

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2021] NZEnvC 011

IN THE MATTER OF an appeal pursuant to clause 14 of the
First Schedule of the Resource
Management Act 1991

AND of an application under s 293 of the Act
in relation to Noise Contours

BETWEEN NORTHPORT LIMITED

(ENV-2020-AKL-109)

Appellant

AND WHANGAREI DISTRICT COUNCIL

Respondent

Court: Judge J A Smith
Commissioner RM Bartlett
Commissioner SK Prime

Hearing: at Onerahi on 4 February 2021

Last Case Event: Updated Maps Filed by Ms Shaw on 17 February 2021

Appearances: KRM Littlejohn and TJ Baker for Northport Limited
ST Shaw for Whangarei District Council

Date of Decision: 18 February 2021

Date of Issue: 18 February 2021

ORAL DECISION OF THE ENVIRONMENT COURT

The Court makes the following Directions under s 293 of the Act:

A: Notice is to be issued to the owners of properties that are identified as being within
the original 'outer' boundary, the community liaison group and relevant iwi/hapu

Northport Limited v Whangarei District Council



by means of a direct letter giving a general outline of the latest application, a map and summary information of the changes. This letter would include an information package, with background information including the noise data and assessment of noise issues, the memorandum of counsel, the directions of this Court and contact information, to enable people to understand the impact of this proposal.

- B: A public notice is to be published giving a general outline of the application and a map of the area, and advising contact details of designated Northport and Council staff members who are to be contacted with any queries.
- C. Information is to be made available on the Northport and Council websites.
- D. Objections to the new proposal are to be lodged via the s 274 RMA process with the Environment Court.
- E. Costs are reserved.

REASONS

Introduction

[1] This is an application for directions under s 293 of the Act to allow further publication and consultation in respect of changes sought by Northport Limited (**Northport**) to the Urban Package, particularly in relation to the generation of port noise.

[2] Having received affidavit evidence from Whangarei District Council (**the Council**), neither party had any questions and the affidavits were allowed in without further confirmation. Accordingly, the hearing commenced on 4 February 2021 with those documents having been pre-read by the Court.

Background

[3] There is no issue that the changes sought by Northport, as it relates to noise issues generally, was a matter within the scope of the Urban Package and service plan changes.

Northport filed a submission in relation to the plan change seeking, among other things, the imposition of noise controls – basically in accordance with the Port Noise Standard Rules NZ6809. Those rules give the ability for ports to look at noise contour approaches, among other approaches that could be adopted.

[4] At the time of the submission, Northport gave a generalised indication of the control limits. That is annexed hereto and marked A. That map, as can be seen, has two areas of effect. The first is to the west of the Northport site, involving approximately one third of a subdivision, with housing either on it or in the process of being constructed. To the north, on the opposite side of the harbour at Reotahi, there is a line shown approximately to the top of the ridgeline as the cut-off point, and again there are some houses already constructed and obviously subdivisions allowing further development in the future.

Subsequent progress

[5] Northport indicated in its submission that it intended to do further work on the noise rules, and the Council retained an expert (Mr J Styles, an acoustic consultant) who commented that there was a lack of full information in relation to the noise contours, and that the standard itself gave various approaches that could be adopted.

[6] By the time of the hearing, Northport's proposal was significantly more developed. It has essentially developed an approach very similar to that used in other ports and airport, using outer and inner noise contour lines as the control boundaries and adopting a package of controls, some of which required Northport to undertake steps (i.e. for existing dwellings, mitigating effects), and others that would require the mitigation of effects during new builds. As well as this, there were other provisions relating to not only the contours and the gradients within those contours, but establishment of a Noise Liaison Committee. All of these are generally familiar to the Court, and follow on from similar methods used in other parts of the country. The Court was referred to the decision of *Vernon v Thames-Coromandel District Council*.¹

¹ [2018] NZEnvC 76, 21 May 2018.

Use of noise contours

[7] There have been a number of occasions when noise contours have been adopted in New Zealand, in many occasions as a result of appeals or plan changes. Those include Christchurch Airport, which has an inner and outer control boundary contour level. Port Lyttleton and Port Otago have similar approaches.

[8] The key elements of the proposal in this case are set out in Exhibit **B**, and involve firstly establishing, in gradients of 1dB, a 65dB contour grading down at 1dB contours to 55dB, which constitute the outer and inner limits of the noise controls. These are shown in Annexure **B**.

[9] Beyond the 55dB boundary there are no controls, but within the 55dB there are controls that can be summarised in three particular ways:

1. The creation of a community liaison noise committee. At this stage the wording of that provision and the selection of residents is based upon several roads within the area, but it may benefit from greater precision, particularly if a residents group is either in existence or can be formed subsequently to deal with this, to arrange for representatives to be on the liaison committee;
2. Where new residential buildings, at least, are constructed within the 55dB_A contour, there is a need to provide attenuation to standards, namely to achieve an internal noise level (with windows and doors open) of around 40dB_A;
3. The corollary to this is that Northport takes responsibility in relation to existing homes, of ensuring (if the owner requests) that those standards will be met inside the house. There are criterion that have to be met, and the offer is not time-limited. This represents a balanced package that is familiar to the Court as attempting to provide both a responsibility on residents constructing new homes, and on the other hand putting a responsibility on Northport for existing homes.

Scope issues

[10] The question now is how the Court should proceed with the issue. A concern has been expressed by the Council that the changes now sought were not clearly contemplated in terms of the appeal or the original submission. In any event, both parties are agreed that a s 293 consultation process would be appropriate.

[11] We are unanimous in our view that the appeal appears to be within scope. The reason for this is that it was clear Northport was seeking the imposition of noise controls, and the diagram attached to their submission, and to their subsequent evidence, showed the outer limit. Further, the fact is that the outer limit now shown, and demonstrated in Annexure **B**, is either at or within the limits that were demonstrated on the original plan. On that basis no new parties are affected by the noise controls. The details of the noise controls were clearly going to be subject to further information and refinement as the process developed.

[12] Nevertheless, we accept that some people who have purchased homes, or built homes in this area since the original notification, may not be aware of the end result that has now been reached. The end result is significantly more sophisticated than the original proposal, as was intended by both Northport and the Council's consultant. In progressing the s 293 process significant benefits could be gained by consultation with the landowners, particularly around issues such as a liaison committee and its composition, the means by which existing residents can take up the proposed noise mitigation at their homes, and how new residents might be able to understand what the requirements are for new buildings.

[13] In any event, both parties are agreed that this matter should proceed through the s 293 process to get the benefits of such consultation. The unanimous view of the Court is that that is an advantage – whether or not the submission and appeal are within scope. Accordingly, we do not have to rule formally on the scope issue, and our conclusion is that s 293 should properly be utilised in the circumstances of this case. We now go on to deal with the procedure that might be adopted.

The process

[14] Section 293 specifies that, if the Court has had a hearing, and considers a s 293 process appropriate, it must state its reasons for giving the direction and may give directions under ss (1). The reasons for this direction have already been stated earlier, but relate to the prospect of firstly improving the provisions, and secondly ensuring that all of the parties who are directly affected are able to contribute if they feel there has been any change to the known position.

[15] After some thought, we have agreed that we want to give slightly wider scope to any other parties who may consider that they have an interest greater than the public generally or are directly affected. This is because of the possibility that there might be parties who think they should be included within the zone, because of the compensation provisions, or may consider that other provisions could be improved. Nevertheless, we do not see a basis for a wider general wider notification allowing a full right of participation, because this is a relatively narrow issue covering a small area.

[16] That being the case, we intend that the notice and the directions will require that any parties wishing to participate should file a s 274 notice and, subject to the criteria of that section, that they have an interest greater than the public generally or are directly affected. Beyond this, we consider that all of those parties who own property within the notified boundary (in accordance with the Council's rating database) should be notified, together with any community liaison group operating in this area, and of course any relevant iwi groups identified on the Council's database, but clearly including Patuharekeke.

[17] We consider further that there should be two forms of notice; one, a direct letter to the owners of properties that are identified within the noise boundary, and the liaison group and iwi, and secondly a public notice which should give a general outline of the application, with information being available from either Northport or the Council.

Content of notice

[18] We now go on to consider the actual contents of that notice. Having established

that the s 293 Direction should be made, the exact form of that notice was a matter of discussion between the parties. Again, the intent is to provide as much information as is possible for people to understand their own position. We saw this in three phases:

[19] that there be a map and summary information of the changes provided as part of the letters to the residents and, in respect of the public notice, a map showing the general effect would be included within the advertisement; that an information package be provided which would include that information, together with background information as to the assessment of noise data and the issue raised, the memorandum of counsel, the directions of this Court and other information, to enable people to understand the proposal's impact; if parties wanted particular background documents, they could make a request of the Council and I can see no proper reason why those could not be supplied on request. We see having contact people identified as assisting this object.

[20] Having addressed that, the parties are agreed that any person filing a notice should file it, under s 274, with the Environment Court. A date will need to be set for that. The Court has had reference to *Vernon v Thames-Coromandel District Council* as to the type of orders that would be made. It is intended that we follow a similar format here, but those parties that are affected would be the parties who would be primarily able to participate. We would allow under s 274 parties that have an interest greater than a member of the public generally, and that would clearly include iwi groups, the liaison group and possibly others that have not yet been identified.

[21] There are a number of parties who were within the original notified boundary but are now omitted because the contours have moved back towards the port. There was some discussion about this, and in the end it was felt best that those parties were also advised of the change so that they would know that the contours no longer affected their properties. Particularly to the west of the port, this makes a significant difference to the number of properties affected, but it also reduces the number of houses affected on the Reotahi side of the harbour.

Outcomes

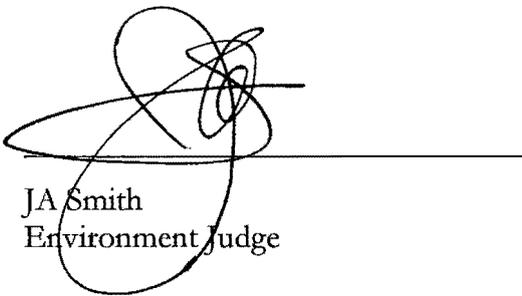
[22] The end result is that we are seeking the widest input into these provisions and providing for maximum information to be disseminated. To assist with this, both parties have agreed that the letter and the public notice will have dedicated staff available to take any enquiries that might be made, although information via websites and opportunity to comment via those websites will also be proffered.

[23] The intention is, once the notices have been filed there will be a short period for direct consultation if needed, but consultation for the most part will be managed through a mediation process, if that is necessary. To that end, my intent is that the mediator appointed would direct how the matter would be addressed from that point on, with a view to having the consultation phase finalised probably another 4-6 weeks after the notice period has closed.

[24] We note to both the Council and Northport that this is a relatively tight timetable, but think it is necessary in order to ensure that this matter comes up to speed with other appeals should a hearing be necessary. If the matter is capable of resolution at that point, either because there are no submissions or the submissions are resolved, then the Court will contemplate making final orders on the papers on the basis of any consent memorandum of affected parties.

For the court:




JA Smith
Environment Judge





Key:

- Outer Control Boundary
- Inner Control Boundary

Figure 3: Port Noise Control Boundaries



B1



B2

Figure 3A: Reotahi Port Noise Control Boundaries





Key:

- Outer Control Boundary
- Inner Control Boundary

Figure 3B: Marsden Bay Port Noise Control Boundaries



B3