



8 August 2023

NOTICE OF DECISION

Resource Management Act 1991 (RMA)

Application Number:	LU-2023-1906-00
Applicant:	KAIKOURA DISTRICT COUNCIL
Consent Sought:	Land Use
Address of Activity:	WAKATU QUAY, KAIKŌURA
Legal Description:	LOT 1 - 3 DP5303
Valuation Number:	21080*491*00*, 21080*490*00*, 21080*492*00*

REASONS FOR DECISION:

- Resource consent is required under the Kaikōura District Plan for a **Restricted Discretionary Activity** for Wakatu Quay Development project activity.
- The application has been processed on **non-notified** basis under Section 95 of the RMA.
- It is considered that the application is consistent with the policy and objectives of the Kaikōura District Plan.
- It is considered that the application is consistent with and does not contravene the Purpose the Resource Management Act 1991 (section 5). It is considered that the application is consistent with the Principles of the Resource Management Act 1991 (sections 6, 7 and 8). The activity is therefore assessed as being consistent with, and not contravening Part II of the Act.
- Council may grant this consent under section 104 and 104B of the RMA and may set conditions under 108 and 108AA of the RMA.

DECISION: GRANTED

Consent is granted pursuant to Sections 104, 104B, 108 and 108AA of the Resource Management Act 1991 to establish a mixed-use development comprising visitor accommodation and commercial/retail tenancies, as well as associated access, parking, and landscaping on site, at LOT 1 - 3 DP5303 as set out in application LU-2023-1906-00 subject to the conditions below:

Please note that advice notes relating to specific conditions follow those conditions in italics and general advice notes and development contribution advice follow the conditions of consent advice notes are useful information to help the consent holder meet the conditions of the resource consent. Please read your entire consent carefully.

CONDITIONS ON NEXT PAGE

PLEASE NOTE: THAT IT IS YOUR RESPONSIBILITY TO ENSURE THAT ALL CONTRACTORS ARE PROVIDED WITH A COPY THE ABOVE RESOURCE CONSENT AND UNDERSTAND THE ACCIDENTAL DISCOVERY PROTOCOL. SEE APPENDIX II.

Signed: 

Graham Taylor
Commissioner

Date: 8 August 2023

Acting under delegated authority by the Kaikōura District Council

APPENDIX I

Land Use Conditions

General

1. The proposal shall proceed in general accordance with application and the accompanying site plan stamped *Approved Plans for LU-1906* and held at Kaikōura District Council with the exception with compliance to the conditions below.
2. The consent holder shall meet all actual and reasonable costs incurred by this Council in monitoring, enforcement and administration of this consent.
3. In accordance with section 35 of the Resource Management Act, monitoring of compliance with the consent will be undertaken by a council officer within six months of the date that the consent is given effect to.

Construction

4. All construction noise shall comply with the requirements of NZ6803:1999 *Acoustic – Construction Noise*, or any subsequent replacement or amendment to those provisions. The construction noise shall comply with the requirements of in Table 2 of this standard.
5. The consent holder shall, at least ten working days prior to the construction activities commencing at the site, notify the Council that construction is to commence.
6. The consent holder shall, no later than one month after the completion of the activity authorised by this consent, submit in writing to the Council notice of the completion of the activity authorised by this consent.
7. All proposed works shall be carried out in accordance with an accepted Construction Management Plan (CMP). The purpose of the CMP is to ensure that any potential effects arising from construction activities on the site is effectively managed. The CMP shall be produced in consultation with a suitably experienced and qualified ecologist, a suitably qualified and experienced structural engineer, a suitably qualified and experienced landscape architect and a suitably qualified acoustic engineer. As a minimum, the CMP shall include procedures and protocols for the following:
 - a. Site description, topography, vegetation, soils and other reference information;
 - b. Details of proposed works, including detailed plans showing the location and design of sediment control measures;
 - c. Roles and responsibilities including contact details of the site manager appointed by the Consent Holder;
 - d. Site establishment;
 - e. Timing of works (including any staging required);
 - f. Defining the construction zone and ensuring that construction activities do not occur beyond this zone;
 - g. Mitigation of construction noise and vibration;
 - h. Measures to avoid contaminants entering stormwater and dewatering water associated with the construction phase;

- i. Measures to control dust associated with the activity;
 - j. The management of erosion and sediment. The erosion and sediment control measures shall be installed, inspected and maintained in accordance with the best practice guidance from Environment Canterbury's Erosion and Sediment Control Toolbox (2017);
 - k. Contingency plans (including use of spill kits);
 - l. The management of traffic associated with the activity;
 - m. Contingency and emergency response procedures;
 - n. Protocols for the discovery of archaeological material; and
 - o. Complaints procedure.
8. The consent holder shall submit this CMP to the Council for certification at least 20 working days prior to the commencement of construction work associated with this consent.
 9. This CMP is to be certified by the Team Leader or their nominee as meeting the requirements of Condition 10 prior to the commencement of any construction work and once certified, the CMP will thereafter form part of the Approved Consent Document.

NOTE: The Team Leader (or their nominee) will either certify, or refuse to certify, the CMP within 10 working days of receipt. Should the Team Leader (or their nominee) refuse to certify the CMP, then they will provide a letter outlining why certification is refused based on the parameters contained in this condition. If the Team Leader (or their nominee) does not certify or refuse to certify the CMP within 10 working days the CMP will be considered as certified for the purposes of Condition is not advised in writing of the decision

10. Should the Team Leader (or their nominee) refuse to certify the CMP, the consent holder shall submit a revised CMP to the Resource Consents Manger for certification. The certification process shall follow the same procedure and requirements as outlined in Conditions 10 and 11.
11. Should the Team Leader (or their nominee) not certify or refuse to certify the CMP within 10 working days, the CMP shall be considered as certified for the purposes of Condition 8.
12. The CMP may be amended at any time by the Consent Holder. Any amendments to the CMP shall be submitted by the Consent Holder to the Council for certification. Any amendments to the CMP shall be:
 - a. For the purposes of improving the measures outlined in the CMP for achieving the CMP purpose (see Condition 5); and
 - b. Consistent with the conditions of this resource consent.

If the amended CMP is certified, then it becomes the certified CMP for the purposes of Condition 10 and will thereafter form part of the Approved Consent Document.

Traffic

Workplace Travel Plan

13. A Workplace Travel Plan must be submitted to Kaikōura District Council for approval 6 months prior to operation of activities at the Site. The plan must outline measures to reduce employee single car occupant car travel to and from the Site by providing staff with information about travel choices, including walking, cycling, car sharing and working from home (if applicable). The plan must include the following:
- a) targets for transport mode share;
 - b) measures to assist in achieving the above transport mode shares.
 - c) a plan to monitor changes in travel behaviour and transport mode share.
 - d) information which demonstrates that the Travel Demand Management proposed is supported by and integrated with appropriate infrastructure, including sufficient cycle parking and end of trip facilities (provision of showers and lockers).
 - e) requirements for regular review of the Travel Plan, including to provide additional facilities as required.

Note: The plan must be implemented during operation of the activities authorised by this Consent.

Avoca Street and Lower Ward Street Footpaths

14. Prior to activities commencing operation at the Site, footpaths are required to be provided on the northern side of Avoca Street (between Esplanade and Lower Ward Street) and both sides of Lower Ward Street (between Avoca Street and Wakatu Quay). These footpaths shall be designed and constructed to the satisfaction of Kaikoura District Council.

Event Parking and Traffic Management Plan

15. Prior to events taking place at the Site that would lead to a predicted parking demand in excess of 84 vehicles (accounting for any ongoing permanent activities at the Site) a Parking and Traffic Management Plan will be prepared and submitted to Council for certification. The purpose of the Plan will be to identify the transport management measures required to ensure the safe and efficient operation of the transport network to accommodate the additional travel demands associated with that event.

The Parking and Traffic Management Plan will incorporate the following measures (as relevant):

- a) Determining the parking demand for vehicles anticipated in association with the event, as well as in conjunction with any permanent activities that rely on the surrounding road network for parking;
- b) Identifying the likely location for parking of these vehicles and either confirming that the effects of this parking are acceptable or setting out the Transport Management Measures to remedy adverse effects. This may include (but is not

limited to):

- i). Temporary Traffic Management (in accordance with the Code of Practice for Temporary Traffic Management or as subsequently amended);
 - ii). Measures to promote alternate travel modes or parking locations, plus associated requirements to advertise this and ensure these people are able to safely travel to / from the Site;
 - iii). Measures to minimise disruption to the surrounding community throughout the duration of the event (including the set-up and take-down of the event). This includes access to / from the Site for loading and wharf access, access to / from the boat ramp and access to / from surrounding properties;
 - iv). Consideration of stall holder parking (for markets); and
 - v). Feedback from Council regarding the operation of previous Parking and Traffic Management Plans for relevant activities.
- c) The draft Parking and Traffic Management Plan will be submitted to Council at least six weeks in advance of the proposed event for certification as meeting the above objectives, or for feedback as to how it needs improving to meet these objectives.
- d) The approved Parking and Traffic Management Plan will be implemented for the duration of the event (including set-up and pack-down if relevant).

Loading Management Plan

16. Prior to activities operating at the Site, a Loading Management Plan shall be prepared and submitted to Council for certification. The purpose of the Plan will be to set out the steps proposed to ensure that loading associated with the Site (including the on-going use of the Boat Ramp and Wharf) occurs on-site and safely. The Loading Management Plan shall address:

- a) The hours during which loading is permitted to occur on-site, giving particular regard to the safety of pedestrians within the Site. All unnecessary loading should be minimised on the site between 08:00 and 18:00.
- b) How these loading hours are communicated to the tenants of the Site (including users of the Boat Ramp and the Wharf), as well as their delivery divers, noting there may be limited control over when deliveries occur given the distance between distribution hubs and Kaikōura;
- c) Whether there is a need to install signage and / or physical measures (such as bollards) at the entrance to the Site to ensure loading vehicles only enter during the permissible times; and
- d) What measures are required (if any) during exceptional circumstances such as emergencies.

- e) The Loading Management Plan shall be implemented during operation of the activities authorised by this Consent. However, it is able to be revised and resubmitted to Council for certification to adapt to changing operation of the Site.

Vehicle Tracking

17. Prior to installation of landscaping elements (both hard and soft landscaping), vehicle tracking will be provided of loading access in and around the Site. The purpose of the vehicle tracking is to confirm that the appropriate design vehicle (at least an 8m rigid truck) is able to satisfactorily negotiate the Site with that landscaping in place. The tracking will be provided to Council for certification.

Road Upgrades

18. Prior to activities operating at the Site, road upgrades in broad accordance with those illustrated in Beca plans 3160297-CA-200 and 3160297-CA-200 (both Revision D) as provided in the RFI response will be completed. This is to provide:
- a) At least 96 on-street car parks in the works area proposed;
 - b) Footpath provision on Esplanade and Wakatu Quay, both footpaths linking to the Site;
 - c) Provision of signage identifying where campervan parking is not permitted; and
 - d) Signage at the bus stop identifying that it is pick-up / drop-off only and not for dwelling.

Noise

19. Except for the 3 events provided for below in Condition 18, the consent holder shall ensure that all activities on the site are measured in accordance with NZS 6801:2008 Acoustics – Measurement of environmental sound, and assessed in accordance with the provisions of NZS 6802:2008 Acoustics – Environmental noise, shall not exceed the following noise limits at any point within the following sites, during the following timeframes:

Residential Zone sites

0700 -2300 hours Monday to Sunday: 55 dB LAeq

2300 – 0700 hours Monday to Sunday: 45 dB LAeq, 70 dB LAfmax

Business Zone sites

0700-2300 hours Monday to Sunday: 65 dB LAeq

2300– 0700 hours Monday to Sunday: 55 dB LAeq, 75 dB LAfmax.

20. Any community event held at Wakatu Quay is limited to the operating hours outlined in the Kaikōura District Plan Appendix Q.2.e. These events are exempt from complying with the District Plan noise limits and/or noise limits outlined in Condition 13.
21. A schedule of upcoming community events is readily accessible online and is displayed on the information kiosk on Wakatu Quay.

22. No outdoor loudspeakers shall operate after 2300 hours.
23. A Noise Management Plan is provided for the site to cover both typical site operation and community (temporary) events.
24. Up to 3 commercial events can be held annually where the District Plan noise limits are exceeded at residential properties, providing the following controls are adopted:
 - i. The operational hours are limited to between 0800 and 2300 hours
 - i. Noise emissions from the event do not exceed 65 $\text{dB}_{L_{Aeq}}$ and 85 $\text{dB } L_{A_{fmax}}$ when received at any residentially zoned site.
 - ii. Events cannot occur on concurrent days.
 - iii. A specific Noise Management Plan (NMP) is provided for each event.
 - iv. The details of event are provided in writing to the occupants of nearby sites at least 14 days prior to the event, including nature of the event, operational hours, and a contact phone number for any queries or complaints.
 - v. Noise monitoring shall be carried out by the event organiser undertaking periodic noise measurements at the boundaries of the following representative sites during sound checks and event operations: 1 Wakatu Quay (Lot 1 DP 3886), 1B Wakatu Quay (Lot 2 DP 3886), 3 Wakatu Quay (Lot 2 DP 6724), 1 Avoca Street (Lot 1 DP 492 – Pier Hotel), 3 Avoca Street (Lots 1-3 D 2820).
 - vi. Noise measurements shall be conducted with a Class 1 or 2 sound level meter, in accordance with NZS 6801:2008 and a log of the noise levels will be recorded. If the measurements indicate that the event noise limits are being exceeded, steps will be taken to reduce the noise emissions.
25. Prior to the issue of building consent, a design report shall be submitted to the Council that demonstrates that all mechanical plant cumulative noise is designed to be 5 db below the noise limits set out in Condition 13. The design report shall be prepared by a suitably qualified and experienced acoustic consultant.

Penguins

26. Works shall provide for the installation of a minimum of 10 penguin nest boxes. The penguin nest boxes shall be constructed, installed and located at the advice and discretion of a suitably qualified and experienced ecologist.
27. The consent holder shall, within that 48-hour period prior to commencing construction work:
 - a. Undertake a check of the works area at the seawall to determine whether there are any penguins or any active burrows present.
 - b. Where any penguins or active burrows are present, the consent holder must establish an exclusion zone around it so as to ensure no works directly impact the nesting or moulting activity.
 - c. The contents of an active burrow located within the project footprint shall not be removed to enable works to progress.

Advice Note: "Active burrow" means a penguin burrow containing, or suspected to contain, a nesting bird, viable nest contents (egg(s) and / or chick(s)) or moulting bird based on the time of the year and other evidence observed at the burrow location by an SQE.

Lighting

28. Prior to construction works commencing, the consent holder shall submit a lighting strategy to the Team Leader of Resource Consents (or nominee) of the Council. The lighting strategy shall detail the type and location of both interior and exterior sources of lighting.

Advice Notes:

No archaeological sites, waahi tapu, taonga or koiwi may be damaged, destroyed or modified unless the necessary authorities pursuant to the New Zealand Pouhere Taonga Act 2014 have been obtained first.

You have the right of objection to the consent authority pursuant to section 357 of the Resource Management Act 1991 in respect to the above decision within fifteen working days of receipt of this decision. Should you wish to object to this decision please advise Kaikōura District Council in writing, setting out the reasons for your objections, within the above time limit.

Pursuant to section 125 of the Resource Management Act 1991 these consents will lapse on the expiry of 5 years after date of commencement of the consent, or such other date as provided for in the consent, unless:

- The consent is given effect to or;
- Application for an extension of time is made within 3 months after expiry of that period.

In accordance with section 127 of the Resource Management Act 1991, the consent holder at any time prior to the issue of a section 224 certificate may apply for the change or cancellation of any of the conditions of this consent.

Development contributions have been assessed in accordance with the Councils Development Contribution Policy 2021, and are set out in Appendix Four.

This is not a building consent. You are still required to obtain a building consent before any building work commences.

APPENDIX II
RELEVANT SECTIONS OF THE RESOURCE MANAGEMENT ACT 1991

Applications for resource consents are considered under sections 104, 106 and 108 of the RMA.

Section 104(1) sets out the matters to which the Council shall have regard when considering an application for resource consent. Subject to Part II of the Act, which contains the Act's purpose and principles, the following matters are relevant:

any actual and potential effects on the environment of allowing the activity;
any relevant provision of;
a national policy statement;
a New Zealand coastal policy statement;
a regional policy statement or proposed regional policy statement;
a plan or proposed plan; and
any other matters that the consent authority considers relevant and reasonably necessary to determine the application.

In accordance with section 104(2) a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

Under section 104(3) a consent authority must not-
have regard to trade competition when considering an application:
when considering an application, have regard to any effect on a person who has given written approval to the application:
grant a resource consent contrary to provision of section 107 (Coastal Permits) or section 217(Water Conservation Order) or any Order in Council in force under section 152 (Coastal Permits), or under any regulations:
grant a resource consent if the application should have been publicly notified and was not.

Under section 104(A),(B),(C),(D)(determination and restrictions on applications), council must grant consent for controlled activities. May grant or refuse applications for (restricted) discretionary and non-complying activities.

If the activity is non-complying under section 104(D) then it may only be granted if council is satisfied that either-

The adverse effects of the activity on the environment (other than any effect to which section 104(3)(b) applies) will be minor; or
The application is for an activity that will not be contrary to the objectives and policies of the relevant plans (operative or proposed).

Part II of the Resource Management Act

Any decision of the Council is subject to the provisions contained in Part Two of the Resource Management Act 1991. In considering the application, the consent authority must give pre-eminence to Part II of the Act.

Section 5 of the Act contains the purpose of the Act, which is to promote the sustainable management of natural and physical resources. Sustainable management is defined in the Act as:

“Managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while-

Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

Avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

Sections 6, 7, and 8 of the Resource Management Act (1991) outline the principles of the Act. All persons exercising functions and powers under the Act shall consider:

Matters of National Importance (s.6);
Other Matters (s.7); and
The Treaty of Waitangi (s.8).

APPENDIX III ACCIDENTAL DISCOVERY PROTOCOL: ARCHAEOLOGICAL SITES, ARCHAEOLOGICAL AREAS, HISTORIC AREAS OR WAAHI TAPU

This rule does not apply to the Kaikōura Peninsula Tourism Zone and the Ocean Ridge Comprehensive Living Zone

Where, during earthworks on any site, any archaeological feature, artefact or human remains are accidentally discovered or are suspected to have been discovered, the following protocol shall apply:

- i. Immediately that it becomes apparent that a suspected archaeological site, burial site, waahi tapu or waahi taonga site has been uncovered, all excavation shall cease.

In cases other than suspected human remains

- ii. The contractor must shut down all machinery immediately, secure the area and advise the consent holder or proponent and Kaikōura District Council of the occurrence.
- iii. The consent holder or proponent must notify the NZ Historic Places Trust so that the appropriate consent procedure can be initiated.
- iv. The consent holder or proponent must consult with a representative of the Te Runanga o Kaikōura to determine what further actions are appropriate to safeguard the site of its contents.

Where human remains are suspected

- v.** The contractor must take steps immediately to secure the area in a way which ensures human remains are not further disturbed. The contractor shall advise the consent holder or proponent of the steps taken.
- vi.** The contractor shall notify the Police of the suspected human remains as soon as practicably possible after the remains have been disturbed. The consent holder or proponent shall notify Te Runanga o Kaikōura and NZ Historic Places Trust within 12 hours of the suspected human remains being disturbed, or otherwise as soon as practically possible.
- vii.** Excavation of the site shall not resume until the Police, NZ Historic Places Trust and the relevant Kaumatua have each given the necessary approvals for excavation to proceed.

Note: If any land use activity (such as earthworks, fencing or landscaping) is likely to modify, damage or destroy any archaeological site (whether recorded or unrecorded, an “authority” (consent) from the NZ Historic Places Trust must also be obtained for the work to lawfully proceed.

