

RESOURCE CONSENTS HEARINGS PANEL

MINUTES: of a meeting of the Resource Consents Hearings Panel which commenced at 9.15 a.m. in the Council Chamber, Centreway Road, Orewa on Friday, 26 March 2010.

PRESENT:

Chair	Les Simmons
Crs	June Turner
	Suzanne Weld

IN ATTENDANCE:

Reporting Officer	Anne Hessel
Manager Resource Consents	Ian Dobson
Environmental Protection Manager	Ian Farrell (9.15 a.m. - 11.00 a.m.)
Traffic Engineer	David Mitchell (from 11.45 a.m.)
Democracy Services Officer	Raewyn Morrison

* * * * *

26 March 2010

281/03/10 APOLOGIES**AGENDA ITEM NO. 1**

There were no apologies.

282/03/10 A NOTIFIED RESOURCE CONSENT APPLICATION UNDER SECTION 88 OF THE RESOURCE MANAGEMENT ACT 1991**AN APPLICATION FOR RETROSPECTIVE RESOURCE CONSENT TO LEGALISE FOUR EXISTING ACTIVITIES ON THE SITE WITHIN THE EXISTING 'WOOLSHED' BUILDING, WITH THESE ACTIVITIES BEING:**

- **A CAFÉ OFFERING PREDOMINANTLY SMALL SNACKS AND COFFEES AND OPERATING FROM 8:00AM TO 4:00PM.**
- **A CIRCUIT ROOM/EXERCISE STUDIO**
- **12 FUNCTIONS PER YEAR THAT OPERATE NO LATER THAN 12:00AM AND EXCEED NO MORE THAN 120 PATRONS**
- **AN ART GALLERY, WHICH COMPRISES BOTH AN EXHIBITION SPACE AND RELATED SHOP**

Address: 1151 Leigh Rd, Omaha Flats

APPLICANTS: MATAKANA MUSEUM LIMITED**FILE REF** RMA 55593**WARD** Northern**AGENDA ITEM NO. 2**

The applicant seeks retrospective consent to legalise four activities on the site within the existing 'Woolshed building'. The activities include a café, a circuit/exercise room, 12 functions per year that operate no later than 12.00 a.m. and exceed no more than 120 patrons and an art gallery with exhibition space and a related shop.

The applicant, John Baker, and the applicant's representatives, Russell Bartlett (Counsel), Lisa Capes (Planning Consultant) and Nevil Hegley (Acoustic Engineer), present.

Submitters in support in attendance: James Davies, Michelle Tree, Neville Johnson, Jenny Francis (on behalf of Matakana Community Group), Lee Parore (on behalf of Emma Barry), John Cresswell, Glenn Dalton, Eric Henry, Joy Earley, Jane Cresswell (owner of The Circuit Room), and Dr Louise Chasteau.

Submitters in opposition in attendance: Bill and Joan Freeth (Innova Tan Limited) and their representative Graham Parfitt, and Elizabeth Foster, present. Damion and Sharon Freeth in attendance from 1.34 p.m. - 1.50 p.m.

9.15 a.m. The Chairperson opened the hearing and outlined the meeting procedure.

Simmons/Weld

That the late submissions from Emma Barry, Dr Louise Chasteau, Jane Cresswell, Glenn Dalton, and Michelle Tree be accepted as they raised no issues that had not already been raised in other submissions received.

Carried

26 March 2010

Graham Parfitt on behalf of Bill and Joan Freeth of Innova Tan Ltd said that he wished to have it recorded that he did have an objection to the Panel accepting the late submissions as they had been received substantially late. If they had been a couple of days late he wouldn't have worried but the late submissions were over a fortnight late. It was immaterial in regard to the hearing evidence on the case; rather it was a strong matter of principle.

Russell Bartlett opened proceedings for the applicant. Mr Bartlett distributed and read a written submission. He also tabled case law Decision No. A081/2009 (Cornerstone Group Limited v Rodney District Council and Auckland Regional Council). The following was noted:

Mr Bartlett said that it was significant that the application had overwhelming support from the community. Mr Bartlett focused on the provisions of the District Plan and in particular the analysis provided by Judge Newhook in the case of Cornerstone Group Limited v Rodney District Council and Auckland Regional Council. Mr Bartlett highlighted what he considered to be pertinent sections of that decision. He said that the application site was a working country site. He said that a significant difference between the Cornerstone application and the Matakana Country Park application was that the building and landscaping already existed. It was therefore only the effects of the activities within the building and the extent to which they do or may generate effects outside the building and beyond the site which needed to be addressed. Mr Bartlett also referred to the Environment Court decision Brookby Quarries Limited vs Manukau City Council. In conclusion Mr Bartlett said that he thought some of the proposed conditions had no resource management purpose and should not be applied to any consents granted on the application.

In response to questions from the Panel Mr Bartlett said that:

- Regarding a restriction of numbers at the café, 50 patrons would be better than 28.
- He challenged the inclusion of proposed conditions 10, 11, 14, 15 and 16 but accepted all the other conditions.
- He did not think any of the existing consents were different in character; they were passive activities. This application could be done on a stand-alone basis.

Ms Capes noted that an appropriate finish time for events in the Woolshed would be up until midnight.

Neville Johnson distributed and read written evidence. Mr Johnson was accommodated to speak before the applicant had finished their presentation because of time constraints. The following was noted.

Neville Johnson from Matakana Village said that he took a strong interest in the community and he had been regularly involved in community committees and as such he believed he could comment with a degree of certainty about how the community felt about Matakana Country Park. He thought the application should be approved without conditions. Mr Johnson said that he had been involved in the consultation regarding the Matakana Structure Plan and he didn't think the Park had been looked at in enough detail in relation to the place it had in the evolution of facilities and activities in the area. Mr Johnson questioned to what extent the Matakana Country Park activities should be constrained by the rules of the General Rural Zone. He also questioned the future of the Country Park. Mr Johnson said that the insistence that almost every new activity at the Country Park be required to be permitted and sometimes notified in order to comply with a rural zoning would appear to be placing the Park under extremely difficult operational restrictions.

John Baker introduced himself and outlined the initial idea for the Matakana Country Park which he said came from a visit to Butchart Gardens in Canada. Mr Baker bought the property when it became available for sale in around 2004 and he employed a Canadian landscape designer. The focus of the park included an equestrian area, a garden for the future (he had planted 500 Redwood trees), food, art, and music and community activities. He had progressively carried out these different things. He noted that there was a craft shop on the site for which around 100 people provided goods for sale. He said that he had had the former Matakana Church shifted on to the site from Snells Beach and he had fielded quite a few enquiries for weddings. Mr Baker said that the Country Park provided employment opportunities. He had a vision and as far as the gym was concerned it offered a major plank in the treatment for diabetes as it offered exercise opportunities to the wide variety of people who attended the gym. Mr Baker thanked the people who had come along to support the application.

26 March 2010

In response to questions from the Panel Mr Baker said that:

- Matakana Country Park was a destination.
- He shared the view that the Country Park should be a scheduled activity as a tourist related activity with certain defined future uses. He had been in discussion with the Council and it was expected that a plan change would be publicised in May 2010 which would be open to public discussion until November. If approved the plan change would mean that he would not need to apply for resource consent all the time. He thought this was a good approach which would define a 40-50 year plan. Mr Baker confirmed that all the resource consents had different activities with different closing times.
- There was carparking for 1180 cars with parking on hard stand for 200-280 cars.
- The restaurant at the Matakana Country Park, RD6, was open from 9.00 a.m. to 11.00 p.m.
- In some instances time extensions were applied for such things as weddings etc.

Nevil Hegley distributed and read written evidence.

Mr Hegley discussed the design criteria, the existing noise environment and noise from existing activities. Mr Hegley referred the Panel to the noise standard in Table 16.9.2.1.2(i) Noise Received in Rural Zones (L_{eq}) in the District Plan. He considered the levels in the District Plan to be appropriate for a working environment. Mr Hegley said that as the site and closest dwellings were located within 70m of a District Arterial Road (Leigh Road), the high background requirements of the Table in his evidence were applicable.

Referring to the impact on the noise assessment with 50 people in the café Mr Hegley said that he assumed the level might rise to 23 decibels. He said that Matakana Country Park was an extremely good site for the proposed activities with the majority of activities screened from the closest house. With regard to noise impacts in this case, Mr Hegley said that the separation, building design and layout were controlling factors in relation to the building.

In conclusion Mr Hegley said that:

- The existing noise environment was typical of that expected in a rural area adjacent to a district arterial road and from approximately 6.00 a.m. each morning the noise level climbed quickly as a result of increased traffic flows.
- The existing activities were all well within the District Plan noise limits and for the majority of the time they were well below the existing noise environment.
- Based on the evaluation of the existing noise environment and noise from the facility, the effects for neighbours would be less than minor. Based on noise there was no reason why the application should not be approved.

Mr Hegley said that there was no reason why any of the activities should have a time restriction as they could comply with noise restrictions so there was no need for a condition.

In response to questions from the Panel Mr Hegley said that:

- The site had no unusual features, it was a flat area.
- He assumed the prevailing wind would be the same for the rest of the country, i.e. westerly to south-westerly. Winds from that direction would significantly reduce the noise by 5-8 decibels which would have a positive effect for the neighbour in opposition to the proposal.

11.00 a.m. Neville Johnson (submitter) and Ian Farrell (Council's Environmental Health Manager) retired from the meeting.

11.00 a.m. - 11.19 a.m. Morning tea adjournment.

Owing to time constraints John Cresswell and Lee Parore were accommodated to address the meeting before the applicant had finished presenting their case.

26 March 2010

John Cresswell addressed the meeting.

Mr Cresswell said that he supported John Baker and his daughter, Jane, who had established The Circuit Room. He considered The Circuit Room to be an outstanding example of a boutique gymnasium and that it added tremendous value to the community and was a great asset. The Circuit Room had limited opening hours and specialist classes that catered for all age groups. Mr Cresswell said that the community was supporting The Circuit Room and he believed its location to be ideal as people did not have to travel outside the area.

Lee Parore addressed the meeting on behalf of Emma Barry.

Mr Parore gave an overview of how Les Mills World of Fitness operated. He said that obesity related diseases were currently the number one cause of death. Mr Parore said that The Circuit Room offered the choice of health. Mr Parore said that good fitness training should be promoted in rural areas as well as in cities. Parents were able to come to The Circuit Room with their children, which promoted a good role model. Mr Parore said that people in the Matakana area needed access to such a facility and he requested that consent be granted. The Circuit Room offered social, physical and emotional services to better people's health and wellbeing. Before The Circuit Room had been set up people had to go to Warkworth; there was nowhere else locally that offered the same service.

Lisa Capes distributed and read written evidence.

Ms Capes outlined the proposal and referred to submissions received noting the written approval of the owners of 38 and 40 Omaha Flats Road (known as Oakhill Vineyard) which was received after lodgement. Under the heading Assessment under Section 104 and Part II of the Act, Ms Capes discussed rural character and amenity values, noise, traffic access and parking, and development engineering issues. Ms Capes also addressed the proposed conditions of consent.

In conclusion Ms Capes said that having assessed the proposal in relation to the tests set out in Section 104B and 104D of the Resource Management Act and the relevant matters for assessment set out in section 104 of the Act, it was her opinion that consent should be granted to the proposal. The reasons for her opinion were:

- The potential adverse effects of the proposal on the environment were considered to be no more than minor.
- The proposal was not contrary to the intent of Vision Rodney or the Sustainable Development Plan for Matakana in which the Matakana Country Park featured as a distinct "zone".
- The proposal was considered to be consistent with relevant objectives and policies of the relevant planning instruments.
- The proposal would not set a precedent.
- The proposal was consistent with Part II of the Act.

Ms Capes said that the matters raised in the three submissions in opposition had been addressed generally in the assessment of effects of the proposal on the environment and it was concluded that the matters raised in submissions were able to be adequately dealt with by way of consent conditions, such that any adverse effects would not be more than minor.

In response to questions from the Panel Ms Capes said that:

- It would not hurt to have a review condition.
- With regard to Vision Rodney and the Matakana Sustainable Development Plan (MSDP), the MSDP was the latest planning document available and the Matakana Country Park was shown in the MSDP but she didn't know what level of consultation there had been.
- The character of the Matakana - Omaha Flats area was unique in a sense and quite modified in what a lot of people would call a rural environment. Matakana was the playground of Auckland because of its proximity and it still had lots of features of standard rural production activities, for example, vineyards, the opportunity to have home gardens and sell at the gate; there was a lot of tourism and recreation. The character was highly consistent with what you would find in the area if you were a visitor.
- The applicant didn't want any restriction on the hours of the café, especially if the café owner wanted to keep the cafe open during the same hours as The Circuit Room.

26 March 2010

Mr Bartlett confirmed that he would be confident enough to consent to a review condition.

Submitters in support:

James Davies distributed and read a written statement.

Mr Davies said that there were two factors which should be taken into account, these were parking and tourism. He said that the Matakana Country Park had adequate parking to provide for the volume of visitors expected; this was in contrast to Matakana Village where on weekends and holidays parking conditions could only be described as chaotic. With regard to tourism, Mr Davies said that Matakana Country Park attracted many people, some of whom were overseas visitors.

Michelle Tree addressed the meeting.

Ms Tree said that she had worked extensively in the area of fitness. She considered that the community could not do without the facilities at The Circuit Room and they were a valuable facility for people with health issues. Ms Tree said that Warkworth had a gym but The Circuit Room offered something different. The Circuit Room was prepared to train firemen and sports teams, and worked in conjunction with the Stroke Foundation. She said that with the generosity of The Circuit Room classes were able to be run which catered to people with Multiple Sclerosis or Parkinson's disease. Ms Tree said that she contracted her services to The Circuit Room and that she didn't consider the music to be at all loud.

Dr Louise Chasteau addressed the meeting.

Dr Chasteau requested that the Panel grant resource consent to the proposal. Speaking as a health professional, Dr Chasteau drew the Panel's attention to the letters of support from local doctors and physiotherapists. She also spoke as a sometime resident of Leigh and said that her parents utilised The Circuit Room for their health needs. Dr Chasteau said that residents of Northern Rodney faced difficulties in regard to access to facilities. She said that facilities such as The Circuit Room were important in that they served the rural community and it represented a valuable asset to the health of people in the rural community. For a lot of people the travel costs were more affordable and there were the added benefits of social connection, cultural enrichment etc. Dr Chasteau said that The Circuit Room embodied all the concepts mentioned in Vision Rodney. She said that The Circuit Room was a welcome and valuable feature of the local and surrounding community with a high level of attendance and an obvious enjoyment of the facilities.

Eric Henry of 865 Takatu Road addressed the Panel.

Mr Henry said that he was not a member of The Circuit Room but he drove past the Matakana Country Park most days. Mr Henry noted the rural character of the area and said that the park provided benefits to a major group of people as well as providing for their social needs. Mr Henry said that he often visited the café during weekends. Speaking from his perspective as a former businessman, Mr Henry said that he used strategic thinking and he saw nothing but benefits from the proposal; he saw no negatives whatsoever. He considered the Matakana Country Park to be a building block in Rodney District going forward and supported what John Baker had done 100%.

Jenny Francis on behalf of Matakana Community Group distributed a brief written statement.

Ms Francis said that all members of the Matakana Community Group utilised some part of the Matakana Country Park. She said that a synergy clearly existed and that John Baker had provided a facility for tourists as well as locals. She believed that during the lean winter months local people contributed to supporting the Matakana Country Park.

26 March 2010

Glenn Dalton from Ti Point addressed the meeting.

Mr Dalton said that he was supportive of the proposal and he thanked John Baker for bringing something to the community that was needed, especially as there wasn't a leisure centre in the area. Mr Dalton described the area and said that the park was located near a very busy intersection with roads on each side. Mr Dalton said that he had been involved in a meeting with Mr Freeth and his son, Damion, along with Mr Baker and Ms Capes. Mr Freeth had indicated wholehearted support for The Circuit Room at the time. Mr Dalton noted that there were about 500 people on The Circuit Room's books, the majority of which were locals.

Joy Earley addressed the meeting.

Ms Earley said that she supported John Baker. Ms Earley said that she had shifted to the area 2 years ago and had been introduced to The Circuit Room. She said that she enjoyed the small classes and she thought the instructors were fantastic. Ms Earley said that she had made some wonderful friendships and she had lost a significant amount of weight which had changed her health and wellbeing. She also said that she had gained 3 jobs through going to the gym. She enjoyed the Saturday morning classes and the ability to have a coffee afterwards at the cafe. In conclusion she said that the gym was situated in a nice environment and that Matakana Country Park and the cinema complex in Matakana Village had raised amenity values in the area.

Jane Cresswell addressed the meeting.

Ms Cresswell said that she was the owner of The Circuit Room. She thanked the Panel for accepting the late submissions. Ms Cresswell said that The Circuit Room was not a normal gym. She described it as a studio which was open for 20 hours per week and which ran classes such as ballet for preschoolers as well as exercise classes for senior citizens. Ms Cresswell said that she had 568 adults on her database. The Circuit Room didn't have membership as such; she charged on a casual basis or people could purchase concession cards. She said that she didn't intend to grow the business; she was proud of the intimate connection that she had with people who used the gym. Ms Cresswell said that she had previously held fitness classes at Matakana Hall but had found that too cold in winter. She said that the classes had grown since she set the business up and that it was not a 'money spinning business.' Ms Cresswell read out the gym's mission statement. In conclusion she said that she supported John Baker and noted that overseas trainers who visited had been very impressed by the facility.

12.51 p.m. - 1.34 p.m. Luncheon adjournment.

Most of the submitters retired from the meeting at the luncheon adjournment with the exception of Mr Dalton and Mr Davies.

Submitters in opposition:

Damion Freeth read a written statement (the statement was later tabled).

Mr Freeth said that he lived at 1 Takatu Road with his wife and young family. They moved to that address in 1997, 3 years before the inception of the Matakana Country Park. When approached by John Baker in 2000 with a concept for an equestrian event centre and vintage car museum they were 100% supportive. Since then Mr Freeth said they had never been approached legally in regard to seeking consent for any of the activities at the park. Mr Freeth was happy to see the art gallery and the café continue as normal but he wanted The Circuit Room hours to be more compassionate so that his family wasn't woken by loud music in the early hours of the morning. In regard to 12 functions in the Woolshed, he requested that consent be completely rejected as there were already existing rights to 15 special events per annum and he believed the existing restaurant (RD6) to be a more than adequate function centre already.

In response to questions from the Panel, Damion Freeth said that:

- Noise from The Circuit Room was a concern and he would prefer to see a 7.00 a.m. start.

26 March 2010

- The Woolshed already had 15 events happening per annum. His concerns in this regard related to noise and activities late at night, especially the behaviour of people and vehicles leaving the site.
- Noise from some events had made the crockery shake in their cupboard.

1.50 p.m. Damion Freeth retired from the meeting.

Damion Freeth had submitted a DVD taken of the Highlife event at the Matakana Country Park however this was determined by the Hearings Panel to be of limited relevance to the resource consent application before them and thus was not shown.

Elizabeth Foster distributed and read written evidence. The following was noted:

Ms Foster said that she had serious concerns about the manner in which development on this site varied from the original consent and she was further greatly concerned that the Council had chosen to ignore deviations from the consent for 7 years, particularly in regard to sealing the parking area. Ms Foster said that after the original consent was issued, it quickly became apparent that the character of the development was moving toward a commercial activity. She also considered that the requirement to provide adequate screen planting had been ignored. Ms Foster said that the issue of public functions was of real concern. She noted that the District Plan provided for functions for up to 1,000 people and yet a function (Highlife) attracting 10,000 people was seen by Council staff as having effects that were no more than minor and did not require public notification. She said that continuing approval of activities drew more traffic through the notorious Hill Street intersection without any consideration by the Council of providing an alternative route. Ms Foster also said that a major issue for her was the radically changed character associated with the development at the Matakana Country Park in a catchment that was rural/horticultural and had no commercial cluster of activity provided for in any plan. She believed there was a strong emphasis on allowing illegal activities to develop and then be rewarded retrospective consents while at the same time denying legitimate applicants the privilege of such approvals.

In conclusion, Ms Foster said that if the application was approved she had no confidence that any conditions would be adhered to based on the historical evidence, nor that they would be enforced by the RDC or its successors. She therefore requested that the application be declined and any other irregularities and existing consent conditions be dealt with immediately as this was essential for the consistent administration of the District Plan.

In response to questions from the Panel Ms Foster said:

- The 'Horseworld' application (the original application for an equestrian centre) was approved in 2002.
- She was trying to retain the rural character and was involved with Whangateau HarbourCare Group; once development went beyond a certain stage the area was no longer General Rural and for the sake of the catchment and protection of the Whangateau Harbour it was essential the area didn't become Countryside Living. The Matakana Country Park was not in Matakana it was in the Omaha-Whangateau catchment.
- She would describe the character of the Omaha Flats area as predominantly rural horticultural; it was high value horticultural land in relatively smaller blocks. Native vegetation was much more of a feature on the surrounding hills, and there were isolated farmhouses and roadside stalls. The area was still strictly rural.
- If consent was approved the Panel could reinforce the condition regarding the sealing of the carpark.
- The Reporting Planner described the existing buildings as rural in character but there were lots of large buildings in the area that might be suitable for such activities and the application could create a precedent.
- In her opinion the buildings were not really typical of other farm buildings in the area and there was an issue in terms of planning that other large buildings could be used in a similar way.
- She was predominantly concerned about the integrity of the District Plan and the Council's failure to enforce the rules.
- She also had concerns regarding the traffic; it all added up and the Council allowed more and more developments without making provisions for alternative traffic flow.

26 March 2010

Ms Hessell said that the craft shop had been included in the original building consent application. Although there was no direct reference in the application, when she had done her planning check she considered the craft shop to be in general accordance.

Graham Parfitt distributed and read written submissions on behalf of Bill and Joan Freeth.

In his evidence Mr Parfitt outlined:

- The submission from Innova Tan Limited.
- Dealt with the history of the site as it had impacted upon his client.
- The integrity of the planning report submitted as part of the application.
- Critiqued the Council planning report.
- Conditions of consent including Council enforcement of conditions of consent.
- Assessed the way Council staff had treated the application for the site.

Mr Parfitt said that his client was worried about conditions of consent not being enforced. He also considered that the prior conduct of the applicant was something that the Panel should take into account. He noted that three of the activities for which consent was sought had been going for more than 18 months. Mr Parfitt said that his client didn't have any problem with three of the activities but they did with the application for 12 extra events and he wondered whether the special events would be limited in duration.

In conclusion Mr Parfitt said that both the original planning report (AEE) and the Council planning report were totally deficient in their assessment of the proposed 12 special events. There was no information on what they intended to cover and no limits on them; they were open ended to the extreme. There was no way they could be approved as no one had any idea what they encompassed, what their effects would be and how any adverse effects could be dealt with. He said that resource consent must be refused on that basis alone let alone their complete and total failure to comply with either test of Section 104D.

In the normal course of events he would advise his clients, and he believed they would have accepted that the art gallery, café and the gym with a 7.00 a.m. start for the music could be supported, or in the case of the gym with a 7.00 a.m. music start be not opposed with appropriate conditions. Due to the lack of integrity of the applicant, the applicant's advisors, and Council staff he had to say that support was not possible and the application must be opposed.

Mr Parfitt referred to the Suncern Construction Cases which allowed the prior behaviour of the applicant, its advisors and Council staff with respect to respecting prior consents and conditions of consent to be a relevant matter for consideration by commissioners under Section 104(i)(c) of the RMA 1991 and on that basis alone resource consent should be refused. In view of all the above, resource consent for the whole application (i.e. each activity) must be refused consent.

In response to questions from the Panel Mr Parfitt said that:

- The consent for 12 special events was granted to the museum application in 2002 and as the museum was never established he considered that any events that had taken place had been unlawful.
- There was a difference in what experts said and what people who lived in the area perceived.
- He would have liked to have had the noise monitor by Damion Freeth's windows and have had the noise monitored between 6.00 a.m. and 7.00 a.m.
- The only question mark he had in relation to Mr Hegley's evidence was in regard to the direct line.

3.03 p.m. Mr Parfitt retired from the meeting.

3.03 p.m. - 3.14 p.m. Afternoon tea adjournment.

During the course of the day Andrea Vujnovich left a phone message on the Democracy Services Officer's phone to say she would not be appearing to speak in support but she wished it noted that she still supported the application.

26 March 2010

Bill Freeth distributed and read a written statement.

Mr Freeth commented on the planning officer's report. He said that while the planner had acknowledged that rural amenity would be severely compromised they had gone on to say it would be alright to grant consent if certain conditions were imposed. Mr Freeth said that his son, Damion, and Damion's family had had their sleep affected from activities at the Matakana Country Park which had destroyed the family's health and their amenity values. Mr Freeth said that there had been a significant amount of correspondence between himself and the Council over the past few years in which he had communicated his concerns. He had also had correspondence from the Ombudsmen advising that the Council had been lax in monitoring.

Mr Freeth tabled an aerial map of the site and another diagram which showed the notional boundary.

Mr Freeth said that they had asked from the outset that the gym start at 7.00 a.m. and for clarification on the definition of the 12 special events. He noted that a sculpture symposium held at the Matakana Country Park went for a month. Mr Freeth said that he had never complained about any events; his complaints were solely in relation to the noise. His son had had to move out of his house during the New Year's Eve Highlife event. He said that he believed the notional boundary of the house to be 150m from the Woolshed building.

In response to questions from the Panel Mr Freeth said that:

- The noise increased with the easterly wind.
- He had concerns regarding the Woolshed building and thought it needed better sound proofing.
- It wasn't just events themselves, it was the 'hyped up' people leaving events, especially as some events had run until 2.00 a.m.
- He considered there had been incredible consent creep.
- He was happy with the art gallery but wanted no music in the gym before 7.00 a.m.
- A matter of concern was the requested 12 additional events; there was no clarity on what other events there were. He was opposed to the extra events in their entirety, the main reason being that there was no enforcement of sound.

The Chairperson said that the Panel would look at the conditions of consent on the other existing consents for the Country Park.

Council Officers:

David Mitchell

Mr Mitchell confirmed that his position remain unchanged from his original comments. With regard to the mobility parking spaces, he believed they should be formed and sealed to an all weather surface. He suggested proposed conditions 6 and 13 remain unchanged. With regard to the patron numbers for the café at proposed condition 14 and whether that should be 50 rather than 28, there was no issue in a transport sense so long as the building could provide for that. With regard to proposed condition 10 (co-ordination of activities) Mr Mitchell suggested that the words "...without submission and approval by the Council of a traffic management plan..", this was so the Council had the ability to ensure that parking didn't overflow onto the road. Mr Mitchell noted that both concrete and asphalt could be coloured.

Anne Hessel

Ms Hessel said that proposed conditions 10, 11, 14, 15, and 16 had been imposed largely because of the need to moderate the intensity of effects on the site given the other extensive consents. She referred the Panel to Policy 7.13.1 (a)(v) and Plan Change 55 and said that she had taken into account the consequent effect on rural character. Ms Hessel requested clarification in regard to the number of patrons at the café and whether 50 people could be accommodated at present and she also asked for clarification on how many art gallery openings there would be and the associated hours. She understood the café had the ability to be open until 8.00 p.m.

26 March 2010

Ms Hessell noted that a review condition could create expectations, and in her experience though they were sometimes put into consents, they didn't get used a lot. However she noted that it would give the Council some flexibility. Ms Hessell said that sometimes there were problems in regard to administering review conditions, i.e. what triggers a review and when does that take place; it would need to be made clear what that trigger was. With regard to the comments from the submissions in support, Ms Hessell said that there were certain social, health and welfare benefits. With regard to the type of activity, she said that the main issue related to the environmental effects, the location and the plan provisions and whether they were met.

Referring to the comments of Mr Parfitt, Ms Hessell said that the application was a result of the compliance work the Council had done. With regard to comments about the sealing of the carpark, that had been a requirement of the first consent, then there had been a consent issued for the farmers' market which referred to 150 carparks in accordance with the plan submitted; she considered that potentially that consent may supersede the earlier consent.

In response to questions from the Panel Ms Hessell said that:

- She would print out the other consent conditions on the existing consents for the Panel and she would also provide information on how the notional boundary was determined.
- She would like to see the cafe continue to run at the scale it currently was.

Mr Bartlett presented the right of reply:

Mr Bartlett said that it was not the first time a specific consent hearing had been the occasion to vent grievances but he was not going to get into allegations of non compliance. Mr Bartlett referred to a decision of Judge Bollard where he had said that one means of achieving compliance was to make an application. Mr Bartlett said that it was wonderful to see so many people in support of the proposal. Referring to comments by Ms Foster that the proposal was outside the intent of the original consent, Mr Bartlett said that was why there was a new application as some of the new activities were unconsented. With regard to the sealing of the carpark Mr Bartlett said there were associated run off concerns from the carpark to the stream which could be a discharge consent issue. Referring to the comments of Mr Freeth, Mr Bartlett said that if noise was such an issue Mr Freeth could have called in an expert. It seemed Mr Freeth had no real argument in regard to the art gallery and café as they didn't make much noise. What would take place in the Woolshed building was a matter of condition and one had to assume conditions would be adhered to; noise could be complied with subject to conditions.

In regard to comments about the high ratio of open space in relation to buildings Mr Bartlett referred to the character of the area. He said that there was a predominance of natural features which would not be affected by the application. In relation to questions raised in the planner's report he said that the more intensively the site was used the less pressure there was for others to 'sprout up.' In terms of rural character there was a point where something can have drifted into an urban situation but things had to work up to their own level. In terms of broader management and precedent the applicant was making use of the park in the way everyone seemed to want to make use of it. The applicant had no issue regarding a 7.00 a.m. start for the music and he was surprised at comments that people had been woken by music at 6.00 a.m. when 6.30 a.m. was the gym's start time.

With regard to the request for 12 new events Mr Bartlett said that the condition could be subject to a review clause; he conceded that conditions needed to be subject to better monitoring than had been done to date. The applicant offered that a specific monitoring clause be included in the conditions. That allowed some kind of benchmark that created appropriate standards and could only be of benefit; it was a manageable situation.

With regard to questions from the Panel, Mr Bartlett requested that proposed condition 4 (hours of operation) be left at 6.00 a.m. but that the music start at 7.00 a.m. With respect to comments on noise, Mr Bartlett said that clearly there had been an intention to monitor the last New Year's Eve event but that didn't happen.

26 March 2010

In response to a question from the Panel, Mr Baker requested that there be 56 patrons for the café, this was not a problem as the café could accommodate that many people and would allow for bus loads of visitors. He said that the art gallery had openings about every 6 weeks and he would like to apply for one occasion a month in case there were a few extra openings. He also requested that the final finish time for gallery openings be 8.00 p.m. Mr Bartlett said that he struggled to see that there was a resource management reason to 'tie down' the art gallery.

In response to a question from the Panel Mr Baker said that he had considered buying Mr Freeth's property.

4.43 p.m. The Chairperson adjourned the meeting subject to a site visit.

The Panel requested clarification in regard to where Mr Hegley had taken the noise readings and this was circulated to the applicant's agent, Innova Tan Ltd and D and S Freeth.

The hearing was closed on Monday, 12 April 2010 at 4.00 p.m.

The Panel resolved.

Turner/Weld

THE DECISION

THAT, PURSUANT TO SECTIONS 104, 104B AND 104D OF THE RESOURCE MANAGEMENT ACT 1991 AN APPLICATION FOR RETROSPECTIVE CONSENT TO LEGALISE FOUR EXISTING ACTIVITIES ON THE SITE WITHIN THE EXISTING 'WOOLSHED' BUILDING, WITH THESE ACTIVITIES BEING:

- **A CAFE OFFERING PREDOMINANTLY SMALL SNACKS AND COFFEES AND OPERATING FROM 8:00AM TO 4:00PM**
- **A CIRCUIT ROOM/EXERCISE STUDIO**
- **12 FUNCTIONS PER YEAR THAT OPERATE NO LATER THAN 12:00AM AND EXCEED NO MORE THAN 120 PATRONS**
- **AN ART GALLERY, WHICH COMPRISES BOTH AN EXHIBITION SPACE AND A RELATED SHOP**

is granted consent for the following reasons.

PREAMBLE:

Procedural Matters

Late submissions had been received from Emma Barry, Dr Louise Chasteau, Jane Cresswell, Glenn Dalton, and Michelle Tree. All five submissions were in support of the proposal. The submissions were received by the Council 16 working days late. Mr Bartlett on behalf of the applicant supported the late submissions being accepted.

Mr Parfitt on behalf of Bill and Joan Freeth of Innova Tan Ltd said that he wished to have it recorded that he did have an objection to the Panel accepting the late submissions as they had been received substantially late. If they had been a couple of days late he wouldn't have worried but the late submissions were over a fortnight late. He stated that it was a matter of principle that he opposed the submissions being accepted. In relation to the hearing itself he considered that it was immaterial whether the submissions were accepted or not.

Mr Bartlett indicated that the submitters could speak in support of the proposal on behalf of the applicant if the submissions were not accepted.

26 March 2010

While acknowledging the submissions were significantly late they were accepted in terms of sections 37 and 37A of the Act for the following reasons:

- The applicant agreed to the extension of time.
- The submissions were all in support, were identical to a large number of other submissions, and as a consequence they raised no new issues that had not already been raised.
- No other parties, other than the applicant, were considered to be directly affected by the extension of time.

Following the right of reply on 26 March the hearing was adjourned at 4.45 p.m. The Chairman indicated that the Panel would undertake a site visit on Wednesday 31 March. On the morning of 31 March, prior to the site visit, Mr Freeth sent an email to the reporting planner, Ms Anne Hessel, seeking clarification on where Mr Hegley had taken his noise readings. The Panel noted on the site visit that there was an inconsistency between what had been stated at the hearing and the actual location of the container where they understood the readings had been taken by Mr Hegley.

Mr Hegley was asked to clarify and he did so in an email dated 8 April. A copy of this email was sent to the applicant's agent, Innova Tan Ltd and D and S Freeth.

The hearing was formally closed on 12 April 2010.

REASONS FOR THE DECISION:

Pursuant to Section 113 of the Resource Management Act 1991, the reasons for this decision are as follows:

- (a) **Subject to the imposition of conditions, any adverse effects upon the property at 1 Takatu Road have been determined to be no more than minor. With respect to noise, the proposal will comply with the relevant noise standard contained within the District Plan. With respect to the general amenity values that can reasonably be expected by the occupiers at 1 Takatu Road, specific restrictions on the hours of operation, noise levels and the frequency of events have been imposed.**
- (b) **Given the nature of the activities for which consent is sought and the fact that they will take place within an existing consented building which is located within an existing cluster of buildings, the Panel accepted the evidence of Ms Capes and Ms Hessel that any additional adverse effects on rural character and amenity values will be no more than minor.**
- (c) **Based on the evidence presented the Panel accepts that the proposal is consistent with the relevant planning provisions. No specific provisions were identified that the current proposal was contrary to or inconsistent with.**
- (d) **Any adverse effects on the environment have been determined to be no more than minor and the activity has determined to be consistent with rather than contrary to the relevant objectives and policies. The proposal therefore passes both gateway tests of section 104D.**
- (e) **The nature of the subject site, and the consents that are in place that have enabled this tourist and recreational facility to be developed, clearly distinguish this site from most other sites within the rural environment generally and this locality in particular.**
- (f) **When applying an overall broad judgement the proposal will promote the sustainable management of resources as contemplated by Part 2 the Act. In relation to the "circuit room/exercise studio" the positive aspects and the physical and social wellbeing and health benefits of this aspect have been accepted.**
- (g) **With respect to the remaining aspects of the proposal, subject to the conditions of consent that have been imposed, the grant of consent will enable the existing tourist and recreational facility to be used in a manner consistent with section 5 and the purpose of the Act.**

26 March 2010

- (h) In relation to the property at 1 Takatu Road the grant of consent, together with the conditions that have been imposed will appropriately avoid, remedy or mitigate any adverse effects on this property consistent with Part 2 of the Act, given the nature of the existing environment and the activities that can take place on the applicant's site.

**THE RELEVANT STATUTORY PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (AA))**

Overall this application was considered to be a **non-complying** activity and was considered in terms of sections 104, 104B and 104D and Part 2 of the Act.

**OTHER RELEVANT PROVISIONS THAT WERE CONSIDERED:
(Section 113(1) (ab))**

The provisions of the following documents were considered by the Hearings Panel in reaching this decision. In summary the relevant provisions were those set out in the report of Ms Hessel, the reporting planner.

Auckland Regional Policy Statement

Plan Change 55

Proposed District Plan 2000, Operative in Part

Other Matters Considered Relevant and Reasonably Necessary to Determine the Application

As envisaged under section 104(1) (c) of the Act the Panel has taken into account the non statutory Council documents the Sustainable Development Plan for Matakana, June 2006, 'Vision Rodney' (Revised December 2008) and Planning Rodney.

**THE PRINCIPAL ISSUES THAT WERE IN CONTENTION:
(Section 113(1) (ac))**

The principal issues that were in contention were as follows:

1. The nature and extent of any adverse effects on the Innova Tan Limited (Freeth) property at 1 Takatu Road.
2. The nature and extent of any adverse effects on the environment of allowing the activity.
3. Compliance issues in relation to conditions of previous resource consents.
4. Whether the proposal is consistent with or contrary to the relevant planning provisions.
5. Whether the proposal passes either of the gateway tests of section 104D of the Act.
6. Whether the proposal can be favourably considered under section 104 of the Act.
7. Whether the grant of consent will have an effect on the integrity and consistent administration of the district plan.
8. The detailed wording of the conditions of consent.
9. Whether the grant of consent will promote the sustainable management of resources as contemplated by Part 2 of the Act.

26 March 2010

**SUMMARY OF THE EVIDENCE HEARD:
(Section 113(1) (ad))****The Applicant**

The applicant, John Baker, and his representatives, Russell Bartlett (Counsel), Lisa Capes (Planning Consultant) and Nevil Hegley (Acoustic Engineer) were in attendance and presented written and oral submissions and evidence.

Mr Bartlett opened proceedings for the applicant. Mr Bartlett distributed and read a written submission. He also tabled case law Decision No. A081/2009 (Cornerstone Group Limited v Rodney District Council and Auckland Regional Council).

Mr Bartlett stated that it was significant that the application had overwhelming support from the community. Mr Bartlett focused on the provisions of the District Plan and in particular the analysis provided by Judge Newhook in the case of Cornerstone Group Limited v Rodney District Council and Auckland Regional Council. Mr Bartlett highlighted what he considered to be pertinent sections of that decision. He said that the application site was a working country site. He said that a significant difference between the Cornerstone application and the Matakana Country Park application was that the building and landscaping already existed. It was therefore only the effects of the activities within the building and the extent to which they do or may generate effects outside the building and beyond the site which needed to be addressed. Mr Bartlett also referred to the Environment Court decision Brookby Quarries Limited vs Manukau City Council. In conclusion Mr Bartlett said that he thought some of the proposed conditions had no resource management purpose and should not be applied to any consents granted on the application.

In response to questions from the Panel Mr Bartlett said that;

- Regarding a restriction of numbers at the café, 50 patrons would be better than 28.
- He challenged the inclusion of proposed conditions 10, 11, 14, 15 and 16 but accepted all the other conditions.
- He did not think any of the existing consents were different in character; they were passive activities. This application could be done on a stand-alone basis.

Ms Capes noted that an appropriate finish time for events in the Woolshed would be up until midnight.

Neville Johnson distributed and read written evidence. Mr Johnson was accommodated to speak before the applicant had finished their presentation because of time constraints.

Neville Johnson from Matakana Village said that he took a strong interest in the community and he had been regularly involved in community committees and as such he believed he could comment with a degree of certainty about how the community felt about Matakana Country Park. He thought the application should be approved without conditions. Mr Johnson said that he had been involved in the consultation regarding the Matakana Structure Plan and he didn't think the Park had been looked at in enough detail in relation to the place it had in the evolution of facilities and activities in the area. Mr Johnson questioned to what extent the Matakana Country Park activities should be constrained by the rules of the General Rural Zone. He also questioned what the future of the Country Park would be. Mr Johnson said that the insistence that almost every new activity at the Country Park be required to be permitted and sometimes notified in order to comply with a rural zoning would appear to be placing the Park under extremely difficult operational restrictions.

John Baker introduced himself and outlined the initial idea for the Matakana Country Park which he said came from a visit to Canada. Mr Baker bought the property when it became available for sale in around 2004 and he employed a Canadian landscape designer. The focus of the park included an equestrian area, a garden for the future (he had planted 500 Redwood trees), food, art, and music and community activities. He had progressively carried out these different things. He noted that there was a craft shop on the site which around 100 people provided goods for sale. He said that he had had the former Matakana Church shifted on to the site from Snells Beach and he had fielded quite a few enquiries for weddings. Mr Baker said that the Country Park provided employment opportunities. He had a vision and as far as the gym was concerned it offered a major plank in the treatment for

26 March 2010

diabetes as it offered exercise opportunities to the wide variety of people who attended the gym. Mr Baker thanked the people who had come along to support the application.

In response to questions from the Panel Mr Baker said that:

- Matakana Country Park was a destination.
- He shared the view that the Country Park should be a scheduled activity as a tourist related activity with certain defined future uses. He had been in discussion with the Council and it was expected that a plan change would be publicised in May 2010 which would be open to public discussion until November. If approved the plan change would mean that he would not need to apply for resource consent all the time. He thought this was a good approach which would define a 40-50 year plan. Mr Baker confirmed that all the resource consents had different activities with different closing times.
- There was carparking for 1180 cars with parking on hard stand for 200 -280 cars.
- The restaurant at the Matakana Country Park, RD 6, was open from 9.00 a.m. to 11.00 p.m.
- In some instances time extensions were applied for such things as weddings etc.

Nevil Hegley distributed and read written evidence.

Mr Hegley discussed the design criteria, the existing noise environment and noise from existing activities. Mr Hegley referred the Panel to the noise standard in Table 16.9.2.1.2(i) Noise Received in Rural Zones (L_{eq}) in the District Plan. He considered the levels in the District Plan to be appropriate for a working environment. Mr Hegley said that as the site and closest dwellings were located within 70m of a District Arterial Road (Leigh Road), the high background requirements of the Table in his evidence were applicable.

Referring to the impact on the noise assessment with 50 people in the café, Mr Hegley said that he assumed the level might rise to 23 decibels. He said that Matakana Country Park was an extremely good site for the proposed activities with the majority of activities screened from the closest house. With regard to noise impacts in this case Mr Hegley said that the separation, building design and layout were controlling factors in relation to the building.

In conclusion Mr Hegley said that:

- The existing noise environment was typical of that expected in a rural area adjacent to a district arterial road and from approximately 6.00 a.m. each morning the noise level climbs quickly as a result of increased traffic flows.
- The existing activities are all well within the District Plan noise limits and for the majority of the time they are well below the existing noise environment.
- Based on the evaluation of the existing noise environment and noise from the facility, the effects for neighbours will be less than minor. Based on noise there was no reason why the application should not be approved.

Mr Hegley said that there was no reason why any of the activities should have a time restriction as they could comply with noise restrictions so there was no need for a condition.

In response to questions from the Panel Mr Hegley said that:

- The site had no unusual features, it was a flat area.
- He assumed the prevailing wind would be the same for the rest of the country, i.e. westerly to south-westerly. Winds from that direction would significantly reduce the noise by 5-8 decibels which would have a positive effect for the neighbour in opposition to the proposal.

Owing to time constraints John Cresswell and Lee Parore were accommodated to address the Panel before the applicant had finished presenting their case.

26 March 2010

John Cresswell presented oral evidence.

Mr Cresswell said that he supported John Baker and his daughter who had established The Circuit Room. He considered The Circuit Room to be an outstanding example of a boutique gymnasium and that it added tremendous value to the community and was a great asset. The Circuit Room had limited opening hours and specialist classes that catered for all age groups. Mr Cresswell said that the community was supporting The Circuit Room and he believed its location to be ideal as people did not have to travel outside the area.

Lee Parore presented oral evidence on behalf of Emma Barry.

Mr Parore gave an overview of how Les Mills World of Fitness operated. He said that obesity related diseases were currently the number one cause of death. Mr Parore said that The Circuit Room offered the choice of health. Mr Parore said that good fitness training should be promoted in rural areas as well as in cities. Parents were able to come to The Circuit Room with their children, which promoted a good role model. Mr Parore said that people in the Matakana area needed access to such a facility and he requested that consent be granted. The Circuit Room offered social, physical and emotional services to better people's health and wellbeing. Before The Circuit Room had been set up people had to go to Warkworth; there was nowhere else locally that offered the same service.

Lisa Capes distributed and read written evidence.

Ms Capes outlined the proposal and referred to submissions received noting the written approval of the owners of 38 and 40 Omaha Flats Road (known as Oakhill Vineyard) which was received after lodgement. Under the heading Assessment under Section 104 and Part II of the Act Ms Capes discussed rural character and amenity values, noise, traffic access and parking, and development engineering issues. Ms Capes also addressed the proposed conditions of consent.

In conclusion Ms Capes said that having assessed the proposal in relation to the tests set out in Section 104B and 104D of the Resource Management Act and the relevant matters for assessment set out in section 104 of the Act, it was her opinion that consent should be granted to the proposal. The reasons for her opinion were:

- The potential adverse effects of the proposal on the environment were considered to be no more than minor.
- The proposal was not contrary to the intent of Vision Rodney or the Sustainable Development Plan for Matakana in which the Matakana Country Park features as a distinct "zone".
- The proposal was considered to be consistent with relevant objectives and policies of the relevant planning instruments.
- The proposal would not set a precedent.
- The proposal was consistent with Part II of the Act.

Ms Capes said that the matters raised in the three submissions in opposition had been addressed generally in the assessment of effects of the proposal on the environment and it was concluded that the matters raised in submissions were able to be adequately dealt with by way of consent conditions, such that any adverse effects would not be more than minor.

In response to questions from the Panel Ms Capes said that:

- It would not hurt to have a review condition.
- With regard to Vision Rodney and the Matakana Sustainable Development Plan (MSDP), the MSDP was the latest planning document available and the Matakana Country Park was shown in the MSDP but she didn't know what level of consultation there had been.
- The character of the Matakana - Omaha Flats area was unique in a sense and quite modified in what a lot of people would call a rural environment. Matakana was the playground of Auckland because of its proximity and it still had lots of features of standard rural production activities, for example, vineyards, the opportunity to have home gardens and sell at the gate, and there was a lot of tourism and recreation. The character was highly consistent with what you would find in the area if you were a visitor.
- The applicant didn't want any restriction on the hours of the café, especially if the café owner wanted to keep the cafe open during the same hours as The Circuit Room.

26 March 2010

Submitters in support:

James Davies distributed and read a written statement.

Mr Davies said that there were two factors which should be taken into account, these were parking and tourism. He said that the Matakana Country Park had adequate parking to provide for the volume of visitors expected; this was in contrast to Matakana Village where on weekends and holidays parking conditions could only be described as chaotic. With regard to tourism, Mr Davies said that Matakana Country Park attracted many people, some of whom were overseas visitors.

Michelle Tree presented oral evidence.

Ms Tree said that she had worked extensively in the area of fitness. She considered that the community could not do without the facilities at The Circuit Room and they were a valuable facility for people with health issues. Ms Tree said that Warkworth had a gym but The Circuit Room offered something different. The Circuit Room was prepared to train firemen and sports teams, and worked in conjunction with the Stroke Foundation. She said that with the generosity of The Circuit Room classes were able to be run to cater for people with Multiple Sclerosis or Parkinson's disease. Ms Tree said that she contracted her services to The Circuit Room and that she didn't consider the music to be at all loud.

Dr Louise Chasteau presented oral evidence.

Dr Chasteau requested that the Panel grant resource consent to the proposal. Speaking as a health professional Dr Chasteau drew the Panel's attention to the letters of support from local doctors and physiotherapists. She also spoke as a sometime resident of Leigh and said that her parents utilised The Circuit Room for their health needs. Dr Chasteau said that residents of Northern Rodney faced difficulties in regard to access to facilities. She said that facilities such as The Circuit Room were important in that they served the rural community and that it represented a valuable asset to the health of people in the rural community. For a lot of people the travel costs were more affordable and there were the added benefits of social connection, cultural enrichment etc. Dr Chasteau said that The Circuit Room embodied all the concepts mentioned in Vision Rodney. She said that The Circuit Room was a welcome and valuable feature of the local and surrounding community with a high level of attendance and an obvious enjoyment of the facilities.

Eric Henry presented oral evidence.

Mr Henry said that he was not a member of The Circuit Room but he drove past the Matakana Country Park most days. Mr Henry noted the rural character of the area and said that the park provided benefits to a major group of people as well as providing for their social needs. Mr Henry said that he often visited the café during weekends. Speaking from his perspective as a former businessman Mr Henry said that he used strategic thinking and he saw nothing but benefits from the proposal; he saw no negatives whatsoever. He considered the Matakana Country Park to be a building block in Rodney District going forward and supported what John Baker had done 100%.

Jenny Francis on behalf of Matakana Community Group distributed a brief written statement.

Ms Francis said that all members of the Matakana Community Group utilised some part of the Matakana Country Park. She said that a synergy clearly existed and that John Baker had provided a facility for tourists as well as locals. She believed that during the lean winter months local people contributed to supporting the Matakana Country Park.

Glenn Dalton presented oral evidence.

Mr Dalton said that he was supportive of the proposal and he thanked John Baker for bringing something to the community that was needed, especially as there wasn't a leisure centre in the area. Mr Dalton described the area and said that the park was located near a very busy intersection with roads on each side. Mr Dalton said that he had been involved in meeting with Mr Freeth and his son, Damion, along with Mr Baker and Ms Capes. Mr Freeth had indicated wholehearted support for The Circuit Room at the time. Mr Dalton noted that there were about 500 people on The Circuit Room's books, the majority of which were locals.

26 March 2010

Joy Earley presented oral evidence.

Ms Earley said that she supported John Baker. Ms Earley said that she had shifted to the area two years ago and had been introduced to The Circuit Room. She said that she enjoyed the small classes and she thought the instructors were fantastic. Ms Earley said that she had made some wonderful friendships and she had lost a significant amount of weight which had changed her health and wellbeing. She also said that she had gained 3 jobs through going to the gym. She enjoyed the Saturday morning classes and the ability to have a coffee afterwards at the cafe. In conclusion she said that the gym was situated in a nice environment and that Matakana Country Park and the cinema complex in Matakana Village had raised amenity values in the area.

Jane Cresswell presented oral evidence.

Ms Cresswell said that she was the owner of The Circuit Room. She thanked the Panel for accepting the late submissions. Ms Cresswell said that The Circuit Room was not a normal gym. She described it as a studio which was open for 20 hours per week and which ran such classes as ballet for preschoolers as well as exercise classes for senior citizens. Ms Cresswell said that she had 568 adults on her database. The Circuit Room didn't have membership as such; she charged on a casual basis or people could purchase concession cards. She said that she didn't intend to grow the business; she was proud of the intimate connection that she had with people who used the gym. Ms Cresswell said that she had previously held fitness classes at Matakana Hall but had found that too cold in winter. She said that the classes had grown since she set the business up and that it was not a 'money spinning business.' Ms Cresswell read out the gym's mission statement. In conclusion she said that she supported John Baker and noted that overseas trainers who visited had been very impressed by the facility.

Submitters in opposition:

Damion Freeth read a written statement (the statement was later tabled).

Mr Freeth said that he lived at 1 Takatu Road with his wife and young family. They moved to that address in 1997, 3 years before the inception of the Matakana Country Park. When approached by John Baker in 2000 with a concept for an equestrian event centre and vintage car museum they were 100% supportive. Since then Mr Freeth said they had never been approached legally in regard to seeking consent for any of the activities at the park. Mr Freeth was happy to see the art gallery and the café continue as normal but he wanted The Circuit Room hours to be more compassionate so that his family wasn't woken by loud music in the early hours of the morning. In regard to 12 functions in the Woolshed, he requested that consent be completely rejected as there were already existing rights to 15 special events per annum and he believed the existing restaurant (RD6) to be a more than adequate function centre already.

In response to questions from the Panel Damion Freeth said that:

- Noise from The Circuit Room was a concern and he would prefer to see a 7.00 a.m. start.
- The Woolshed already had 15 events happening per annum. His concerns in this regard related to noise and activities late at night, especially the behaviour of people and vehicles leaving the site.

Elizabeth Foster distributed and read written evidence. The following was noted:

Ms Foster said that she had serious concerns about the manner in which development on this site varied from the original consent and she was further greatly concerned that the Council had chosen to ignore deviations from the consent for 7 years, particularly in regard to sealing the parking area. Ms Foster said that after the original consent was issued it quickly became apparent that the character of the development was moving toward a commercial activity. She also considered that the requirement to provide adequate screen planting had been ignored. Ms Foster said that the issue of public functions was of real concern. She noted that the District Plan provided for functions for up to 1,000 people and yet a function (Highlife) attracting 10,000 people was seen by Council staff as having effects that were no more than minor and did not require public notification. She said that continuing approval of activities drew more traffic through the notorious Hill Street intersection without any consideration by the Council of providing an alternative route. Ms Foster also said that a major issue

26 March 2010

for her was the radically changed character associated with the development at the Matakana Country Park in a catchment that was rural/horticultural and had no commercial cluster of activity provided for in any plan. She believed there was a strong emphasis on allowing illegal activities to develop and then be rewarded retrospective consents while at the same time denying legitimate applicants the privilege of such approvals.

In conclusion, Ms Foster said that if the application was approved she had no confidence that any conditions would be adhered to based on the historical evidence, nor that they would be enforced by the RDC or its successors. She therefore requested that the application be declined and any other irregularities and existing consent conditions be dealt with immediately as this was essential for the consistent administration of the District Plan.

In response to questions from the Panel Ms Foster said:

- The 'Horseworld' application (the original application for an equestrian centre) was approved in 2002.
- She was trying to retain the rural character and was involved with Whangateau HarbourCare Group; once development went beyond a certain stage the area was no longer General Rural and for the sake of the catchment and protection of the Whangateau Harbour it was essential the area didn't become Countryside Living. The Matakana Country Park was not Matakana it was in the Omaha-Whangateau catchment.
- She would describe the character of the Omaha Flats area as predominantly rural horticultural; it was high value horticultural land in relatively smaller blocks. Native vegetation was much more of a feature on the surrounding hills, and there were isolated farmhouses and roadside stalls. The area was still strictly rural.
- If consent was approved the Panel could reinforce the condition regarding the sealing of the carpark.
- The Reporting Planner described the existing buildings as rural in character but there were lots of large buildings in the area that might be suitable for such activities and the application could create a precedent.
- In her opinion the buildings were not really typical of other farm buildings in the area and there was an issue in terms of planning that other large buildings could be used in a similar way.
- She was predominantly concerned about the integrity of the District Plan and the Council's failure to enforce the rules.
- She also had concerns regarding the traffic; it all added up and the Council allowed more and more developments without making provisions for alternative traffic flow.

Ms Hessell noted that the craft shop had been included in the original building consent application. Although there was no direct reference in the application, when she had done her planning check she considered the craft shop to be in general accordance.

Graham Parfitt distributed and read written submissions on behalf of Bill and Joan Freeth (Innova Tan Ltd).

In his submissions Mr Parfitt outlined:

- The submission from Innova Tan Limited.
- Dealt with the history of the site as it had impacted upon his client.
- The integrity of the planning report submitted as part of the application.
- Critiqued the Council planning report.
- Conditions of consent including Council enforcement of conditions of consent.
- Assessed the way Council staff had treated the application for the site.

Mr Parfitt said that his client was worried about conditions of consent not being enforced. He also considered that the prior conduct of the applicant was something that the Panel should take into account. He noted that three of the activities for which consent was sought had been going for more than 18 months. Mr Parfitt said that his client didn't have any problem with three of the activities but they did with the application for 12 extra events and he wondered whether the special events would be limited in duration.

26 March 2010

In conclusion Mr Parfitt said that both the original planning report (AEE) and the Council planning report were totally deficient in their assessment of the proposed 12 special events. There was no information on what they intended to cover and no limits on them; they were open ended to the extreme. There was no way they could be approved as no one had any idea what they encompassed, what their effects would be and how any adverse effects could be dealt with. He said that resource consent must be refused on that basis alone let alone the complete and total failure to comply with either test of Section 104D.

Mr Parfitt said that in the normal course of events he would advise his clients, and he believed they would have accepted, that the art gallery, café and the gym with a 7.00 a.m. start for the music could be supported, or in the case of the gym with a 7.00 a.m. music start be not opposed with appropriate conditions. Due to the lack of integrity of the applicant, the applicant's advisors, and Council staff he had to say that support was not possible and the application must be refused.

Mr Parfitt referred to the Suncern Construction Cases which allowed the prior behaviour of the applicant, its advisors and Council staff with respect to respecting prior consents and conditions of consent to be a relevant matter for consideration by the commissioners under Section 104(i)(c) of the RMA 1991 and on that basis alone resource consent should be refused. In view of all the above, resource consent for the whole application (i.e. each activity) must be refused consent.

In response to questions from the Panel Mr Parfitt said that:

- The consent for 12 special events was granted to the museum application in 2002 and as the museum was never established he considered that any events that had taken place had been unlawful.
- There was a difference in what experts said and what people who lived in the area perceived.
- He would have liked to have had the noise monitor by Damion Freeth's windows and have had the noise monitored between 6.00 a.m. and 7.00 a.m.
- The only question mark he had in relation to Mr Hegley's evidence was in regard to the direct line.

Bill Freeth distributed and read a written statement.

Mr Freeth commented on the planning officer's report. He said that while the planner had acknowledged that rural amenity would be severely compromised they had gone on to say it would be alright to grant consent if certain conditions were imposed. Mr Freeth said that his son, Damion, and Damion's family, had had their sleep affected from activities at the Matakana Country Park which had destroyed the family's health and their amenity values. Mr Freeth said that there had been a significant amount of correspondence between himself and the Council over the past few years in which he had communicated his concerns. He had also had correspondence from the Ombudsmen advising that the Council had been lax in monitoring.

Mr Freeth tabled an aerial map of the site and another diagram which showed the notional boundary.

Mr Freeth said that he had asked from the outset that the gym start at 7.00 a.m. and for clarification on the definition of the 12 special events. He noted that a sculpture symposium held at the Matakana Country Park went for a month. Mr Freeth said that he had never complained about any events; his complaints were solely in relation to the noise. His son had had to move out of his house during the New Year's Eve Highlife event. He said that he believed the notional boundary of the house to be 150m from the Woolshed building.

In response to questions from the Panel Mr Freeth said that:

- The noise was increased by the easterly wind.
- He had concerns regarding the Woolshed building and thought it needed better sound proofing.
- It wasn't just events themselves, it was the 'hyped up' people leaving events especially as some events had run until 2.00 a.m.
- He considered there had been incredible consent creep.
- He was happy with the art gallery but wanted no music in the gym before 7.00 a.m.

26 March 2010

- A matter of concern was the requested 12 additional events; there was no clarity on what other events there were. He was opposed to the extra events in their entirety, the main reason being that there was no enforcement of sound.

Council Officers:

David Mitchell

Mr Mitchell confirmed that his position remain unchanged from his original comments. With regard to the mobility parking spaces, he believed they should be formed and sealed to an all weather surface. He suggested proposed conditions 6 and 13 remain unchanged. With regard to the patron numbers for the café at proposed condition 14 and whether that should be 50 patrons rather than 28, there was no issue in a transport sense so long as the building could provide for that. With regard to proposed condition 10 (co-ordination of activities) Mr Mitchell suggested that the words "...without submission and approval by the Council of a traffic management plan.." be added, this was so the Council had the ability to ensure that parking didn't overflow onto the road. Mr Mitchell noted that both concrete and asphalt could be coloured.

Anne Hessel

Ms Hessel said that proposed conditions 10, 11, 14, 15, and 16 had been imposed largely because of the need to moderate the intensity of effects on the site given the other extensive consents. She referred the Panel to Policy 7.13.1 (a)(v) and Plan Change 55 and said that she had taken into account the consequent effect on rural character. Ms Hessel requested clarification in regard to the number of patrons at the café and whether 50 people could be accommodated at present and she also asked for clarification on how many art gallery openings there would be and the associated hours. She understood the café had the ability to be open until 8.00 p.m.

Ms Hessel noted that a review condition could create expectations and in her experience, while there were some instances where they were put into consents, they didn't get used a lot. However she noted that a review condition would give the Council some flexibility. Ms Hessel said that sometimes there were problems in regard to administering review conditions, i.e. what triggers a review and when does that take place; it would need to be made clear what that trigger was. With regard to the comments from the submissions in support, Ms Hessel said that there were certain social, health and welfare benefits. With regard to the type of activity, she said that the main issue related back to the environmental effects, the location and the plan provisions and whether they were met.

Referring to the comments of Mr Parfitt, Ms Hessel said that the application was a result of the compliance work the Council had done. With regard to comments about the sealing of the carpark, that had been a requirement of the first consent, then there had been a consent issued for the farmers' market which referred to 150 carparks in accordance with the plan submitted; she considered that potentially that consent might supersede the earlier consent.

In response to questions from the Panel Ms Hessel said that:

- She would print out the other consent conditions for the Panel and she would also provide information on how the notional boundary was determined.
- She would like to see the cafe continue to run at the scale it currently was.

Mr Bartlett presented the right of reply:

Mr Bartlett said that it was not the first time a specific consent hearing had been the occasion to vent grievances but he was not going to get into allegations of non compliance. Mr Bartlett referred to a decision by Judge Bollard where he had said that one means of achieving compliance was to make an application. Referring to comments by Ms Foster that the proposal was outside the intent of the original consent, Mr Bartlett said that was why there was a new application as some of the new activities were unconsented. With regard to the sealing of the carpark, Mr Bartlett said there were associated run off concerns from the carpark to the stream which could be a discharge consent issue. It seemed Mr Freeth had no real argument in regard to the art gallery and café as they didn't make much noise. What would take place in the Woolshed building was a matter of condition and one had to assume conditions would be adhered to; noise could be complied with subject to conditions.

26 March 2010

In regard to comments about the high ratio of open space in relation to buildings, Mr Bartlett referred to the character of the area. He said that there was a predominance of natural features which would not be affected by the application. In relation to questions raised in the planner's report, he said that the more intensively the site was used the less pressure there was for others to 'sprout up.' In terms of rural character there was a point where something can have drifted into an urban situation but things had to work up to their own level. In terms of broader management and precedent, the applicant was making use of the park in the way everyone seemed to want to make use of it. The applicant had no issue regarding a 7.00 a.m. start for the music and he was surprised at comments that people had been woken by music at 6.00 a.m. when 6.30 a.m. was the gym's start time.

With regard to the request for 12 new events Mr Bartlett said that the condition could be subject to a review clause; he conceded that conditions needed to be subject to better monitoring than had been done to date. The applicant offered that a specific monitoring clause be included in the conditions. That allowed some kind of benchmark that created appropriate standards and could only be of benefit; it was a manageable situation.

With regard to questions from the Panel, Mr Bartlett requested that proposed condition 4 (hours of operation) be left at 6.00 a.m. but that the music start at 7.00 a.m. With respect to comments on noise, Mr Bartlett said that clearly there had been an intention to monitor the last New Year's Eve event but that didn't happen.

In response to a question from the Panel, Mr Baker requested that there be 56 patrons for the café, this was not a creep as the café could accommodate that many people and would allow for bus loads of visitors. He said that the art gallery had openings about every 6 weeks and he would like to apply for one occasion a month in case there were a few extra openings. He also requested that the final finish time for gallery openings be 8.00 p.m. Mr Bartlett said that he struggled to see that there was a resource management reason to 'tie down' the art gallery.

THE MAIN FINDINGS OF FACT: (Section 113(1) (ae))

The main findings of fact determined by the Hearings Panel that have led to the above decision and the reasons for that decision are as follows. They have been reached after considering the application, the submissions, the evidence and submissions at the hearing, the report prepared by the reporting planner, all the relevant statutory and planning provisions and from a site visit. The Panel finds the following.

The nature and extent of any adverse effects on the Innova Tan Limited (Freeth) property at 1 Takatu Road.

The primary concern identified in relation to the property at 1 Takatu Road was the noise effects from activities on the applicant's site.

Mr Damion Freeth, who lives at 1 Takatu Road, together with Mr Bill Freeth on behalf of Innova Tan Limited, the owner of the property, and Mr Parfitt, outlined the history of the concerns they had with activities that have been operating on the subject site. Many of the issues related to matters that were not specifically related to the current application. The Panel is unable through this current resource consent process to respond to the matters raised in relation to New Year's Eve Outdoor Entertainment Events that have been granted consent through, until and including 31 December 2013 and 1 January 2014.

In addition, the concerns raised with respect to how the Council has processed previous applications and compliance issues in relation to the conditions of those consents is beyond the scope of the current application.

Having been provided with copies of the previous consents that have been granted for the subject site, it is evident that activities on the site have evolved over the years. It would appear that consents have been sought and granted for the various activities, apart from the activities the subject of this retrospective application. The Panel agrees that a comprehensive approach to consent conditions is

26 March 2010

desirable. The possibility of a scheduled activity for the site may be the best method of providing greater certainty for the landowner and neighbouring land owners; however this will involve a separate process, with public participation at some future date.

The Panel can only consider the matters currently before them in relation to the application as lodged and we have therefore limited our attention to those specific matters.

It is particularly relevant to note that there is no application before the Panel seeking to exceed the relevant noise standards of the District Plan. It was Mr Hegley's unchallenged evidence, to the extent that no other expert acoustic evidence was presented, that the activities are well within the noise limits and for the majority of the time they are well below the existing noise environment. A condition of consent to require ongoing compliance with the District Plan noise standards was accepted by the applicant.

Mr Damion Freeth was very clear that he had no issue with the cafe or the art gallery activities. With respect to the specific concern of early morning music coming from the 'circuit room/exercise studio' Mr Freeth stated that 7.00am would be a reasonable time for the music to start, rather than the 6.00am sought. The applicant agreed to this and accepted that a condition could be imposed to ensure that no music would be played before 7.00am.

The only outstanding issue related to the proposed 12 functions per year to be held in the Woolshed building.

Mr Freeth's concerns opposed any further functions taking place on the site and was particularly concerned with the hours functions were finishing late at night and noise generated from functions.

The history of the special events conditions on consents that have been granted dates back to the original consent dated 28 November 2002. The original condition 23 stated that there shall be no more than one special event per calendar month. Special events were identified as being activities which lie outside the normal operation of the museum and cafe on the property.

In March 2003, the conditions were amended and the new condition 23 was as follows.

"(special event) There shall be no more than 12 per year. Special events are those that seek to attract participants and spectators from outside the Warkworth region and are in addition to activities associated with the day to day operation of the museum. The consent holder shall maintain a register of each such event and the register shall be made available to the Council on request.

Advice Note: Special events are those that require more than 100 carparks and/or cause traffic management problems on the surrounding roads."

When the weekly farmers market was granted consent in April 2004, condition 2 stated that:

"(special events) No other special events as defined in resource consent L32399 shall be held on the site during the Saturday morning farmers market."

In May 2004, condition 23 was further amended with the effect of clarifying that special events do not include the weekly farmers market.

The application seeks consent for up to 12 functions per year within the Woolshed. These functions to date have involved a car parking requirement of less than 100 cars and therefore have not been "special events" as set out in the previous conditions of consent outlined above. A closing time of midnight has been sought for functions that extend into the evening.

As the application is retrospective and the application has been specific in terms of what has been applied for, the Panel's determination is limited to the application as it has been lodged.

The proposal is for up to 12 additional functions, for up to 120 persons that would be in addition to the 12 "special events" already authorised under earlier consents.

26 March 2010

Subject to the imposition of conditions any adverse effects upon the property at 1 Takatu Road have been determined to be no more than minor. With respect to noise the proposal will comply with the relevant noise standard contained within the District Plan. With respect to the general amenity values that can reasonably be expected by the occupiers at 1 Takatu Road, specific restrictions on the hours of operation, noise levels and the frequency of events have been imposed.

In addition a review condition has been imposed to enable the Council to review the conditions of consent to respond to any adverse effects on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage.

The Panel has determined that the conditions of consent imposed will avoid or mitigate adverse effects. With respect to noise generated between 6.00pm and 6.00am a condition has been imposed requiring the applicant to confirm that the noise standards required by condition 2 can be met when a function is taking place in the Woolshed that includes typical amplified and/or live music of the type that has been a concern in the past. If the noise standards cannot be met, then the applicant will need to modify the use of the Woolshed to lower generated noise levels, or install noise reduction measures within the building itself.

The nature and extent of any adverse effects on the environment of allowing the activity.

The effects on the environment, beyond the property at 1 Takatu Road, primarily relate to the effects on the rural character of the surrounding environment.

The planning evidence of Ms Capes and Ms Hessell was that the rural character of this site had been substantially modified by the establishment of the activities that had been granted consent. The Panel agrees with this assessment.

Ms Foster was particularly concerned with the changing nature of activities on the site, from those originally proposed, together with the prospect of further functions now being authorised. In her opinion the character associated with the applicant's site development has *"radically changed ... in a catchment which is rural/horticultural and has no commercial cluster of activity provided for in any plan."* The Panel agrees with Ms Foster to the extent that the character of the site has changed as a result of the development that has occurred.

In terms of the consent now before the Panel the issue is the extent to which the grant of consent will lead to any additional changes to the character of the site. Given the nature of the activities for which consent is sought and the fact that they will take place within an existing consented building which is located within an existing cluster of buildings, the Panel accepts the evidence of Ms Capes and Ms Hessell that any additional adverse effects on rural character and amenity values will be no more than minor.

Compliance issues in relation to conditions of previous resource consents.

In addition to the compliance issues raised by the Freeth's, Ms Foster raised specific concerns with respect to the conditions of previous consents that had been granted, as did Mr Parfitt.

The Panel has determined that compliance issues in relation to previous consents are beyond the scope of the current application. If any submitter wishes to pursue these compliance matters further with the Council, they will need to do so in the normal manner.

Whether the proposal is consistent with or contrary to the relevant planning provisions.

The planning evidence of Ms Capes and Ms Hessell was that the proposal was consistent with the most relevant provisions of the district planning documents. Mr Parfitt acknowledged in response to a question that there were no issues from his perspective in relation to the relevant objectives and policies of the District Plan. Ms Foster raised general concerns with respect to the consistent administration of the District Plan, however no specific provisions were identified that she considered the current proposal was contrary to or inconsistent with.

Based on the evidence presented the Panel accepts that the proposal is consistent with the relevant planning provisions.

26 March 2010

Whether the proposal passes either of the gateway tests of section 104D of the Act.

For the reasons set out above any adverse effects on the environment have been determined to be no more than minor. In addition the activity has determined to be consistent with rather than contrary to the relevant objectives and policies.

The proposal therefore passes both gateway tests of section 104D and we have gone on to consider the proposal in terms of section 104 of the Act.

Whether the proposal can be favourably considered under section 104 of the Act.

Section 104(1)(a) requires an assessment of both the positive and adverse effects on the environment of allowing the activity. Particularly in relation to the "circuit room/exercise studio" the overwhelming level of community support is a positive effect that cannot be ignored.

In relation to adverse effects, the only property that has been identified that experiences adverse effects is 1 Takatu Road. This property contains one of the closest neighbouring dwellings to the Woolshed building. Given the location of 1 Takatu Road at the intersection of Takatu and Leigh Road, together with the busy nature of these roads, as well as the relatively small size of this property being 1 hectare, the site itself cannot physically provide a substantial buffer between it and the road, or the activities on the applicant's site.

The conditions of consent that have been imposed on previous consents have not been designed to ensure that activities on the applicant's site cannot be heard at 1 Takatu Road. They have been imposed to mitigate rather than avoid activities being heard. The hours of operation and the limit on the number of functions, in particular, have also been imposed to mitigate rather than avoid activities within the Woolshed being heard at 1 Takatu Road.

In the context of the existing environment and subject to the conditions that have been imposed on this consent, the Panel has determined that the grant of consent is appropriate.

With respect to section 104(1)(b) no planning provisions were identified that the proposal was inconsistent with.

With respect to section 104(1)(c) the Panel has taken into account the existing development of the site and the resource consents and conditions that authorised this development.

Whether the grant of consent will have an effect on the integrity and consistent administration of the district plan.

The aspects of this proposal that are non-complying are the shop associated with the Art Gallery and the "circuit room/exercise studio." In the context of the consents that have already been granted on this site and the physical development that has occurred, these non-complying aspects were largely unchallenged by submitters.

The nature of the subject site and the consents that are in place that have enabled this tourist and recreational facility to be developed, clearly distinguish this site from most other sites within the rural environment generally and this locality in particular. While submitters expressed concerns as to non-notified processing of consents, these consents exist and cannot be ignored or revisited as part of the current application.

The Panel has determined that the activities granted consent by this decision will not challenge the integrity or consistent administration of the District Plan. The evidence of Ms Capes has been accepted in this regard.

26 March 2010

The detailed wording of the conditions of consent.

The Panel has carefully considered the wording of the reporting planner's recommended conditions of consent and the suggested changes to these conditions by the applicant and submitters. Where there was agreement on conditions we have accepted those conditions.

The Panel notes that they are bound by the scope of the application as defined by the specific description of each part of the proposal and the Assessment of Environmental Effects that support the application. In this regard the Panel have not extended the hours of operation, or the nature of the consents beyond those that have been applied for. Given the retrospective nature of the application and the precise details describing the activities, the flexibility sought by the applicant at the hearing on some matters has not been agreed to.

In relation to the formation and sealing of the required mobility impaired parking spaces, a sealed surface will provide the most useful surface for people with disabilities and the alternative treatment sought by the applicant has not been accepted. The visual appearance of these parking spaces is a valid concern however and the condition has been worded to enable an appropriate treatment to blend these parking spaces with the existing 'rustic' and rural environment.

A review condition has been imposed as was agreed in principle at the hearing.

An additional condition has been imposed requiring an acoustic assessment to be undertaken to confirm that the noise condition (condition 2) can in fact be met when a function is taking place in the Woolshed that includes typical amplified and/or live music of the type that has been a concern in the past. If the noise standards cannot be met, then the applicant will need to modify the use of the Woolshed to lower generated noise levels, or install noise reduction measures within the building itself.

Whether the grant of consent will promote the sustainable management of resources as contemplated by Part 2 of the Act.

When applying an overall broad judgement the Panel have concluded that the proposal will promote the sustainable management of resources as contemplated by the Act. In relation to the "circuit room/exercise studio" the positive aspects and the physical and social wellbeing and health benefits of this aspect have been accepted.

With respect to the remaining aspects of the proposal, subject to the conditions of consent that have been imposed, the grant of consent will enable the existing tourist and recreational facility to be used in a manner consistent with section 5 and the purpose of the Act.

In relation to the property at 1 Takatu Road, the grant of consent, together with the conditions that have been imposed, will appropriately avoid, remedy or mitigate any adverse effects on this property, given the nature of the existing environment and the activities that can take place on the applicant's site.

CONDITIONS OF CONSENT:

Pursuant to Section 108 of the Resource Management Act 1991, this consent relates to the following activities and is subject to the following conditions:

General

1. (general) The development shall proceed in general accordance with the application submitted, including but not limited to the following:
 - The report prepared by Lisa Capes of 'Lisa Capes Consulting 'titled' Applicant: Matakana Museum Ltd, The Circuit Room, Woolshed Function Centre and Country Café at the Matakana Country Park, Leigh Road, Omaha Flats, Non Complying Activity Resource Consent Application to Rodney District Council' and Appendices A-E.

26 March 2010

- The additional assessment for the Art Gallery titled 'Assessment of Environmental Effects for the Art Gallery and Exhibition Space.'
2. (Noise) The consent holder shall ensure the Circuit Room/Exercise Studio activities, Café, Art Gallery (comprising of exhibition space and related retail shop) and twelve functions per year in the Woolshed building are designed and conducted so that the following noise limits are not exceeded at any point within the notional boundary of any dwelling, childcare and education facility, hospital and rest home, place of worship (excluding the historic church on the site) during any 15 minute period of assessment within the following timeframes:

Monday to Saturday 6:00 am to 6:00 pm	55 dBA Leq
Sunday 6:00 am to 6:00 pm	50 dBA Leq
At all other times	45 dBA Leq
At all times	75 dBA Lmax

Sound levels shall be measured in accordance with the provisions of NZS 6801:2008 Acoustics-Measurement of Environmental Sound, and assessed in accordance with the provisions of NZS 6802:2008 Acoustics-Environmental Noise.

3. (noise reading) Within 6 months following the commencement of this consent pursuant to section 116 of the Resource Management Act 1991 (RMA), the consent holder shall commission a suitably qualified and experienced expert to undertake noise readings while one of the functions in the Woolshed (that includes the use of typical amplified and/or live music) are being held, in order to demonstrate compliance with the noise standards in condition 2. The results of these noise readings shall be provided to Council's Environmental Protection Officer no later than one week after the readings have been taken.
4. (resource consent and monitoring charges) The resource consent holder shall pay to the Council within one month of the issue of this consent or prior to the activity commencing (whichever is earlier) the cost, including specialist services, staff time and administration for the processing of this application together with initial charges for the following inspections:

Environmental protection	2	x site visit(s).
--------------------------	---	------------------

Monitoring deposits will be invoiced by the Council together with the consent processing charges.

Should further monitoring be required to ensure compliance, the Council will recover the actual and reasonable costs that are incurred for this monitoring as set out in the Council's Schedule of Fees and Charges.

Note: These general conditions (1, 2, 3 and 4) apply to all activities authorised under this resource consent being the Café, Circuit Room/Exercise Studio, 12 Woolshed functions and Art Gallery with exhibition space and related retail shop.

EXERCISE STUDIO/CIRCUIT ROOM

5. (Hours of Operation) The activities in the Circuit Room/Exercise Studio, including any dance classes held in this space shall only operate between the hours of 6:00 am and 10:00 pm and not outside these hours. Notwithstanding the commencement of Circuit Room/Exercise Studio activities at 6:00 am, strictly no music associated with this activity shall commence until 7:00 am.
6. (parking) Within the 'main carparking area', which is the carpark located between the restaurant and Woolshed buildings, 11 carparks shall be available for use by patrons of the Circuit Room/Exercise Studio. The consent holder shall ensure that when the lease for the Circuit Room/Exercise Studio is due for renewal, this number of carparks shall be made a requirement of this lease and all subsequent leases for this activity.

26 March 2010

7. (mobility impaired parking) Within six months following the commencement of this consent one parking space for mobility impaired people, in relation to the Circuit Room/Exercise Studio, shall be provided in the 'main carparking area' being the carpark located between the restaurant and Woolshed buildings. This space shall be formed and sealed, with an exposed aggregate, colour tinted finish or similar treated surface approved by the Manager: Resource Management in order to minimise the visual impact of this parking space, to NZS4121:2001 standards.

Note: For the avoidance of confusion this condition only relates to the mobility impaired carparking for the Circuit Room/Exercise Studio activity and therefore if any other conditions require the provision of mobility impaired carparks in relation to another activity, this is a separate requirement and must also be complied with.

TWELVE FUNCTIONS IN THE WOOLSHED

8. (Frequency) No more than 12 functions per calendar year shall be held in the Woolshed building. The consent holder shall keep a written record of the events that take place within the calendar year which must detail the nature of the function (e.g: christening, wedding) and the date on which it was held. This record shall be available onsite at all times between the hours of 9.00 a.m. and 5.00 p.m., for the inspection of the Council's Environmental Protection Officer or equivalent RMA compliance officer. The requirement under this condition to not exceed 12 functions per calendar year in the Woolshed and to keep a written record of these functions, does not apply to the 'special events' that can be held on the site under condition 23 of RMA 32399 or any New Year's Eve Outdoor Entertainment Event authorised by RMA 55606 or event type activity that is permitted under the District Plan or Proposed Plan.

9. (Hours of Operation) The 12 functions in the Woolshed that are authorised under this consent shall only operate within the following hours and not outside these hours:

Sunday to Thursday	9:00 a.m. to 10.00 p.m.
Friday and Saturday	9:00 a.m. to 12.00 midnight.

10. (patron numbers) The 12 functions in the Woolshed authorised by this consent shall have no more than 120 guests attending per function.
11. (co-ordination of activities) If one of the 12 functions in the Woolshed authorised by this consent will be operating at the same time as one or more of the following activities listed in the bullet points below, then two weeks prior to this, the consent holder shall submit to the Manger-Resource Management a Traffic Management Plan for approval. This Traffic Management Plan shall include but not be limited to providing details on how the parking demand that will be generated by holding activities in conjunction with one another will be provided for. Once approved the Traffic Management Plan shall be complied with in relation to that particular function in the Woolshed.

- Any function activity that takes place as part of the restaurant activity in the restaurant building. This does not include circumstances where a function in the Woolshed makes use of the restaurant facilities and building for the function.
- A 'special event' authorised under condition 23 of RMA 32399.
- The weekly Farmers Market authorised under RMA 35222.
- A New Year's Eve Outdoor Entertainment Event authorised under RMA 55606.
- Any wedding, christening, funeral, memorial service or other church related event held in the church on the site, outside of Sunday services. This does not include circumstances where the same event at the church will be using function space in the Woolshed for one of the 12 functions per year authorised under this consent.
- An event activity that is permitted under the District Plan or Proposed Plan.

26 March 2010

CAFE

12. (Hours of operation) The café that is authorised under this consent shall only operate between the hours of 8:00 a.m. to 4:00 p.m. and not outside these hours.
13. (parking) Within the 'main carparking area', which is the carpark located between the restaurant and Woolshed buildings, 11 carparks shall be available for use by patrons of the café. The consent holder shall ensure that when the lease for the café is due for renewal, this number of carparks shall be made a requirement of this lease and all subsequent leases for this activity.
14. (mobility impaired parking) Within six months following the commencement of this consent one parking space for mobility impaired people, in relation to the café, shall be provided in the 'main carparking area' being the carpark located between the restaurant and woolshed buildings This space shall be formed and sealed, with an exposed aggregate, colour tinted finish or similar treated surface approved by the Manager: Resource Management in order to minimise the visual impact of this parking space, to NZS4121:2001 standards.

Note: For the avoidance of confusion this condition only relates to the mobility impaired carparking for the café activity and therefore if any other conditions require the provision of mobility impaired carparks in relation to another activity, this is a separate requirement and must also be complied with.

15. (patron and staff numbers) The café activity shall only operate within the space referred to as 'Kitchen', 'Coffee Space' and area shown with five outdoor tables with seating on the 'Brown Day Architects' plan submitted with the application in Appendix A of the Assessment of Environmental Assessment Report prepared by Lisa Capes of Lisa Capes Consulting Ltd. The patron numbers of the café shall not exceed 56, at any one time.

ART GALLERY WITH EXHIBITION SPACE AND RELATED RETAIL SHOP

16. (Hours of operation) The Art Gallery with exhibition space and related retail shop shall only operate between the hours of 9:00 a.m. to 5:00 p.m.
17. (Functions related to the Art Gallery & Exhibition Space) If functions such as exhibition openings for artists are required as an extension of the Art Gallery and Exhibition space activity beyond 5.00 p.m., then such functions shall make use of the twelve Woolshed functions per year that are authorised under this consent and will be subject to all conditions this consent approval imposes on the Woolshed functions, including the hours of operation for such functions. No other functions in relation to the Art Gallery and exhibition space activity shall be held in the Woolshed.
18. **(REVIEW CONDITION) PURSUANT TO SECTION 128 OF THE RESOURCE MANAGEMENT ACT 1991, THE COUNCIL MAY SERVE NOTICE ON THE CONSENT HOLDER OF ITS INTENTION TO REVIEW CONDITIONS 5, 8, 9, 10, 16 AND 17 OF THIS CONSENT:**
 - (i) within 12 months following the commencement of this consent pursuant to section 116 of the Resource Management Act 1991 (RMA) and thereafter annually; and
 - (ii) for the purpose of dealing with any adverse effect on the environment, and in particular whether: the hours of operation including the day of operation of the activity are appropriate; the actual noise levels generated by the activity, compliance with the District Plan Rules and the appropriateness of these rules; the impact that the number of people on the site has on noise and general amenity; the frequency of activities remain appropriate with respect to the effect on noise and general amenity.

The actual and reasonable costs incurred by the Council in undertaking this review shall be paid by the resource consent holder within one month of being invoiced.

26 March 2010

Advice Notes

1. The café premises should comply with the Food Hygiene Regulations 1974.
2. The consent holder will be required to demonstrate on an ongoing basis that the drinking water supply to the café complies with the current Drinking Water Standards for New Zealand. This may involve the installation of a water treatment system.

CarriedCONFIRMED AS A TRUE AND CORRECT RECORD THIS 8TH DAY OF JULY 2010MAYOR

* * * * *

