

**IN THE MATTER** of the Whangarei District Plan and the Resource Management Act 1991 (RMA)

**A N D**

**IN THE MATTER** of the following Urban, Services & Open Space plan changes to the Whangarei District Plan:  
Plan changes 88, 88A, 88B, 88C, 88D, 88E, 88F, 88G, 88H, 88I, 88J, 143, 144, 145, 115, 148, 109, 136, 147, 82A, 82B

**BEFORE** **THE HEARING PANEL**  
**WHANGAREI DISTRICT COUNCIL**  
**URBAN, SERVICES & OPEN SPACE PLAN CHANGES**

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**SUBMISSIONS OF COUNSEL FOR WHANGAREI DISTRICT COUNCIL  
ON NOISE  
(THIRD SUPPLEMENTARY)**

**DATED: 4<sup>th</sup> December 2019**

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**SARAH SHAW**  
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**MAY IT PLEASE THE COMMISSIONERS**

1. The Panel have asked for legal submissions with respect to noise and the submissions made by:
  - (a) Northport Limited (“Northport”) (#132), with respect to PC144 Port Zone; and
  - (b) Stephen Westgate (#196), with respect to PC143 Airport Zone.
2. PC144 (Port Zone) and PC143 (Airport Zone) do not include noise provisions, but consequential amendments were proposed to the NAV (Noise & Vibration) chapter as part of the package of notified plan changes. With respect to the Port and Airport, this included amending references in NAV to the Port Zone and Airport Zone to update naming.
3. In my first legal submissions I set out the law with respect to whether a submission is “on” the plan change in terms of the *Clearwater* limbs, which in summary are whether the submission:
  - (a) addresses the extent to which the plan change amends the existing status quo; and
  - (b) would result in a planning instrument being amended without real opportunity for participation by those potentially affected.
4. I also set out there the law with respect to relief sought in evidence that was not “fairly and reasonably raised” in a submission.

**Port**

5. Northport’s submission seeks three aspects of relief with respect to noise (in the order presented in the submission):
  - (a) National Planning Standards - application of the Port Noise Standard Inner and Outer control boundaries, associated with:
    - (i) a range of permitted and conditional activities; and
    - (ii) port management plans to manage and monitor noise from their operations.
  - (b) National Planning Standards - application of the Port Noise Standard noise limits as specified in the submission.

- (c) Introduction of a mapped Port Noise Management Area and its addition to NAV.6.5 Sound Insulation Requirements.
6. The only further submission with respect to the noise matters is X352 New Zealand Refining Company.
7. I submit that the Northport submission with respect to noise issues clears the first *Clearwater* limb. PC144 notified a new Port Zone together with consequential amendments to NAV. If Northport cannot raise issues of port noise now, there is no future plan change in which it can do so.
8. The second *Clearwater* limb, and the relief sought in evidence as it relates to the submission, raise issues of procedural fairness. Taking the three areas of relief in turn, I submit that:
- (a) There are potential issues of procedural fairness associated with application of the Port Noise Standard Inner and Outer control boundaries.
- Those issues are unlikely to arise in the context of the second point (requirements for port management plans to manage and monitor noise from their operations), to the extent that implementation would place obligations *on the port* rather than on its neighbours.
- The issues do arise however in the context of the first point (Inner and Outer control boundaries associated with a range of permitted and conditional activities), to the extent that implementation would place obligations *on the port's neighbours* rather than on the port.
- The submission stated "*Northport has engaged acoustic experts to prepare a port noise model in accordance with the requirements of the Port Noise Standard. This work is progressing in parallel with this submission and will inform subsequent engagement*".
- There is no "subsequent engagement" in a plan change - only notification, submissions and further submissions.
- I submit that the proposed Inner and Outer control boundaries should have been mapped in the submission, and therefore notified in the summary of submissions to invite further submissions, if Northport proposed to introduce controls *on the port's neighbours*.

I submit that introducing the proposed Inner and Outer control boundary in evidence at hearing (with respect to introducing any obligations *on the port's neighbours*) was not “fairly and reasonably raised” in the submission and would amount to procedural unfairness.

- (b) There are not issues of procedural fairness associated with seeking to implement the Port Noise Standard noise limits.

The limits were clearly signalled in the Northport submission. The Port Noise Standard is already a referenced document in the Plan<sup>1</sup>.

- (c) There are potential issues of procedural fairness associated with the introduction of a mapped Port Noise Management Area and its addition to NAV.6.5 Sound Insulation Requirements.

The submission stated *“The exact location of the PNMA is subject to ongoing noise modelling work and will be determined through this process. A plan showing the properties likely to be affected by this rule is attached.”*

I submit that the “goalposts” of scope are the notified provisions, the Port Noise Management Area plan included with the submission, and anything in between – but not greater. In that context a PNMA could apply within the area indicated in the plan attached to the submission, but extending beyond it would raise issues of procedural fairness to those who might otherwise have made further submissions.

### **Airport**

9. Mr Westgate’s submission (#196) seeks to re-assess the position of the Airport’s Outer Control Boundary on Resource Area map 76R.
10. NAV.6.6 contains rules with respect to activities near the Airport. The plan changes proposed amendments to the Zone name in that rule. Mapping of the Airport Zone was notified, but not amendments to the mapped Outer Control Boundary.
11. In terms of whether the submission is “on” the plan change, I submit that lay submitters would have considered that the notification of the new Airport Zone, mapping, and consequential amendments to NAV raised the issue of Airport noise.

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<sup>1</sup> At REF.1.2 Schedule of Documents Incorporated by Reference at (c) Noise

12. In terms of procedural fairness, I submit that the submission clearly raised the specific issue of the Outer Control Boundary, which was then clearly included in the summary of submissions, providing the opportunity for further submissions.

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**Sarah Shaw**

Counsel for Whangarei District Council

Date: 4<sup>th</sup> December 2019