

Decision on an application to vary/cancel a consent notice under section 221 of the Resource Management Act 1991



Application under section 221(3)

Application number: VCN70025970 (Variation/cancellation of consent notice)

Consent notice number: 11288436.1

Original subdivision consent number: SUB60036409 (SUB-67771)

Applicant: Matakana Country Park Limited

Site address: 1153 Leigh Road Omaha Flats
1151 Leigh Road, Omaha Flats
31 Omaha Flats Road Omaha Flats
51 Omaha Flats Road Omaha Flats
15 Takatu Road Omaha Flats
27 Omaha Flats Road Omaha Flats
29 Omaha Flats Road Omaha Flats

Legal description: LOT 1 DP 519220, 1/9 SH LOT 10 DP 519220
LOT 2 DP 519220, 1/9 SH LOT 10 DP 519220
LOT 3 DP 519220, 1/9 SH LOT 10 DP 519220
LOT 4 DP 519220, 1/9 SH LOT 10 DP 519220
LOT 5 DP 519220, 1/9 SH LOT 10 DP 519220
LOT 7 DP 519220, 1/9 SH LOT 10 DP 519220
LOT 8 DP 519220, 1/9 SH LOT 10 DP 519220

Proposal:

To vary condition titled 'No further subdivision' of consent notice 11288436.1 to no longer refer to lots 1-5 and 7-8.

Note: For the avoidance of doubt, unless the context requires otherwise, any reference in this decision to 'application' shall be taken to mean an application to vary or cancel a consent notice under s221 of the RMA.

This activity under s221(3) of the Resource Management Act 1991 (RMA) is for the cancellation to consent notice 11288436.1 involving the following amendments (with ~~strike through~~ for deletion, **bold** for insertions):

Variation to consent notice 11288436.1

No further subdivision No further subdivision of lots 4—8 6 is allowed.

Decision

I have read the application, supporting documents, and the report and recommendations on the application for variation/cancellation of a consent notice. I am satisfied that I have sufficient information to consider the matters required by the RMA and make a decision under delegated authority on the application.

Acting under delegated authority, under sections 221, 104 and Part 2 of the RMA, the application is **GRANTED**.

Reasons

The reasons for this decision are:

1. In accordance with an assessment under s104(1)(a)-(ab) as required by s221(3A) of the RMA, the actual and potential effects from the application will be avoided, remedied or mitigated as:
 - a. The subject sites were created under subdivision around the existing and identified activity areas within the Matakana 2 Precinct and from consent history review, the consent notice was likely included to reflect this and the Rodney District Plan provisions which required a consent notice restricted further subdivision. Any potential future subdivision, including boundary adjustments, will require resource consent under the AUP(OP), and will be assessed on the merits of the application.
 - b. The variation of the consent notice restriction to remove lots 1-5 and 7-8 in itself will not result in additionally development (including subdivision) rights.
 - c. The original subdivision consent did not rely on this consent notice condition to manage or mitigate any effects on the environment or on any persons. The proposed cancellation therefore would not result in unacceptable effects in this regard.
 - d. In terms of positive effects, the proposal provides for economic and social wellbeing for the applicant.
 - e. With reference to s104(1)(ab), there are no specific offsetting or environmental compensation measures proposed or agreed to by the applicant to ensure positive effects on the environment.
2. In accordance with an assessment under s104(1)(b) as required by s221(3A) of the RMA, the application is consistent with the relevant statutory documents. In particular:

National Policy Statement for Highly Productive Land (NPS-HPL)

- a. The National Policy Statement for Highly Productive Soils (NPS-HPS) become operative in 2022 and sets a clear directive for territorial authorities to avoid subdivision of land containing highly productive soils. Policy 7 seeks to avoid subdivision of highly

productive land except as provided in the NPS. The proposal is considered to consistent with these as the proposed cancellation of this consent notice condition does not permit any subdivision and will not result in any effects on the highly productive land. The proposal will therefore avoid significant loss of and fragmentation of geographically cohesive highly productive land.

Auckland Unitary Plan (Operative in Part)

- b. The objectives and policies of chapter E39, H19, and I522 which seek to ensure that subdivision achieves the purposes of the zone, the continued rural production, non-residential activities such as tourist and visitor activities, while maintaining the rural character and amenity values. The proposal is considered to be consistent with these as the cancellation of the consent notice restrict alone does not allow for subdivisions to occur, and any possible future applications will be assessed at the time.

It is acknowledged that the consent notice currently acts as a reinforcing mechanism to ensure subdivision aligns with the precinct's purpose. However, the removal of the consent notice itself does not enable any subdivision and the existing planning framework would be sufficient to uphold the precinct's integrity without the consent notice.

The precinct description indicates that subdivision in this precinct is controlled to ensure the anticipated range of rural and tourist activities are enabled over the sites while are managed as a single entity. However, this is not reflected in any objectives, policies or rules. Matters of discretion I522.8.1(3)(g) and assessment criteria I522.8.2(3)(g) provide the consent authority the discretion to consider further subdivision restriction of the sites unless these activities are enabled by the Matakana 2 Precinct. In this case, as discussed above, the subdivision rules under the precinct reflect this restriction and repeating the same restriction on the title does not in effect achieve a different planning outcome. In terms of the restriction on the uses, this is further enforced through the consent notice restrictions which restrict the activities and uses on each of the sites, and that have required the sites to enter into a management agreement or land covenants to ensure the activities can be enforced, and encumbrance to Council to enforce any breach of these land covenants. No change to these legal mechanisms is proposed or enabled under the current application, the Matakana Country Park will continue to operate as one entity with the authorised and anticipated activities. Hence, the proposal to vary the consent notice would not be considered contrary to the provisions.

3. In accordance with an assessment under s104(1)(c) and s221(3A), the following other matters are considered appropriate:
 - a. It is considered relevant to consider the establishment of an undesirable precedent and its potential impact on the consistent administration of the Auckland Unitary Plan (Operative in part). For an undesirable precedent to be set, it must be possibility that granting the application will result in a proliferation of materially indistinguishable applications. This in turn hinges on whether this site and proposal are at least unusual, if not unique. In this case it is considered there are circumstances that differentiate the site and/or proposal to from the generality of potential proposals that have been offered. In this regard, the consent notice restriction appears to be implemented to reflect the subdivision provisions under the Matakana 2 precinct allow for subdivision to occur

around the activity areas and to reflect the Rodney District Plan provisions. The imposition of the consent notice was not a determining factor in the approval of the original subdivision consent. The Matakana 2 Precinct differentiates this from other undersized subdivisions within the Mixed Rural zone and could not be easily replicated in this regard. The cancellation of this consent notice condition does not by default permit any subdivision. Subdivisions that are not around the activity areas identified in the precinct will remain as a non-complying activity and any possible future applications will be assessed on a case by case basis. As such, the proposal will not lead to undesirable precedent and will not undermine the purposes and principles of the AUP(OP).

- b. It is noted that under the Precinct, matters of discretion 1522.8.1(3)(g) and the assessment criteria 1522.8.2(3)(g) require to consider whether legal restriction and further subdivision within each new site are proposed. However, the plan integrity in this regard would not be compromised by this proposal as no subdivision is proposed as part of this variation of consent notice so no new site would be created under this application. Further, these particular matters of discretion and assessment criteria requires *'legal mechanisms to restrict further subdivision of the sites.... unless these activities are enabled by the Matakana 2 Precinct'*. The subdivision rules under the precinct already reflect this restriction and repeating the same restriction on the title does not in effect achieve a different planning outcome. Any future subdivision application will be assessed on itself merit of the application which includes the consistency of the objectives and policies contained within the Matakana 2 Precinct. Furthermore, the consent notice restrictions pertaining to the activities are not proposed to be changed under this proposal. As such, the plan integrity and consistent will not be compromised.
4. In the context of this application, where the objectives and policies of the relevant statutory documents were prepared having regard to Part 2 of the RMA, they capture all relevant planning considerations and contain a coherent set of policies designed to achieve clear environmental outcomes. They also provide a clear framework for assessing all relevant potential effects and there is no need to go beyond these provisions and look to Part 2 in making this decision as an assessment against Part 2 would not add anything to the evaluative exercise.
5. Overall, the proposal is considered to have actual and potential effects on the environment that will be acceptable. The proposal is consistent with the objectives and policies of the AUP(OP) and the purpose of the RMA.

Advice notes

1. *A copy of the revised consent notice as amended is included as attachment 1 to this section 221(3) decision.*
2. *This decision is to be read in conjunction with any other relevant approved resource consent(s) and does not negate the requirement to continue to comply with the conditions of any previously granted resource consent(s) that have been implemented, and any existing consent notices.*

Delegated decision maker:

Name: Lexie Li

Title: Team Leader, Resource Consents

Signed:



Date:

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28 November 2025

Attachment 1: Consent notice as varied

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

AND

IN THE MATTER of Consent Notice 11288436.1

AND

IN THE MATTER of Record of Title Identifiers 815180 to 815187 (incl).

**VARIATION OF CONSENT NOTICE 11288436.1
(Pursuant to Section 221(3) of the Act)**

That Council resolves pursuant to Section 221(3) of the Resource Management Act 1991, that the Consent Notice 11288436.1 as registered against the record of title for Lots 1 to 8 DP 519220 (RT 815180 to 815187 (incl.)), be varied with the following condition now deleted:

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No further subdivision No further subdivision of lot 6 is allowed.

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Dated this 28th day of November 2025.

Authenticated by the Auckland Council pursuant to
Section 221(3) of the Resource Management Act 1991



Signed by KEN BERGER

Senior Subdivision Specialist

**Authorised officer under delegated authority
Council Reference: VCN70025970**