

Before an Independent Hearings Panel

The Proposed Waikato District Plan (Stage 1)

IN THE MATTER OF the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF hearing submissions and further submissions on the Proposed
Waikato District Plan (Stage 1) Hearing 7:
Topic 7 – Industrial

**REBUTTAL STATEMENT OF JON ROBERT STYLES ON BEHALF OF HAVELOCK
VILLAGE LIMITED**

(NOISE AND VIBRATION)

Dated: 18 December 2019

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1. INTRODUCTION

1.1 This rebuttal statement relates to primary evidence filed by:

- (a) Damian Ellerton for Genesis Energy Limited, submitter #924;
- (b) Chris Day for Ports of Auckland Ltd, submitter #578 (**POAL**); and
- (c) Nicola Williams for Tuakau Proteins Ltd, submitter #402.

1.2 I confirm that I have the qualifications and expertise previously set out in my primary statement of evidence.¹

1.3 I repeat the confirmation given in my primary evidence that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note 2014 and that my evidence has been prepared in accordance with that Code.

2. EVIDENCE OF MR ELLERTON

2.1 Mr Ellerton provides evidence on several issues relating to acoustics and planning in relation to the Huntly Power Station (**HPS**). The primary issue I am responding to in this evidence is Mr Ellerton's proposal for the 'date stamp' approach, as he describes from paragraph 17 of his evidence.

2.2 Mr Ellerton is of the view that the noise limits applying to the HPS should only apply at the notional boundary of any dwelling existing as at 25 September 2004. He states that applying the 'date stamp' limitation to the rule would preserve the certainty afforded to HPS because it will always know where its noise limits need to be applied.

2.3 I accept that on a site specific basis, it may be appropriate to 'protect' a noise maker from the vulnerability of encroachment or a dynamic receiving environment. In his suggested wording for Rule 21.2.3.2 P2 and P3 at his paragraph 38, Mr Ellerton applies the date stamp limitation of the rule to the interface between the HPS and all residential and rural zones.

2.4 As a general principle, I do not support the 'date stamp' approach unless all potentially affected land owners are involved in the process and the potential effects on development of the affected land is properly understood. I was not involved in the

¹ See paragraphs 1.1 – 1.4, Styles primary evidence for Havelock Village Limited for Hearing Topic 7 dated 10 December 2019.

consenting process for the HPS, but I accept that the date stamp approach has been in place for some time under the Operative District Plan.

2.5 Provided this date stamp approach is limited in its application to the HPS, I do not take issue with Mr Ellerton's proposed changes.

3. EVIDENCE OF MR DAY

3.1 In his evidence for POAL, Mr Day describes a similar date stamp approach to Mr Ellerton in respect of the Horotiu Industrial Park (**HIP**). At his paragraphs 5.4 and 5.5, Mr Day supports a limitation to the interface rules that would see the noise limits applying only to receivers existing at a particular time. Under his approach, any new noise receiver constructed after the specific date would not be afforded the protection of noise limits from the industrial activity, and the industrial activities would have a fixed receiver point to measure existing and future noise emissions at. In other words, it means that the existing industrial activities are not vulnerable to encroachment by noise sensitive activities or potential 'reverse sensitivity' effects.

3.2 I agree with Mr Day that in principle, it can be appropriate in some circumstances to provide certainty to industrial noise makers that they are 'protected' from encroachment by fixing the point at which noise limits apply into the future.

3.3 As with the HPS, I am not familiar with the details and context of the HIP and its surroundings. As a result, I do not offer a view on the merits of Mr Day's proposed approach in that specific context. But, if a date stamp approach is acceptable for HIP on its particular facts, I do not think it should be seen as a precedent or template for the rest of the Proposed Plan.

3.4 However, I consider that the suggestion of fixing the compliance point to be the dwellings at the date the Proposed Plan becomes operative across the Plan, would be a poor substitute for best practice. I consider that it would be very problematic if applied on a district-wide basis. There are many problems with this approach in principle, as follows:

- (a) The receivers existing at the time the Proposed Plan becomes operative are not known at this time. Between now and when the Proposed Plan becomes operative, some dwellings may come and some may go. The compliance position is therefore quite arbitrary;

- (b) The approach allows industrial activities to externalise their effects and use the neighbouring land as a buffer zone. The noise emissions over the neighbouring land could be relatively high, and the noise effects on the intervening land are not known or described, resulting in significant limitations on the ability to develop that land in the way that the zone provisions intend. Because the compliance point is somewhat arbitrary, (see (a)), the degree to which the intervening land is affected is not known at the decision making stage. This issue could be solved by more detailed assessment and information of particular sites;
- (c) If the compliance point is some distance away, fixing it early in the development process could provide the industrial activities with the potential to significantly increase noise levels to far beyond what is normally required or expected of industrial uses. This can happen because the compliance point is fixed and is at a large distance from the industrial area. It may take years before the noise generation reaches a level that only just complies with the proposed noise limit at the fixed compliance point. By that time, the noise emissions of the industrial area could be well in excess of what is reasonable over the intervening land;
- (d) There will be pressure to carry over the same 'date stamp' for the interface into future District Plans. This will mean that in two or three District Plans from now, the compliance date might still be 2020, or 2021. This carryover issue is identified in the evidence of Mr Ellerton, where the date stamp for the HPS noise controls is 25 September 2005. That is already 14 years old, and is now being proposed for the life of another District Plan. The ability to find out what receivers existed on a particular date is helped by modern aerial mapping and GIS services, but can remain problematic, particularly if there is a specific date that is not covered by aerial photography, and if the area is being developed throughout the periods covered by aerial photography and the Plan becoming operative. Whilst the noise maker(s) might have good knowledge of the surrounding environment, incoming residents, new land owners and other interested parties may not.
- (e) The ways in which the intervening land might be developed is essentially uncontrolled. The success of the approach relies on the owners / occupiers of the intervening land to know about the rule in the Plan that fixes the compliance point. In my experience, it is quite common for development to occur on the intervening land without the owner / developer or the Council

being aware of the potential noise issues on the land. The issue does not often become apparent until sometime after a new dwelling is occupied and there is a noise complaint. Whilst the noise maker might be protected from any action by its fixed compliance point (beyond the new dwelling) the owner of the new dwelling will in my experience be aggrieved. Whilst I accept that proper due diligence may avoid this issue, the fact is that the issue still arises, and more often than it should. I consider that it results in a very inefficient and unclear planning framework that does not properly manage development on the intervening land.

- 3.5 In my view, there are other far more effective and efficient methods of providing the protection that the date stamp approach seeks. These methods are well known, tried and true, and there is no reason they cannot be applied in this case.
- 3.6 One of the most common and robust methods of protecting noise makers from encroachment is to provide a noise control boundary. This is essentially a line on the planning maps that surrounds the noise making activity (industrial area in this case). The noise control boundary is established by carrying out noise modelling of the activities in the industrial zone, taking into account the layout, topography and the typical noise generating characteristics (which are known for most industrial activities).
- 3.7 The noise level predictions would be relatively general if the industrial area is in the planning stages only, but could be quite accurate if the industrial area is already partially or fully developed, as the actual noise emissions can be used, (plus an allowance for growth if appropriate).
- 3.8 If detailed noise level predictions are unable to be prepared and/or the industrial activities are not operating, (precluding any useful noise measurements) the location of the noise control boundary can often be reliably estimated by an acoustics expert using high level information, including topographical data. Resource consents for activities can also be relied on, including any noise level predictions that were prepared to inform them.
- 3.9 This approach gives a realistic position for the compliance point that is based on proven engineering methods, topography and the activities in the zone. The noise modelling can inform an assessment of the effects over the intervening land (the buffer zone). It will tell us whether the effects are so great in some places that sensitive uses simply should not be permitted, or whether the effects are less serious, allowing development but in a controlled way.

- 3.10 The land within the noise control boundary can be developed appropriately if the effects are known, and land use planning controls can be drafted to support this. Simple examples might include discouraging noise sensitive uses from locating close to the industrial area, but providing for them towards the outer extent of the noise control boundary but only where acoustic insulation is provided.
- 3.11 This approach is very widely used in modern district plans for a large variety of land uses, including ports, airports, road and rail infrastructure, quarries, industrial areas and motorsports activities. There are many examples of noise control boundaries around industrial areas in New Zealand District Plans.
- 3.12 The following New Zealand acoustical standards specify this exact method for achieving the same purpose:
- (a) NZS6805:1992 – *Airport noise management and land use planning*;
 - (b) NZS6807:1994 – *Noise management and land use planning for helicopter landing areas*; and
 - (c) NZS6809:1999 – *Acoustics – Port noise management and land use planning*.
- 3.13 They have been developed to provide methods for managing different land uses in a controlled and efficient manner using the noise control boundary² concept, recognising that the noise making activities they deal with would often be classified as regionally or nationally significant.

4. EVIDENCE OF MS WILLIAMS

- 4.1 Ms Williams considers that the interface rule should only apply between industrial and residential zoned land, and should not apply to rural land.
- 4.2 I disagree and consider the interface rule, as notified and supported in the section 42A report, should apply between industrial zones and all other zones where noise sensitive activities are permitted. Noise sensitive activities can occur in the rural zone, albeit at a lower intensity than the residential zone and those activities should be afforded adequate protection from noise effects.

² Although different terminology might be used in the Standards, the approach is generally the same.

5. CONCLUSION

- 5.1 I consider that fixing the date of the receiving environment is a poor substitute for establishing a noise control boundary and buffer zone using noise level predictions or existing information on the general nature of the noise from the industrial activities, where the effects on the intervening land are known and can be appropriately managed, and where there is good certainty for all stakeholders. If detailed noise level predictions are not possible, the location of the noise control boundary can be reliably estimated using the information typically available, including resource consent documentation for existing activities. Even if this approach is approximate, the noise control boundary approach is likely to be considerably more efficient and effective than the date stamp approach.
- 5.2 Noise control boundaries can be combined with or incorporated by setback rules or similar plan provisions to provide appropriate and adequate protection for both existing noise generators and future noise sensitive activities. I have been assisting Havelock Village Limited with the identification of noise contours on its site, for noise arising from the nearby industrial activities. I understand that Havelock Village is proposing setbacks and buffers for residential activities within the site in light of my objective assessment. In principle, I consider this to be an appropriate method to manage noise issues. I consider that it is not always necessary to use compatible zones to manage that issue.
- 5.3 Despite section 8.4.8 of NZS6802:2008 (as quoted at paragraph 5.2 of Mr Day's evidence) that supports the date stamp approach, I consider that the method prescribed in other three acoustical standards noted in 3.10 above is by far the most appropriate method for 'protecting' significant noise makers and providing appropriate land use planning controls for the surrounding land. I consider that section 8.4.8 of NZS6802 is out-dated and inappropriate for a modern District Plan where large and significant noise makers require protection from reverse sensitivity effects.
- 5.4 Whilst the date stamp approach may be reasonable for specific sites and situations where the fixed location is acceptable (e.g. for the HPS), I do not support the date stamp approach as a district-wide control.

JON ROBERT STYLES

Dated: 18 December 2019