a way that is consistent with the matters over which Council has reserved control in Rule 2.10.2.2 of the District Plan and restricted discretion in Rule H.4.14.2.4.2 of the PAUP. The use of the site as a “reserve” is gazetted, and Council is yet to release a decision on the proposed “Single House” zoning of the site under the PAUP.
6. In terms of Section 104(1)(c) of the RMA, other relevant matters, including monitoring have been considered in the recommendation.
 7. Having regard to Part 2 of the RMA the proposal will result in appropriate environmental effects while enhancing the local recreational opportunities for pre-school children in particular. The reserve will continue to provide for other informal recreational opportunities for other users. Given the nature of the proposal and the limited range of activities (noting the lack of lighting fettering night time use opportunities) that it provides for and having regard to the positive benefits for local families and the community it can be found to be concluded that the proposal is consistent with the sustainable management purpose of the RMA.

2. Conditions

Under section 108 of the RMA, this consent is subject to the following conditions:

General conditions

1. The playground and earthworks activity shall be carried out in accordance with the plans and all information submitted with the application, detailed below, and all referenced by the council as consent number R/LUC/2016/2140:
 - Application Form, and Assessment of Environmental Effects prepared by Richmond Planning Ltd, dated May 2016.

Report title and reference	Author	Rev	Dated
Milano Reserve Playground	Marshall Day Acoustics Ltd	01	15 June 2016

Plan title and reference	Author	Rev	Dated
Site Context Plan; 1-6	Park and Playground Solutions Ltd		25 May 2016
General Plan; 2-6	Park and Playground Solutions Ltd		25 May 2016
Dimensions and Drainage Plan; 3-6	Park and Playground Solutions Ltd		25 May 2016

Plan title and reference	Author	Rev	Dated
Earthworks – Cut and Fill Plan; 4-6	Park and Playground Solutions Ltd		25 May 2016
Planting Plan; 5-6	Park and Playground Solutions Ltd		25 May 2016
JT 558	Playground People Ltd		Received by Council on 30 May 2016
COR8220			Received by Council on 30 May 2016
GXY916			Received by Council on 30 May 2016
2 Bay Ace UFO			Received by Council on 30 May 2016

Other additional information	Author	Rev	Dated
FW: Milano Noise Report	Richmond Planning Ltd		17/06/16
RE: Milano Noise Report	Richmond Planning Ltd		17/06/16

2. Under section 125 of the RMA, this consent lapses five years after the date it is granted unless:
 - a. The consent is given effect to; or
 - b. The council extends the period after which the consent lapses.

3. The consent holder shall pay the council an initial consent compliance monitoring charge of \$280.00 inclusive of GST), plus any further monitoring charge or charges to recover the actual and reasonable costs incurred to ensure compliance with the conditions attached to this consent.

Advice note:

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

Development in progress conditions

4. There shall be no obstruction of access to public footpaths, berms, private properties, or public services/utilities resulting from the construction and/or earthworks activity. All materials and equipment shall be stored within the subject site's boundaries.

5. All earthworks shall be managed to ensure that no debris, soil, silt, sediment or sediment-laden water is discharged beyond the subject site to either land, stormwater drainage systems, watercourses or receiving waters. In the event that a discharge occurs, works shall cease immediately and the discharge shall be mitigated and/or rectified to the satisfaction of the Team Leader Southern Monitoring.

Advice Note:

In accordance with condition 5 all earthworks shall be undertaken to ensure that all potential sediment discharges are appropriately managed. Such means and measures may include:

- *Catchpit protection*
- *run-off diversions*
- *sediment retention ponds*
- *silt and sediment traps*
- *decanting earth bunds*
- *silt fences*

During excavation, the ingress and accumulation of surface run-off water and/or perched groundwater can be minimised by:

- *maintaining a waterproof cover over any excavation trenches and pits outside of working hours,*
- *diversion of surface water flow around the works area, and*
- *regular disposal of the water into an appropriate sediment control device, if ponding occurs within the excavation.*

It is recommended that you discuss any potential measures with the council's monitoring officer who may be able to provide further guidance on the most appropriate approach to take. Please contact the Team Leader Southern Monitoring on monitoring@aucklandcouncil.govt.nz for more details. Alternatively, please refer to "Auckland Regional Council, Technical Publication No. 90, Erosion & Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region".

- *All required erosion and sediment control measures on the subject site shall be put in place in accordance with "Auckland Regional Council, Technical Publication No. 90, Erosion & Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region". All controls shall remain in place until earth disturbing activities are complete.*

3. Advice notes

1. *Any reference to number of days within this decision refers to working days as defined in s2 of the RMA.*
2. *For the purpose of compliance with the conditions of consent, "the council" refers to the council's monitoring inspector unless otherwise specified. Please contact monitoring@aucklandcouncil.govt.nz to identify your allocated officer.*

3. *For more information on the resource consent process with Auckland Council see the council's website www.aucklandcouncil.govt.nz. General information on resource consents, including making an application to vary or cancel consent conditions can be found on the Ministry for the Environment's website: www.mfe.govt.nz.*
4. *If you disagree with any of the above conditions, or disagree with the additional charges relating to the processing of the application, you have a right of objection pursuant to sections 357A or 357B of the Resource Management Act 1991. Any objection must be made in writing to the council within 15 working days of notification of the decision.*
5. *The consent holder is responsible for obtaining all other necessary consents, permits, and licences, including those under the Building Act 2004, and the Heritage New Zealand Pouhere Taonga Act 2014. This consent does not remove the need to comply with all other applicable Acts (including the Property Law Act 2007 and the Health and Safety in Employment Act 1992), regulations, relevant Bylaws, and rules of law. This consent does not constitute building consent approval. Please check whether a building consent is required under the Building Act 2004.*



Barry Kaye

Duty Commissioner

24 June 2016