

Cable Bay Vineyard refused consent

One of Waiheke's most popular party venues has had its wings clipped by a planning decision which upholds amenity values - particularly neighbours' rights to reasonable peace and quiet - in parts of the island zoned for rural-residential living.

Cable Bay Wine Ltd has been refused retrospective resource consent for its Verandah bar/restaurant and function space and associated outdoor seating area which have been operating since around 2012.

The vineyard was required last year by Auckland Council to seek retrospective resource consent after the council became aware of several renovations made to the Verandah bar since consent was granted in 2011 and following ongoing complaints by neighbours.

Owner Loukas Petrou says he and his planning advisers are "very surprised" by the decision of an independent hearing panel, which considered the application in November and December. He plans an Environment Court appeal and says the Verandah bar and associated informal dining on the lawn will continue to operate in the meantime.

Under a separate consent, Cable Bay is allowed to host up to four major functions including outdoor music events annually.

“The intention of the policy is to protect the rural environment and those who live in it, not to allow hundreds and hundreds of people to turn a peaceful rural paradise into a party zone.

- Submitters Stephen and Suzanne Edwards

Neighbours who opposed the retrospective consent application are buoyed by the decision but wary that the expensive planning battle is far from over. They told *Gulf News* they did not wish to comment publicly on the situation at this point. They have lodged further complaints with the council about additional outdoor seating installed since the hearing, the decision dated 30 January states.

A council spokeswoman told *Gulf News* its regulatory compliance unit had yet to make any decisions about further action following the ruling.

The decision sheds light on an escalating breakdown in relations between the venue and its neighbours - chiefly over noise - and the neighbours' growing frus-

tration over alleged council inaction to enforce district plan and resource consent requirements.

The issues for debate included noise, traffic, landscape and visual amenity, wastewater capacity and the cumula-

Whau Peninsula and at Thompson's Point, which is earmarked for lifestyle subdivision following a long-running Environment Court saga. While the zoning permits small-scale rural activities with a horticultural focus, it protects the



Evidence was given that the Verandah bar had been repeatedly remodelled with an expansion in outdoor activity since consent was granted in 2011.

tive effects of the activity. The applicant maintained that the adverse effects of the facility were minor and could be mitigated by measures such as noise-limiting devices and acoustic barriers. Mr Petrou also sought a relaxation of current consent conditions limiting restaurant seating to 120 people, including outdoor seating for 40, the decision states. He asked for no restriction on the number of patrons that could be on site "and for extensive use to be made of the outdoor areas for people to enjoy food and wine."

Both the applicant and the opposing submitters engaged a phalanx of legal counsel (including a QC), consultant planners, acoustic experts, landscape and traffic planners to argue the case, while the council - which recommended approval, with conditions - deployed an expert team of six.

The site and neighbouring properties are zoned 'rural 2 western landscape' in the Hauraki Gulf district plan, a zoning intended to provide for rural-residential living in areas of high natural character. On Waiheke, the zoning applies on the semi-rural western peninsula, at Te



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general amenity by limiting activities that might generate significant noise or traffic, a council summary states.

Opposing submitters included Julie Loranger and Lindsay Niemann, who lease an adjoining property that is owned by the vineyard.

"Cable Bay Vineyard seeks to legalise retrospectively a building which has become the catalyst for numerous breaches of the existing noise and wastewater consent conditions," they submitted. "They also seek use of a lawn (up to our common boundary) in a way which has seriously impacted on our privacy and security."

They stated the venue had changed from one that was allowed 40 people to dine outdoors to one that was "open to all comers", affecting their privacy and security.

"The sheer volume of noise arising from the presence during high summer of more than 300 patrons on the lawn and in the facility can be unendurable."

Disturbance was an all-day phenomenon. "Patrons can peer into our home from the boundary, some walk down the driveway, or are seen urinating into the flax bushes.

"... Our sleep has been interrupted by amplified music and by patrons drinking and talking on the boundary, too far away ... to be properly supervised ... by duty managers.

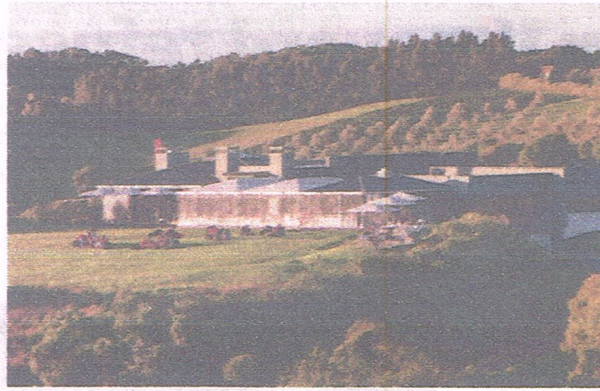
"The activities and noise have had a detrimental effect on our health due to chronic stress and anxiety. Sleep disturbance is now a chronic condition for us both."

They said they had made numerous attempts to persuade council officials to remedy the alleged consent breaches. "While some prosecutions have been successful, other charges have been withdrawn and noise breaches continue ... We have little confidence that officials will be able to contain the adverse effects that will occur if the application is granted."

Christine and Mike Poland of 20 Nick Johnstone Drive submitted that the use of the lawn as an outdoor extension of the restaurant and bar was not consented.

They had suffered "a major loss of amenity" in the six years they had lived there, "due to the applicant's inability to confine the activities and noise inside a suitably designed, acoustically engineered structure.

"We have suffered accordingly from loss of privacy, stress and anxiety, sleep



Cable Bay Vineyard is one of Waiheke's most popular venues, with expansive lawns and panoramic views across the harbour to Auckland.

disturbance and loss of amenity. The applicant should not now be able to benefit from these unconsented effects by way of retrospective consent for his inappropriate structures."

Stephen and Suzanne Edwards, who operate The Gorgeous Inn accommodation facility, said they believed they had a right to expect a high value of amenity.

"We moved to the area in 2012 believing we were buying a piece of paradise in a quiet rural area.

"It is no exaggeration to say that our home is no longer a haven. Instead it feels like a battleground ...

"The intention of the policy is to protect the rural environment and those who live in it, not to allow hundreds and hundreds of people to turn a peaceful

rural paradise into a party zone."

Mr Petrou submitted that the previously consented outdoor space needed to be changed "to establish an indoor/outdoor space for people to enjoy food and wine and admire the spectacular views." When he took over Cable Bay in late-2012, the operation needed to be changed to avoid the business going back into liquidation, as the previous business had before he purchased it.

The rationale was that by providing "better offerings and better weather protections, people will stay longer and spend more money."

Mr Petrou said he thought the relationship with neighbours was good until October 2014 when the employment of the previous winemaker and manager of Cable Bay was terminated. Following that, the relationship with neighbours

deteriorated and communications broke down.

He outlined attempts to resolve issues in relation to helicopter, noise, weddings and functions. He maintained that the venue contributed positively to the island, citing an ongoing relationship with local schools and training for hospitality students. The restaurants provided significant employment and Cable Bay was an important component of the island's tourism infrastructure.

However the panel, in weighing-up the impacts of the proposal on amenity values, preferred the evidence of the neighbours and their expert witnesses to that of the applicant.

It found the effects on amenity values would be more than minor and were contrary to the objectives of the district plan.

Outdoor activities to the intensity envisaged by the applicant have the potential to adversely affect the amenity values anticipated by the neighbouring residents and the environmental outcomes contemplated by the district plan. Based on the evidence of submitters such effects have been occurring for some time under the current operation of activities.

"The environmental outcomes for this zone do not contemplate the scale, ongoing nature and intensity of, in particular, the outdoor restaurant and function activities sought by the applicant.

"We were not convinced by the evidence of [the applicant's] planning witnesses that the recommended conditions of consent would avoid, remedy or mitigate the adverse effects." • Geoff Cumming

Repeated complaints

The hearing panel was given details of six convictions, two abatement notices, an infringement notice, 10 'excessive noise directions' issued and many noise complaints lodged with Auckland Council in relation to activities at Cable Bay since 2012. Its decision states: "While the compliance history may well be a relevant matter if any future enforcement proceedings arise, we find that we should not place any significant weight on these matters in relation to our deliberations." •

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- Submitters Julie Loranger and Lindsay Niemann