

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

Decision No. [2018] NZEnvC 78

IN THE MATTER OF the Resource Management Act 1991
AND of an application under s 311 of the
Act
BETWEEN CATHERINE HUGHSON and
VICTORIA REID
(ENV-2017-WLG-000079)
Applicants
AND NELSON SPEEDWAY
ASSOCIATION INC
Respondent

Court: Environment Judge B P Dwyer sitting alone under s 309 of the Act
Hearing: at Nelson on 16 May 2018
Appearances: G J Praat for the Applicants
N A McFadden and S Galbreath for the Respondent
A D Jewell for the Tasman District Council
Oral judgment: 17 May 2018
Written record: 25 May 2018

ORAL JUDGMENT OF THE ENVIRONMENT COURT

- A: Application for declarations granted.
B: Costs reserved.



REASONS

Introduction

[1] This is my decision in these proceedings. As with any oral decision, I reserve the right to correct any minor errors, misquotations or misdescriptions which do not affect the rationale for or outcome of the decision.

[2] Catherine Hughson and Victoria Reid (the Applicants) have applied for declarations pertaining to operation of a speedway track (the Speedway) at Lansdowne Road, Richmond. The Speedway is operated by Nelson Speedway Association Incorporated (the Respondent) which opposes the making of declarations.

[3] The Respondent operates the Speedway pursuant to a conditional use application approved by Waimea County Council on 11 December 1968 (the Consent). It was common ground between the parties that the Consent granted in December 1968 was a permission which constituted a deemed resource consent pursuant to s 383 Resource Management Act 1991.

[4] Waimea County Council was a predecessor to Tasman District Council which appeared in these proceedings to assist the Court where it was able and produced a number of relevant files. It took no position on outcome. I will simply refer to either or both Councils as "the Council".

[5] The declarations were sought by the Applicants in the following terms:

1. We, Catherine Hughson and Victoria Reid, apply for the following declaration from the Environment Court:
 - a. That the Respondents actions in undertaking various meetings at the Nelson Speedway facility at Lansdowne Road, Richmond, Nelson during the 2016/17 race season was in breach of the terms of the land use consent in relation to that activity in that:
 - i. A public meeting was held on Saturday, 29 October 2016 and a further public meeting was held 7 days later on Saturday 5 November 2016.
 - ii. A public meeting was held on Tuesday 27th December 2016 and a further public meeting was held 11 days later on Friday 7 January 2017.
 - iii. A public meeting was held on Friday 20th January 2017 and a further meeting was held the next day Saturday 21st January 2017.



- iv. A public meeting was held on Saturday, 21st January 2017 and a further meeting was held on Friday 27th January some 6 days later.
 - v. A public meeting was held on Friday, 27th January 2017 and a further meeting was held the next day on Saturday, 28th January 2017.
 - vi. A public meeting was held on Saturday, 25th February 2017 and 13 days later, a further meeting was held on Friday, 10th March 2017.
 - vii. A public meeting was held on Friday, 10th March 2017 and the next day a further public meeting was held on Saturday, 11th March 2017.
 - viii. A public meeting was held on Friday, 14th April 2017 and on the next day a further public meeting was held on Saturday 15th April 2017.
Each of the occurrences ((i) – (vii)) were in breach of the terms of the deemed resource consent in so far as they comprised public meetings which were held more often than on a 'fortnightly' or 'two weekly' basis.
 - ix. A practice meeting was held on Saturday 17 September 2016 prior to the 1st October 2016 when the terms of the deemed resource consent otherwise permitted the race season to commence.
 - x. A practice meeting was held on Saturday 24 September 2016, prior to the 1st October 2016 when the terms of the deemed resource consent otherwise permitted the race season to commence.
- b. That the terms of the (deemed) resource consent pursuant to which the respondent operates the speedway facility at Landsdowne Road, Richmond, Nelson provide for the respondent to hold meetings fortnightly in the period October to April each year;
2. The applicant seeks a determination as to whether the Respondent has acted in breach of the terms of its land use consent 1(a) and/or determination of the relevant terms of the deemed resource consent in this regard;
 3. The grounds for this application are:
 - a. The respondent's predecessor were granted a conditional land use consent for the establishment and operation of a 'scramble track' at the speedway facility at the corner of Landsdowne Road and Lower Queen Street, Richmond;
 - b. The terms on which the application was made requested permission to run 'fortnightly meetings in the period October to April' each year;
 - c. The notice of the decision of the Waimea County Council of 11 December 1968 omitted the relevant stipulation as to the frequency and dates for meetings;
 - d. The Waimea County Council otherwise dealt with the application on the basis that the activity in respect of which the applicant sought permission was to run fortnightly meetings in the period October to April each year.



[6] The Applicants filed three affidavits in support of their application being joint affidavits of both Applicants dated 1 August 2017 and 13 April 2018 as well as an affidavit of Ms Reid solely dated 8 March 2018. The Respondent filed affidavits dated 23 March 2018 and 27 April 2018 from Sandra Marie Birdling, a life member and former President of the Respondent.

[7] None of the deponents were cross-examined on their affidavits, but Ms Birdling gave additional evidence during the hearing about some aspects of Speedway operation and answered questions on that evidence.

[8] Prior to the hearing the parties filed an agreed summary of facts where they distilled the questions for determination by the Court down to the following:

- What are the terms of the deemed consent?
- Did the Respondent breach those terms in the 2016/2017 racing season?

I will return to those issues in due course.

Background

[9] The Respondent was formed in 1968, initially under the name of Tasman Car Scramble Club (the Club/the Respondent). The Club had negotiated a lease of land at Richmond for the purpose of establishing the Speedway which remains on that same land today, but is now owned rather than leased by the Respondent.

[10] On 11 April 1968 the President of the Club wrote to the Council in the following terms (the Letter):

Dear Sir,

ESTABLISHMENT OF STOCK CAR RACING TRACK

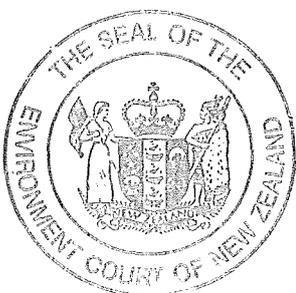
On behalf of the above club I request Town Planning approval to establish a stock car track in the County. Land adjacent to the Gun Club in Lansdowne Road has been offered to the Club for this purpose by Cook Bros. (Val. No. 1939/87/1)

Sufficient land is available to provide complete off-street parking for all spectators.

The Club is prepared to install toilet facilities on the site.

Providing County Council permission is granted to establish the track we intend to start racing in October 1968.

It is proposed that the racing season will last from October until April each year and that Meetings will be held fortnightly.



As the Club wishes to hold its Meetings on Sunday afternoons I also request Council approval for this.

It is not envisaged that any high speed racing will take place. All racing will be done on a dirt track with old model cars to which suitable modifications have been made. Please find enclosed copy of our car specifications.

Spectator safety will be one of the Clubs main concerns and a Public Risk Insurance Policy will be taken out.

The sport is growing in popularity throughout the country and a new club has commenced racing in Blenheim this year. Some Nelson cars are racing on this track at present because there is no track available in this area.

We feel that the establishment of this sport in the District would be welcomed by the Public and it would certainly provide the owners of many old cars with an outlet for their enthusiasm.

I trust that this application will meet with Council approval.

[11] The Council replied to the Club on 29 April 1968 advising that it would hold over the application until such time as the Club applied for a conditional use in a Rural Zone.

[12] On 24 July 1968 the Club made application to the Council in Form N of the Town and Country Planning Regulations 1960 (Amendment No 2) seeking consent to establish and operate a scramble car track. A copy of the application form is attached as Attachment "A" to this decision.

[13] Form N contains provision for any special conditions, restrictions or provisions proposed for the application to be identified. No such conditions, restrictions or provisions were identified on the Form N application lodged by the Club.

[14] Notwithstanding that, I understood it to be common ground between the parties that the Form N application of 24 July 1968 was to be read in conjunction with the Club's Letter so that any consent granted by the Council was limited to the ambit of the proposal set out in the Letter even though the Letter preceded the formal application by over three months. If the parties were not in agreement in that regard, I would have found that to be the case in any event.

[15] The Letter together with a copy of the Club's Rules Applying to Construction of Cars (the Construction Rules), which identify the specifications to which racing cars must comply, were both held on the Council file together with the formal application.



Any person who inspected the Council file in response to the public notification of the application would have seen the Letter and Construction Rules which clearly formed part of the Club's proposal.

[16] When the Council belatedly wrote to adjoining property owners about the application it stated that meetings would be held fortnightly through the summer months, being a restriction proposed in the Letter not in the Form N application form, so the Council clearly regarded the information contained in the Letter as being part of the application to be considered.

[17] In his submissions for the Applicants, Mr Praat, identified the terms on which the application was made as follows:

- The site was adjacent to a gun club at Lansdowne Road on land then owned by Cook Brothers;
- Sufficient land was available for off-street parking;
- The Club would install toilet facilities at the site;
- The racing season would last from October to April (I note that the parties agreed this meant 1 October to 30 April each year);
- Meetings would be held fortnightly;
- There would be no high-speed racing;
- Racing would be on a dirt track;
- Race cars would be old model cars which were modified in accordance with the Construction Rules;
- The Club would take out a public liability insurance policy.

With respect to Mr Praat, I consider that he has omitted a significant aspect of the proposal as described namely, the statement that the Club wished to hold its meetings on Sunday afternoons. I will return to that aspect of the proposal in due course.

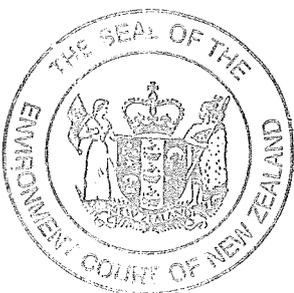
[18] The Council gave notice of its approval of the application by letter of 11 December 1968 (the Consent) which provided as follows.

Dear Sir,

Application for Conditional use

Scramble Car Track

The decision of the Council in respect to the above application is as follows : –



"That the Tasman Car Scramble Club be granted a conditional use of land described as Pt. Sec. 205 Waimea East District – Lansdowne Road, for the purposes of establishing and operating a Scramble Car Track subject to the following conditions : –

1. The Club shall provide sufficient parking on the property for all competitors and spectators.
2. No parking of vehicles belonging to persons attending the meeting will be permitted for ½ mile on either side of the entrance to the property.
3. Adequate toilet facilities for men and ladies shall be erected and maintained on the property by the Club, such facilities to comply with the requirements of the County Health Inspector.

I regret that you have not been advised of this decision at an earlier date.

The question of racing on Sundays was considered to be outside the scope of the hearing and therefore your Club will be required to make a separate application to the Council in relation to this matter.

[19] It will be noted that none of the conditions imposed by the Council in the Consent contain any restrictions as to the length of season, limiting meetings to a fortnightly basis, restrictions on cars to be raced or the like. However the extent of the Consent must be confined by the restrictions contained in the Club's Letter and the Construction Rules. That finding is based on the premise that it was not open to the Council to grant consent to a use whose effects might be greater than those identified in the application. The Council could not give the Club more than it had applied for.

Considerations

[20] What these proceedings ultimately came down to was to determine whether or not the Respondent was complying with the requirement that its meetings were to be held fortnightly as stated in the Letter. This was to be determined by reference to the Respondent's activities during the 2016/2017 racing season.

[21] The Applicants' contentions relating to that matter are contained in the amended application document which I have previously set out in some detail above. Ms Birdling's response to the contentions contained in the application was summarised in annexure A of Mr McFadden's submissions for the Respondent which include as Attachment B to this decision. I note that there was no challenge to Ms



Birdling's response on a factual basis so I have accepted the summary as an accurate statement of the Respondent's activities over the 2016/2017 season.

[22] In light of those observations, I return to the parties' first question, what are the terms of the deemed resource consent held by the Respondent? I consider that two issues require determination in answering that question:

- Firstly, what constitutes a meeting?;
- Secondly what is meant by the expression that "meetings will be held fortnightly"?

[23] The first question in turn has two sub-issues:

- Firstly, are practice meetings held by the Respondent, meetings for the purposes of the Consent?
- Secondly, are meetings which take place over a period longer than one day, one meeting or two meetings (or potentially more)?

[24] The first sub-issue arises because some of the meetings complained about by the Applicants involve practicing rather than racing. Ms Birdling explained that practices are a necessary part of the Respondent's programme for drivers and vehicles to qualify to participate in racing. Drivers have to be assessed and qualified and vehicles checked, so practice meetings are subject to control or supervision by stewards. Practice meetings are formally identified on the Respondent's calendar. Sometimes they take place before the racing season commences in October, sometimes during the racing season and sometimes on the same day as racing. Cars do not race during practice meetings and are not permitted to overtake other cars at them. Although members of the public may attend practice meetings, no charge is made by the Respondent for doing so. It is clear that practicing is not the same as racing.

[25] I consider that the status of practice meetings can be determined from the following sentence, in the Letter "It is proposed that the racing season will last from October until April each year and that Meetings will be held fortnightly." (my emphasis) This restricts the period during which racing meetings may be held (between October and April) and when those racing meetings may be held during that period (fortnightly).

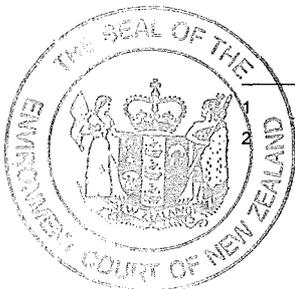


[26] These restrictions were clearly intended to apply to racing and not to practicing which I have accepted is something different. This means that practice meetings may take place outside the racing season and are not subject to the fortnightly restriction during the season that racing meetings are subject to. Practice meetings should not be counted for the purposes of assessing compliance with the restrictions as to season and frequency which apply to racing meetings.

[27] The second issue which arises under the head of “meetings” is whether an event which takes place over more than one day, constitutes one meeting or two. This is a matter of considerable importance for the Respondent. Events such as South Island or New Zealand Championships are commonly held over two consecutive days. If each day is considered as a separate meeting, the Respondent would be precluded from holding such events by the restriction that meetings are to be held fortnightly, subject to interpretation of precisely what that word means.

[28] Mr McFadden submitted that there is nothing in the word meeting which requires or implies that it is limited to a single day. That has been the Respondent’s (and I assume the Council’s) understanding for a long period of time as it has held two day events dating back for many years.

[29] The Applicants dispute that submission. Mr Praat urged on the Court a narrower interpretation of the word meeting to mean an event which occurs on a single day. He submitted that was consistent with a conservative approach to the construction of the word and to the background context and purpose in which it was used. He submitted that “Where an event occurs whereby practice and qualifying rounds are undertaken in one evening and further elimination rounds or finals are undertaken on a subsequent evening, the effects on the environment are no different to those which would otherwise be experienced from two separate race meetings”¹ and further that “It is consistent with the purpose for which the expression “meeting” was used to qualify the number and regularity of the event, so that the Council and affected residents could gauge the scale of the activity and thereby assess the trade-off between the applicants’ entitlement to enjoy participation in the proposed activity on certain terms against the corresponding effects on other parties.”²



Para 48 Applicants’ submissions.
Para 51 Applicants’ submissions.

[30] I observe that nothing in the application documents directly addresses this question one way or the other. However I return to the statement contained in the Letter that "As the Club wishes to hold its Meetings on Sunday afternoons I also request Council approval for this."

[31] I ask the question "What would a person interested in the application as a result of seeing the public notice have understood the Club was applying for, if he or she went and inspected the Council file in 1968?" I consider that is obvious from a plain reading of the Letter namely, that the Club was applying to hold racing meetings between October and April, fortnightly on Sunday afternoons.

[32] The Letter does not say that the Club wished to hold some of its meetings on Sundays and some of them on other days. If that was its intention, it is not expressed in the Letter. The letter simply said that the Club wished to hold its meetings on Sunday afternoons that is, on a single day.

[33] In its letter approving the application on 11 December 1968, the Council advised that the question of racing on Sundays was outside the scope of the hearing and requested that a separate application be made for that. That was a result of the Council considering s 327 of the Counties Act 1956 which controlled Sunday entertainment. It seems that a separate approval was required under that Act. I was not told if such an approval was ever granted, but the Respondent certainly races on Sundays now and has done so for some time.

[34] On the face of the Consent, the Council determined to grant approval for the Club to race on days other than Sundays, notwithstanding that the application proposed that racing would happen on that day. I consider that it was open to the Council to do that as it would appear that the effects of carrying out a stockcar meeting are the same whether it is on a Friday, Saturday, Sunday, or any other afternoon. I add that I make no observation as to the effects of night meetings which were not an issue in this hearing.

[35] Accordingly, the Consent appears to be within scope of the application, even though it did not grant consent for a Sunday, but other days. The same cannot be said of the two consecutive days racing issue.



[36] I accept Mr Praat's submission that the effects of two days racing would equate to the effects of two separate race meetings. While I accept Mr McFadden's proposition that there is nothing in the word meeting itself which requires or implies that a meeting is limited to a single day, in this case the word must be interpreted in the context of the Respondent's Letter stating that meetings are to take place on Sunday afternoons. That is, on a single day.

[37] If Mr McFadden was right in his proposition that meetings are not confined to a single day, then the Respondent could race on any number of days it chooses simply by calling a multiday event a meeting. It would not be confined to two day events which has been its practice up till now. I find that in the context of this application the term meeting means an event carried out on a single day as that is what the Respondent proposed in the Letter.

[38] That finding brings me to the question of what is meant by the expression that "meetings will be held fortnightly". As I understood the Applicants' position, they contended that this meant that there had to be 14 clear days between every meeting. The view Mr McFadden advanced for the Respondent was that this meant there could be one meeting at any time within a particular fortnightly period.

[39] He contended that the Applicants were reading into the requirement that meetings be held fortnightly, a requirement that there had to be a fortnight between events which is a different thing. He submitted that what the fortnightly requirement meant was that the season was to be broken into two week blocks and that there could only be one meeting (whether one day or two days) within any given two week block.

[40] In response to a question from the Court Mr McFadden confirmed that this interpretation meant that the Respondent could race for two days at the end of one fortnightly block and on the first two days of the next block (that is four consecutive days), although I understand this does not happen in fact. He contended that if the Applicants' interpretation was adopted this would lead to an absurd situation that if two meetings were held less than 14 days apart that would be a breach of the Consent even if no other meetings were held for the entire racing season.



[41] In the normal course of events I would consider there to be some force in Mr McFadden's submission, however I think that his argument again runs into the difficulty of the Letter of 11 April 1968, namely that on the face of its own document the Club proposed to hold racing meetings between October and April, fortnightly on Sunday afternoons so that there would in fact be 14 days between racing meetings.

[42] Accordingly, in the context of this particular application the term "fortnightly" meant 14 days apart. The Council decision did not seek to vary that aspect of the proposal as it had done with the Sunday aspect.

[43] In the light of those findings, I return to the questions for determination posed by counsel.

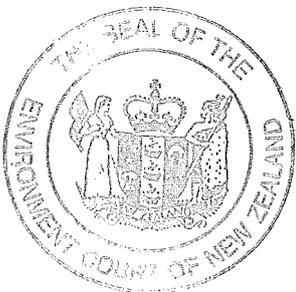
[44] Firstly, what are the terms of the deemed consent? I find that the Consent allows the Respondent to conduct one race meeting on a single day every 14 days, as that is what it applied for permission to do. Otherwise, the terms of consent are those contained in the Consent dated 11 December 1968.

[45] Secondly, did the Association breach those terms in the 2016/2017 racing season? I find that it did. By reference to Attachment B to this decision, the Consent was breached on:

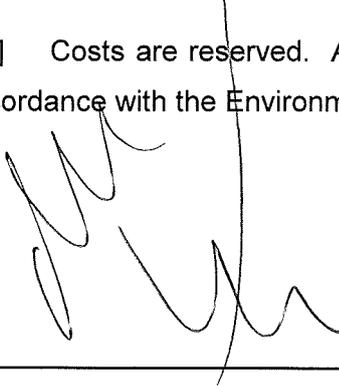
- Saturday 7 January 2017;
- Friday 20 January 2017;
- Friday 27 January 2017;
- Saturday 28 January 2017;
- Friday 10 March 2017;
- Sunday 16 April 2017.

Outcome

[46] I make declarations in both respects accordingly.



[47] Costs are reserved. Any costs application to be made and responded to in accordance with the Environment Court Practice Note 2014.



The seal of the Environment Court of New Zealand is circular. It features the text 'THE SEAL OF THE ENVIRONMENT COURT OF NEW ZEALAND' around the perimeter. In the center is the coat of arms of New Zealand, which includes a shield with a cross, a crown on top, and two figures holding a shield.

B P Dwyer
Environment Judge

Attachment A

THE TOWN AND COUNTRY PLANNING ACT, 1953.

APPLICATION FOR CONSENT TO CONDITIONAL USE.

To The County Clerk,
Waimea County Council,
P.O. Box 70,
RICHMOND.

This application is made under section 28(c) of the Town and Country Planning Act, 1953.

I hereby apply for consent to establish and operate a Scramble Car Track.

The property in respect of which this application is made is situated on the North West side of Lansdowne Road at Appleby. The property is bounded on its North Eastern side by an unformed portion of Queen Street extension and on its South Eastern side by Lansdowne Road. The legal description of the land is ALL THAT piece of land situated in Block II Waimea Survey District, containing FORTY ACRES (40 a 0 r 0 p) more or less, being part Section 205, District of Waimea East and being part of the land in Certificate of Title, Volume 49 folio 274, (Nelson Registry).

I am the prospective lessee of the property.

PROPERTY OWNERS NAMES.

ADDRESSES.

T. G. Ralfe.

P.O. Box 32, Nelson.

W. L. Cook.

P.O. Box 32, Nelson.

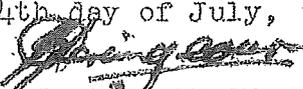
OCCUPIERS NAME.

ADDRESS.

J. B. Cook

Appleby - R. D. 1, Richmond.

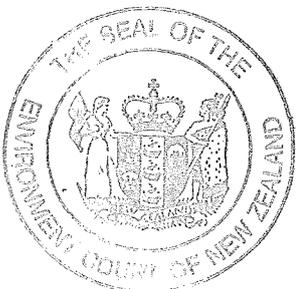
Dated at Richmond this 24th day of July, 1968.


J. G. SCRIMGEOUR.

(For and on behalf of the Tasman Car Scramble Club).

APPLICANT:- John Gordon Scrimgeour,

ADDRESS. 1 Florence Street,
RICHMOND.

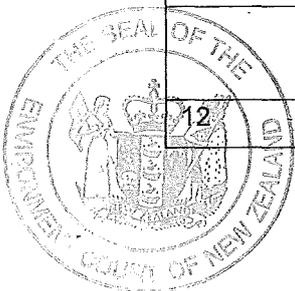


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Attachment B

ANNEXURE A: TABLE OF MEETINGS DURING 2016/17 RACE SEASON

Event number for that season	Date	Time since last meeting	Events per calendar month	Comments
	Sat 17 September		0	Practice only.
	Sat 24 September			Practice only.
	Sat 1 October			Practice only.
1	Sat 15 October		1	Opening night
	Sat 29 October			Rained out, did not proceed.
2	Sat 5 November	21 days		
3	Sat 19 November	14 days	2	
4	Sat 3 December	15 days		
5	Tues 27 December	24 days	2	
6	Sat 7 January	11 days		
7	Fri 20 January	13 days		A practice and event took place on this date.
	Sat 21 January			Day 2 of two day event (New Zealand Sprintcar Grand Prix). There was no event on 21 January- rained out.
8	Fri 27 January	7 days	3	A practice and event took place on this date.
	Sat 28 January			Day 2 of two day event (New Zealand Midget Class Championship)
9	Sat 11 February	14 days		
10	Sat 25 February	14 days	2	
11	Fri 10 March	13 days	1	
	Sat 11 March			Day 2 of two day event (Vertex South Island Super Saloon Series). Rained out, this second day of the event did not proceed.
	Sat 25 March			Rained out, did not occur
	Fri 14 April			Rained out. Meeting occurred on 15 and 16 April instead.
12	Sat 15 April	36 days		



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	Sun 16 April		1	Day 2 of two day event (the Top of the South Championships).
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