

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for resource consent by Emerald Forest Limited to construct a new single level building, and increase the number of children enrolled to 76 and associated staff to 10 for the Green Bay Early Childhood Centre at 142 Connaught Street, GREEN BAY.

DECISION OF WAITAKERE CITY COUNCIL

- A. That pursuant to Sections 104, 104B, 104D, 105, 108 and 113 of the Resource Management Act 1991, **consent be granted** to the application by Emerald Forest Limited to construct a new single level building, and increase the number of children enrolled from 26 to 76 (of which 26 will be under two years of age) and associated staff from 4 to 10 for the Green Bay Early Childhood Centre (“GBECC”) as a non-complying activity with vegetation alteration, building height, height in relation to boundary, yards, building coverage, building location – natural landscape elements, parking, access and traffic generation, and signs infringements at 142 Connaught Street, GREEN BAY, being Allotment 382 Parish of Waikomiti for the following reasons:
- (i) Any actual or potential effects on the environment by the proposal are considered to be no more than minor and will be adequately avoided, remedied or mitigated by appropriate conditions of consent.
 - (ii) The established neighbourhood character and amenities of the locality, which combines residential and open space elements, would not be significantly adversely affected by the proposed building as it would be of a similar character and design and constructed of materials that can be found elsewhere in the locality (including within the subject site).
 - (iii) The size, scale, on-site location, design and height of the proposed building would be consistent with the surrounding environment and would not physically dominate, be visually obtrusive, or interrupt the view of neighbouring residential sites.
 - (iv) The height and setback of the new building will not result in the loss of sunlight / daylight, or visual and privacy intrusion upon neighbouring and nearby residential amenities due to separation distances; and screening provided by fencing, and existing and mitigation planting.

- (v) The proposed earthworks are consistent with the level of development being undertaken, will be of a temporary duration, and are able to be controlled by the imposition of appropriate consent conditions.
- (vi) Separation distances between the new building and residential dwellings on the western side of Portage Road, and the dwelling within the subject site to the north, when combined with the presence of some fencing and screen vegetation, and the respective levels of glazing is adequate enough to ensure sunlight / daylight access and privacy is maintained for the occupants of the subject and adjoining sites.
- (vii) The proposed activity will meet the permitted levels of noise, which identifies that the noise effects in this zone are reasonable under the District Plan. As such, any adverse effects associated with this aspect will be no greater than that permitted by the Plan. A condition requiring certification will be included to this effect.
- (viii) Adequate vehicle access, internal circulation, parking and vehicle manoeuvring will be provided to ensure that vehicles entering/exiting and moving within the site are able to do so in a safe, efficient manner.
- (ix) The additional impermeable surfaces will not place additional pressure on the receiving environment.
- (x) The development of the site would be concentrated to the western side of the subject site, with the remainder of the subject site that contains high quality native vegetation in the south-eastern quadrant being left untouched. This, combined with the proposed mitigation planting along the western boundary would offset the removal of vegetation to facilitate the construction of the new building.
- (xi) Any works which involve vegetation would be undertaken under the supervision of a competent and able Works Arborist.
- (xii) The proposal will enhance the capabilities of the GBECC facility to provide for a broader range of educational/learning, outdoor and recreational activities for the well-being of children from the local community.
- (xiii) The proposal would not be contrary to the relevant Objectives, Policies, Rules and Assessment Criteria of the Waitakere City District Plan.
- (xiv) The proposal would be consistent with the Long Term Council Community Plan.
- (xv) The proposal would not be contrary to the relevant provisions of the New Zealand Coastal Policy Statement and the Auckland Regional Policy Statement.
- (xvi) The proposal would not be contrary to Part II of the Resource Management Act 1991.

- B. The relevant statutory provisions that were considered by the Commissioners are summarised in section 8.0 of the reporting planner's report.
- C. The relevant provisions of the District Plan and Regional Policy Statement that were considered by the Commissioners are also contained in section 8.0 of the reporting planner's report.
- D. The principal issues that were in contention as a result of the application are summarised in section 1.2 of the reporting planner's report.
- E. Evidence that was heard by the Commissioners comprised the following:

The applicant

MR JOHN CHILDS
Planner – John Childs Consultants Limited:

Mr Childs acting on behalf of the applicant, Emerald Forest Limited, spoke to a written statement of evidence (dated: 08 July 2009) that reiterated and supplemented the details provided within his Assessment of Environmental Effects (dated: 11/06/08) submitted within the application. Mr Childs' written evidence provided a précis of the proposal, the subject site, actual and potential effects, assessment (against objectives, policies and assessment criteria), Part II matters, special / unusual circumstances, and matters raised by submitters.

During his presentation of the statement of evidence, Mr Childs discussed several items, including:

- o The 20 car parking spaces to be provided would exceed the 19 spaces required.
- o The subject site's idiosyncratic nature, being privately owned Open Space Environment.
- o The size, scale and position of the GBEC's lease area within the subject site restricted alternative locations for the development to occur.
- o The proposal will have positive effects by increasing the number of child care spaces available within the area.
- o Acknowledging noise and traffic generation as being key concerns for the submitters, and taking guidance from his experts and their specialist reports in respect of these issues.
- o Acceptance of the conditions of consent as proposed in the Planner's Report, with the exception of proposing an amendment to Condition 15.
- o Stating that subject to conditions adverse effects on the environment will be minor.

MR JOHN CAWLEY
Principal Acoustic Specialist – Golder Associates NZ Limited:

Mr Cawley spoke to a written statement of evidence (dated: July 2009), which reiterated and supplemented the details provided within his Assessment of Noise Effects report (dated: 11/06/08) submitted within the application. Mr Cawley's written evidence provided a background to the proposal, design standards, assessment of effects, submissions, and acoustic conditions of consent.

During his presentation, Mr Cawley discussed several items, including:

- Design standards, assessment of effects, and conditions of consent (as Sections 3, 4 and 7 within his statement of evidence).
- Proposing an amendment to Condition 15, relating to noise compliance and monitoring.
- Proposing an Advice Note to tie-in with the proposed amended Condition 15.
- Confirmation that the enlarged GBECC can be operated in compliance with relevant District Plan standards in conjunction with mitigation conditions.

MR G.E. BROWN

Consultant Traffic Engineer – G&H Transportation Consultants Limited:

Mr Brown did not speak to a written statement of evidence, but was instead on hand at the request of Mr Childs to answer questions that arose with regards to his Traffic Engineering Assessment (dated: 12/12/07) which was submitted within the application.

Mr Brown responded to multiple questions from the Commissioners with regards to the 0.8 vehicle-movements per child per hour figure used to quantify the increase in inbound and outbound vehicle movements during AM/PM peak periods associated with the GBECC proposal, and his resultant assessment of the anticipated traffic effects. During Mr Brown's responses to these questions, Mr Childs offered a review condition to allow monitoring of traffic generation, particularly during the AM/PM peak periods.

The submitters

MR B.A. CRANN AND MS. G.M. HONAN

Owner / occupiers – 211 Portage Road, Green Bay

Mr Crann and Ms Honan presented together and spoke in opposition to the proposal. The presentations involved reiteration and elaboration of the issues and concerns raised within their individual written submissions (received: 18/05/09), as well as related issues including: traffic, noise, waste and wastewater.

Mr Crann and Ms Honan identified traffic impacts as being the most significant effects resulting from the proposal, and outlined the following:

- Disputed the 0.8 vehicle-movements per child per hour figure used by Mr Brown to calculate the increase in inbound and outbound vehicle movements, and the assessment thereafter.
- Concern increased traffic would cause problems when combined with traffic generated by: West Auckland Community Toy Library, access to Green Bay Beach, and a number of home operated businesses located along Portage Road extension.
- Suggested a possible alternative vehicle access point for the subject site other than Portage Road, such as Connaught Street.
- Concern that the existing difficulties in exiting the driveway of 211 Portage Road would be exacerbated by the increase in traffic associated with the proposal.
- Concern regarding the safety of children and pedestrians along the Portage Road footpaths due to the increased traffic and potential speeds reached by vehicles along Portage Road extension.
- Doubted the likelihood of many parents walking to drop-off/pick-up their children and that few siblings would attend concurrently.

With the approval of the submitters and Commissioners, Mr Glenn Turner (Green Bay Residents and Ratepayers Association) spoke at the Hearing as a witness to Mr Crann's and Ms Honan's submissions and presentations.

Council Officers

MR JAMES DOWDING
Reporting Planner

Mr Dowding had prepared a report setting out the reasons for the application, a description of the site and the neighbourhood, an assessment of the actual and potential effects on the environment, and he concluded that any adverse effects would be no more than minor and could be adequately mitigated by way of appropriate conditions of consent. In relation to the District Plan provisions he discussed the relevant objectives and policies together with the assessment criteria that specifically apply to the infringements of the proposed development. Overall, Mr Dowding concluded that the proposal would not be contrary to the relevant objectives and policies and the assessment criteria. It was Mr Dowding's recommendation that the proposal merited the granting of consent subject to conditions.

After hearing the evidence of all parties, Mr Dowding supported the offer of the amendment to the acoustic compliance and monitoring condition proposed by Mr Cawley.

MR JOHN CARROLL
Senior Transport Engineer – Regulatory

Mr Carroll responded to questions from the Commissioners with regards to traffic generation, access and parking resulting from the proposal. Mr Carroll suggested a Safety Review be included as an advice note within the consent (if granted) to monitor the nearby Portage Road / Connaught Street / Godley Road intersection and parking associated with the GBECC and Portage Road extension.

MR PHILIP BROWN
Group Manager – Planning and Community Services

Mr Brown responded to questions from the Commissioners that a transport review condition, as offered by Mr Childs, would be an acceptable mechanism to monitor traffic impacts, including the width of the vehicle crossing / driveway, possible alternative access arrangements, and staggered starting times for the GBECC.

The applicant's right of reply

Mr Childs used the applicant's right of reply to respond to and clarify issues raised during the Hearing by the submitters and Commissioners, consisting of the following comments:

- The Scout Association of New Zealand provided written approval to the proposal (which was submitted in the application), and did not provide a submission in opposition to the proposal when afforded the opportunity to do so during the limited notification process.

- Noise impacts would be improved by the proposal and attenuation (acoustic fence) therein, and would be sufficiently monitored by the amended review condition.
- Traffic impacts would be monitored via a new review condition, which would cover vehicle movements, parking, and access. Mr Childs also supported the inclusion of the Safety Audit advice note as offered by Mr Carroll.
- Satisfied with the parties that were identified as requiring notification under the Limited Notified process.

F. The main findings of fact, as determined by the Commissioners, are summarised in the reasons for granting consent.

Pursuant to Section 108 of the Resource Management Act, this consent shall be subject to the following conditions:

GENERAL

1. The development shall proceed in accordance with the plans titled:
 - *"SITE PLAN. proposed pre-school addition: Portage Road, Green Bay. job no. 07/105. sheet no. 1"*, prepared by Simmonds Design Limited.
 - *"WEST ELEVATION, sheet no. 2"*,
 - *"NORTH ELEVATION. FLOOR PLAN, sheet no. 3"*.
2. Pursuant to section 125 of the Resource Management Act 1991, this consent shall lapse after a period of five years after the commencement of the consent.
3. A consent compliance monitoring fee of \$702.00 (inclusive of G.S.T.) has been paid to the Council. This fee is to recover the actual and reasonable costs incurred ensuring compliance with the conditions of this consent. If, on inspection all conditions have not been satisfactorily met, a re-inspection shall be required at the relevant hourly rate applicable at the time the re-inspection is carried out.
4. A copy of this resource consent and conditions shall be kept on site at all times throughout the period of work. Prior to works commencing, it shall be the responsibility of the consent holder to **explain the Conditions of Consent to all contractors, sub-contractors and work site supervisory staff that are carrying out any works associated with the project.**

PRE-START CONDITION

5. **Prior to commencement of any works on site**, the consent holder shall organise a pre-start meeting with Council's Environmental Monitoring Officer, Council's Consultant Arborist and the applicant's appointed Works Arborist to discuss the conditions of consent onsite. The consent holder shall ensure that their representative and all contractors' representatives are present at this meeting.

Inspections must be requested by calling Council's Call Centre (09 839 0400) and requesting a monitoring inspection. Council's response time can be up to five (5) working days.

The pre-start meeting will address the following:

- Tree protection measures and the proposed works procedures relating to retained vegetation can be explained by the consent holder and Appointed Arborist to the work site supervisory staff of all contractors and sub-contractors who shall be engaged to carry out any works associated with this consent.
- The extent of the required vegetation clearance shall be agreed to at this meeting and this shall be marked out on site using warning tape or equivalent.
- Ensure that adequate sediment and erosion control measures are constructed in accordance with Auckland Regional Council Technical Publication No.90 "*Erosion and Sediment Control Guideline for Earthworks.*"

EARTHWORKS CONDITIONS

6. Before commencement of any works and until completion of exposed site works, adequate sediment and erosion control measures shall be constructed and maintained by the consent holder. **The consent holder shall notify Council's Monitoring Officer – Resource Management (ph 8390400) when controls are in place. Work shall not commence until approval has been gained in writing from the Manager Resource Consents.** The control measures must be maintained until the site has been adequately stabilised against erosion and sediment-laden run off. The construction and maintenance shall be in accordance with the Erosion/Sediment Control Measures Appendix to the Natural Area rules of the Waitakere City Council District Plan. (Attached as appendix A to this consent).

VEGETATION CONDITIONS

7. All tree work (including removals, pruning and works within root zones) the subject of the application to undertake additions to the pre-school facility at 142 Connaught Street, Green Bay shall be carried out in general accordance with details, specifications and recommendations provided within the *Arboricultural Report* from *Peers Brown Miller Ltd.*, dated 27 March 2008 and under the on-site direction and supervision of an experienced arborist (hereafter called the **Appointed Arborist**), retained by the consent holders at the consent holder's expense. Except that the following amendments shall apply:
 - (a) All trees retained on the site in close proximity to the works shall be protected by the installation of temporary fencing (where appropriate) in accordance with recommendations from the **Appointed Arborist**. This requirement specifically includes protection and preservation of the Kauri tree located within the deck structure attached to the western façade of the existing building on the site. Well-composted mulch material shall be spread within the root zone of the tree and a roof-water down-pipe shall be allowed to disperse water within the root zone for continuing benefit of this

specimen, in accordance with recommendations from the **Appointed Arborist**.

- (b) The temporary protective fences should be strong and appropriate to the degree of construction works taking place on the site. All areas beyond the protective fencing are considered as sacrosanct and no work shall be carried out within the protected areas without on-site consultation and direction of the **Appointed Arborist**.
8. The **Appointed Arborist** shall assume responsibility for all tree protection, preservation and construction activity within the root zones of retained trees and maintenance and monitoring during construction of the project. Within one month of completion of the development, the **Appointed Arborist** shall provide a written statement confirming that works and activity associated with the project has been conducted in accordance with the conditions of this consent and that adverse effects on the protected trees has been no greater than that anticipated by the consent.
9. Within the next planting season (i.e. autumn to spring) immediately following completion of all construction works on the sites, the consent holder shall plant at least four (4) **appropriate** replacement trees with a minimum root ball size of PB 95 (or equivalent) and a minimum height of 1.5 metres at the time of planting.
- (a) The replacement trees shall be located in suitable position on the site within outdoor child-play areas to provide shade benefits and are to be of suitable species to replace larger-scale landscape treatments and amenity for the site and streetscape. All of the replacement trees shall be maintained thereafter in correct arboricultural fashion.
 - (b) Should the replacement trees die or decline to a point that in the opinion of the Council's Environmental Monitoring Officer, they are of no value at any time during two years following initial planting, they shall be replaced with like species and be of similar size.
10. Washings from concrete trucks and/or associated machinery shall be disposed off site. All excavated spoil shall be disposed of in similar fashion also.
11. Any underground reticulated services to be installed shall be excluded from areas within the root zones of retained, protected trees on the site. Unless they are installed by way of directional drilling or thrusting, with opening pits located clear of important tree roots, under direction and supervision of the **Appointed Arborist**.

NOISE

12. Noise from the preschool shall not exceed the following levels as measured at any residential boundary:
- Monday to Saturday 7.00am – 7.00pm 50dBA L₁₀
 - Monday to Saturday 7.00pm – 10.00pm 45dBA L₁₀
 - Sundays and public holidays 7.00am – 10.00pm 45dBA L₁₀
 - Monday to Sunday (inclusive) 10.00pm – 7.00am 40dBA L₁₀ and 70dBA L_{max}

Noise shall be measured and assessed in accordance with "NZS6801:1991 Measurement of Sound", and "NZS6802:1991 Assessment of Environmental Sound".

13. No service vehicles (including rubbish trucks) or delivery vehicles are permitted to visit the preschool between the following hours:
 - Monday to Sunday (inclusive) 10.00pm – 7.00am
14. The operating hours of the preschool shall be restricted to the following:
 - Monday to Friday 7.00am – 6.00pm
15. Pursuant to s128(a)(i) of the Act, within 6 and 12 months of the commencement of the operation of the new GBECC building, the consent holder shall provide to Council at the consent holder's cost, the results of a noise monitoring programme with respect to Conditions 12, 13 and 14 of this consent, undertaken by a suitably qualified and experienced Acoustician. This report shall also include, if compliance with the standards is not achieved, recommendations for alterations either to the acoustic screening measures, and/or the operation of the GBECC sufficient to ensure compliance with the Permitted Activity standards of the District Plan for Noise. These recommendations shall be implemented at the consent holder's cost within 3 months of Council's receipt of said report.

TRAFFIC

16. The vehicle parking, access and traffic generation resulting from the expanded GBECC operation shall be in accordance with details provided within application, including the Traffic Engineering Assessment from *G&H Transportation Consultants Limited*, dated 12 December 2007.
17. Pursuant to s128(a) of the Act the Council may, within a 12 month period commencing 12 months after the commencement of activities from the new GBECC building and ending 24 months after that date, serve notice on the consent holder of its intention to review the conditions of this consent. The purpose of any such review would be to determine whether any amendments to conditions would be required in order to address effects arising in relation to traffic generation, access and parking. A review would only be initiated in circumstances where the extent or nature of those effects extended significantly beyond those that were anticipated when the consent was granted.

Any such review would consider condition 16 in particular, but would not be limited solely to that condition. If amendments to conditions were considered necessary, the amended or new conditions may require:

- (a) Widening of the vehicle crossing;
- (b) New vehicle access and/or internal circulation arrangements;
- (c) Restriction of operating hours;
- (d) Restriction of enrolment and/or staff numbers;
- (e) Any other measure necessary to mitigate adverse effects.

The consent holder would be responsible for meeting the full costs of any review process, including the cost of obtaining any technical reports and monitoring. The consent holder would also be required to meet the full

costs of implementing any mitigation measures arising from the amended or new conditions.

Advice Notes:

- Where indicated in the conditions it is the consent holder's responsibility to inform the Environmental Monitoring Officer when inspection is required. Inspections can be requested through the Call Centre on 839 0400.
- If a pre-construction meeting is required by any ARC consent, this should be timed to coincide with the Pre-Start Meeting identified in Condition #5 as well for convenience.
- The replacement trees as identified in Condition #9 of this consent are protected via conditions of this consent. These specimens may not be removed, pruned or altered in any way without prior consent from the Council.
- This consent is granted subject to the information presented with the application and subject to conditions and recommendations provided by the Council's Consultant Arborist. If during implementation of this consent, further work is required within the protected root zones of trees and vegetation located at 142 Connaught Street, Green Bay, all such works will be subject to additional consents from the Council.
- The construction of tanks to collect, and potentially re-use, roof water run-off is recommended to attenuate stormwater flows from the new GBECC building.
- The Commissioners request that the Council's Chief Executive Officer initiate and fund a Safety Review within 12 months of the commencement of the operation of the new GBECC building, with respect to traffic and parking matters in the vicinity of Portage Road extension. In particular, the review should consider the functioning of the Portage Road, Connaught Street and Godley Road intersection, kerb-side car parking along Portage Road extension, vehicle speed issues, pedestrian safety, and road markings and signage associated with the aforementioned matters.

Decision dated this 28th day of July 2009



pp Vanessa Neeson
Chairman

For Hearing Panel: Commissioner Vanessa Neeson
Commissioner Warren Flaunty
Commissioner Judy Lawley