

In the matter of the Resource
Management Act
1991

And

In the matter of the Ruakura Variation
to the Hamilton
Proposed District Plan

STATEMENT OF REBUTTAL EVIDENCE OF

Malcolm James HUNT

On behalf of Hamilton City Council

22 July 2016

INTRODUCTION

Qualifications and Relevant Experience

1. My name is Malcolm James Hunt. I have the background and experience set out within **Appendix A** to my form's report entitled "*Hamilton Proposed District Plan - Ruakura Variation - Review Of Noise & Vibration Matters Raised In Submissions Document*" Ref: 16788/5 dated April 2016 which is appended as **Appendix C** to the s.42A report on *Chapter 25.8 Noise and Vibration and Appendix 14*, by Ms Paula Rolfe, Project Manager, District Plan Review.
2. My involvement in this variation dates back to October 2013 when I was commissioned by Hamilton City Council [the Council] to provide acoustic analysis and advice in relation to the private plan change request for land at Ruakura submitted by Tainui Group Holdings Limited (TGH) and Chedworth Properties Limited (CPL). I provided advice on noise and vibration matters that were included in the Council's Submission to the Environmental Protection Authority

in accordance with RMA requirements. I partook in noise expert conferencing culminating in the final agreed statement dated 1 April 2014.

3. In November 2015, Hamilton City Council notified the Ruakura Variation to the Proposed District Plan for public consultation and submissions. The purpose of the Variation is to rezone approximately 822ha of land in Ruakura, ensuring a consistent approach to managing development in the area.
4. I understand Council received 50 submissions to the Ruakura Variation, which account for 675 submission points. The Further Submission period ran from 17 February until 2 March 2016. During April 2016 on behalf of the Council I was asked to review of specific noise and vibration issues raised by submitters which culminated in my report which is appended as *Appendix C* to the s.42A report entitled *Chapter 25.8 Noise and Vibration and Appendix 14*, by Ms Paula Rolfe, Project Manager, District Plan Review (hereafter referred to as the “s.42A Staff Report”).

Expert Witness Code of Conduct

5. I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope Of Evidence

6. My evidence below responds to specific noise and vibration matters raised in the expert evidence of:
 - Mr Jon Styles, acoustics expert, advising Tainui Group Holdings Ltd
 - Mr Nick Roberts, planning expert on behalf of William Roy Cowie and The Ruakura Residents Group.

7. Below I describe the relevant noise issue raised by the submitter's expert, and set out my response to each noise or vibration issue, setting why I do or do not support the approach of the relevant expert. I have based my recommendations on the general thrust and approach of the Proposed District Plan, the specific comments and recommendations set out in the s.42A officer report, the recommendations of the relevant NZ Standards, international guidelines and criteria.
8. Provided the development of the Ruakura Logistics and Ruakura Industrial Park zone proceeds in accordance with the modifications and amendments proposed by Council staff in their reports responding to matters raised in submissions on the Variation provided for within Variation 1. I support the noise limits and timeframes governing noise emissions from the Logistics Zone and Ruakura Industrial Park zone and Rule 25.8.3.11 requiring acoustic insulation for new and altered buildings housing noise sensitive activities affected by noise from rail, busy roads or noise from the Ruakura Logistics Zone or Ruakura Industrial Park Zone. Also, Rule 25.8.3.10 controls vibration received for new and altered sensitive locations near rail lines which ensures these effects are managed appropriately. Subject to the amendments recommended by Council planners, I support acoustic insulation of habitable rooms within noisy areas and avoiding vibration affected areas¹.
9. At the conclusion of my evidence I set out my support for the Variation (subject to amendments proposed by Council Officers) as the combined effect of these District Plan provisions will result in noise and vibration effects at sensitive receiver sites that are reasonable. I have set out below that I consider Variation 1 provides adequate protection from the adverse effects of noise and vibration arising from the Logistic Zone as well as from noise and vibration effects of heavy vehicles using Ryburn and Percival Roads².

¹ For example, PDP district-wide Rule 25.8.3.11(e) requiring acoustic insulation for new and altered buildings housing noise sensitive activities affected by noise from rail, busy roads or noise from the Ruakura Logistics Zone or Ruakura Industrial Park Zone. Also, PDP Rule 25.8.3.10 controls vibration received for new and altered sensitive locations near rail lines.

² As explained below, a new policy is proposed within the s.42A report which adds a new policy in the Objectives and Policies section of 3.7.2, after 3.7.2.4d: *There will be no direct connection to properties in the Ruakura Logistics Zone (Land Development Plan Area P) and the Ruakura Industrial Park Zone (Land Development Plan Area F) from the currently formed Percival and Ryburn Roads.* This policy supports a new proposed rule in the Activity Status Table (Rule 10.3 and Rule 11.3) to make such a road connection a non-complying activity.

EVIDENCE OF JON STYLES

10. I have read and considered the evidence of Mr Jon Styles, acoustics expert, advising TGH.
11. I agree with the observation made at paragraph 8 of Mr Styles evidence where he states that page 7 (Section 5.2) of my report contains an error in describing the ‘night time’ period as running from 10pm to 7am. As part of the Bol process the noise experts all agreed that for noise management purposes the District Plan night time noise limits should be defined as the time period between 11pm to 7am, with the evening ‘shoulder’ period running from 8pm to 11pm. Daytime is defined as the period from 7am to 8pm.
12. I apologise for any difficulties this typographical error may have caused. I should have described ‘night time’ as being from 11pm to 7 am on page 7 of my report. However, I note this error has not affected the recommendations made in my report at the time, nor do they influence this evidence in any way, or affect any of the changes recommended in the s.42A Staff Report.
13. At paragraph 9 of his evidence Mr Styles states he agrees with the wording amendment I have recommended for Rule 25.8.3.13(a), as set out at section 6 of my report; however, he recommends a further amendment, adding the words “any site in the” to the opening of Rule 25.8.3.13(a)(ii). I agree with Mr Style’s proposal to include that clarification.
14. I therefore agree the opening of Rule 25.8.3.13(a)(ii) should be amended to read as follows;

(ii) At or within the boundary of any site in the Residential Zones and Knowledge Zones...
15. I agree, this enhancement improves the wording of Rule 25.8.3.13(a)(ii) and is more in keeping with the original Bol decision.
16. At paragraph 21 Mr Styles states he supports the use of a ‘no complaints covenant’ as a means of providing clear notice to prospective purchasers,

developers or incoming tenants that noise arising from activities in the Ruakura Logistics and Ruakura Industrial Park zone may be present in the area.

17. In the Noise & Vibration Submission Review report to Council dated April 2016 compiled by my firm, there was no recommendation that the District Plan be amended to require the use of buildings for residential activities in the Large Lot Residential Zone be permitted subject to a restrictive non-complaint covenant. I remain of this view. The reasons for not supporting that approach are;
- a) Noise effects are proposed to be controlled to reasonable levels via the District Plan noise rules. Compliance with these limits means effects of unusually elevated noise levels would not arise. Exceedance of the established limits would be a matter for enforcement by Council. I note Noise Management Plan (I refer to below) includes provisions for monitoring of noise levels for the purposes of checking compliance.
 - b) The activity must operate in accordance with a comprehensive Noise Management Plan. Whereas a restrictive covenant is an instrument sitting outside the RMA, the noise management plan is enshrined in the District Plan. An updated Noise Management Plan must be provided to Council if any application is made in relation to Freight-handling activities including alterations to logistics and Freight-handling infrastructure. Rule 1.2.2.20 requires such applications within the Inland Port (Sub Area A (Inland Port)) to be accompanied by a Noise and Vibration Management Plan. This rule stipulates the contents of such a plan must include;
 - Results of previous noise monitoring and an analysis of compliance with the applicable noise limits.
 - Results of acoustic modelling of noise expected to be emitted from the activities proposed in the application, combined with the noise from existing operations (if any).
 - Operational strategies and configurations to be adopted to achieve compliance with the applicable district plan noise and vibration performance standards
 - A signed statement from an acoustics expert that the proposed activities operating within the intended layout will comply with the

relevant noise and vibration performance standards with mitigation measures in place.

- Controls over noise and vibration during any construction works carried out to enable the activities applied for.
- Consultation with persons potentially affected by noise and vibration from the operation and construction of the Inland Port.
- Procedures for receiving and addressing noise complaints.
- Methods for updating the Noise and Vibration Management Plan as appropriate to respond to changing requirements.

c) In addition, Rule 10.5.1. requires the Inland Port Owner to establish a purpose-developed “Community Liaison Committee” to provide a forum for ongoing consultation between the Inland Port Land Owner/Port Operator and owners and occupiers of properties on Ryburn Road, Percival Road and Brighton Grove concerning all staged development in the Inland Port (Sub Area A) and Logistics (Sub Area B) north of East Coast Main Trunk Railway.

18. Overall, I consider noise from the Ruakura Logistics and Ruakura Industrial Park Zones adequately managed and controlled in this manner does not warrant the imposition of a restrictive covenant to prevent neighbours from making noise complaints or to pre-warn prospective purchasers, developers or incoming tenants that there may be potential audible sounds from the Ruakura Logistics and Ruakura Industrial Park zone.
19. I do not consider such covenants to be in any way effective in addressing the primary adverse effects of noise; that is, the adverse impacts on people's health and welfare, yet these types of restrictive covenants are said to be effective in preventing reverse sensitivity effects on the operation of the Inland port.
20. While suggesting restrictive covenants may be effective in mitigating reverse sensitivity noise effects, I note Mr Styles at paragraph 22 of his evidence describes his experience with such covenants but provides no examples of situations where these covenants have operated successfully within other district plans and may be effective in this situation.

21. Mr Styles implies that those homeowners and others subject to such restrictive covenants can take solace from the fact that there are no restrictions on making complaints if the district plan noise limits are being exceeded. However, as noise-affected residents they will have no idea whether the noise that bothers them is compliant or not. I see this aspect of the covenant wording is of no benefit. Having no way of assessing whether the levels of received noise comply or not, potential complainants may not register a noise complaint for fear of breaching the covenant even when the noise levels are non-compliant.
22. Mr Styles states at paragraph 24 that he considers 'no complaint' covenants may have the disadvantage of preventing residents from submitting on any application to increase noise limits, with the added complication that he considered his client TGH Ltd did not allow for this within the wording put forward in the TGH submission on this variation.
23. I do not consider is a relevant consideration. Rule 24.8.3.14(a) specifically states that any application to increase the night time levels to between 40 and 45 dB between 2300 and 0700 hours is an application Council will handle without notification. All other applications will be subject to the requirements of the RMA. Given the most likely application would be to increase the night time noise limit by up to 5 dB, this must be non-notified. This means there is virtually no possibility of residents being able to submit on this application regardless of whether or not a restrictive covenant is in place on their property.

Evidence Of Mr Nic Roberts

24. I have read and considered the evidence of Mr Nic Roberts for Mr Cowie and the Ruakura Resident's Group.
25. I note Mr Roberts supports Council's s.42A officer report which recommends a new policy in the Objectives and Policies section of 3.7.2, after 3.7.2.4d that *"..there will be no direct connection to properties in the Ruakura Logistics Zone (Land Development Plan Area P) and the Ruakura Industrial Park Zone (Land Development Plan Area F) from the currently formed Percival and Ryburn Roads"*.

26. The policy supports a new proposed rule in the Activity Status Table (Rule 10.3 and Rule 11.3) to make such a road connection a non-complying activity.
27. I also agree this new policy will help reduce the effects of noise from heavy vehicles on residents in the area and support its introduction for this reason.
28. Mr Roberts does not support the proposal that the night time noise limit be non-notified under Rule 24.8.3.14(a) which states any application to increase the night time levels from 40 and 45dB between 2300 and 0700 hours is an application without notification.
29. While I agree adequate control over night time noise is important for quality sleep and to maintain residential amenity, I do not see the advantage of involving residents within the processing of such applications beyond the above-mentioned CLG and the requirements of Rule 1.2.2.20(a)xi which stipulates an updated Noise Management Plan must accompany any application for resource consent relating to freight handling in the Logistics Zone shall identify persons potentially affected by noise and vibration from the operation and construction of the Inland Port (Sub Area A (Inland Port)) including but not limited to members of the Inland Port Community Liaison Committee required under Rule 10.5.1, a record of meetings held and consultation undertaken with such potentially affected persons, and responses to matters raised in consultation. This, in my view, will ensure the concerns of local residents will be adequately taken into account without the need for a notification process.
30. The key assessment is whether the 'best practicable option' will end up being applied within the proposed operations for which consent is sought, whether the numerical noise limit is 40 dB or 45 dB. I consider that the Council will be well placed to make this judgement as it will receive the comprehensive Noise Management Plan which (as described above) is to be submitted to Council as a fully updated version each time a consent is applied for.
31. Regarding the possible increase in night time noise, I note the BoI decision acknowledged the amenity benefits of the 40 dB night time limit, but was also faced with expert evidence indicating this limit may not be able to be complied with under future development stages 2 or 3. My view is that, in its decision, the

Board sought the lower night time limit to remain in place for the time being, with an increase up to 45 dB during night time being allowed for only where Council are provided with sufficient technical information that justifies relaxing the limit up to 5 dB , to 45 dB.

32. I note that LAeq 45 dB outdoors in residential areas is acceptable in terms of effects on health and amenity under NZS6802:2008 *Acoustics –Environmental Noise*.
33. I do not agree with Mr Roberts’s view at paragraph 4.24 where he states involving residents within the process will “...enable the potential effects on their living environments to be more accurately assessed”. In my experience the assessment of effects of noise in the environment relies almost entirely on objective methods such as those recommended within NZS6802:2008. Objectivity in assessing noise effects is important, as is consistency. I do not see consultation with residents as assisting in this regard beyond matters that may be raised through the CLC.
34. Any decision by Council to adjust the permitted activity standard that would allow an increase of up to 5 dB in noise emission at night time would require full consideration, at the time, of an updated Noise Management Plan which I consider an important step in verifying that ‘best practical option’ has been adopted. at time this Plan can be amended to any additional management methods or physical controls necessary to ensure night time noise remained reasonable at all times.

SUMMARY & CONCLUSION

35. Submitters to Variation 1 raised a number of issues relating to noise and vibration that I have given consideration to.
36. As a result of submissions, a number of improvements over the notified version have been identified by Council planners and are recommended to be adopted. In most cases these improvements amount to fine tuning although there is one significant new element which is the new policy proposed within the Staff s.42A

Report adding a new policy in Section of 3.7.2 to avoid increasing heavy traffic effects by preventing direct connection to properties in the Ruakura Logistics Zone (Land Development Plan Area P) and the Ruakura Industrial Park Zone (Land Development Plan Area F) from the currently formed Percival and Ryburn Roads.

37. I support the noise limits and timeframes over which they apply which govern noise emissions from the Logistics Zone and Ruakura Industrial Park zone. Rule 25.8.3.11 requiring acoustic insulation for new and altered buildings housing noise sensitive activities affected by transport noise will assist in mitigating the effects of the Ruakura Logistics Zone or Ruakura Industrial Park Zone in so far as they will be the major origin / destination of much of the transport causing this noise. For this reason I also support Rule 25.8.3.10 which controls vibration received within sensitive locations near rail lines.
38. Overall, the comprehensive suite of controls proposed to limit and manage the noise and vibration effects are supported as providing reasonable protection from adverse effects of noise and vibration arising from activities in the Logistic Zone as well as from noise and vibration effects of heavy vehicles using Ryburn and Percival Roads

RECOMMENDATIONS

39. For the reasons set out above, I recommend:
- a) Accepting noise and vibration related amendments to the Operative District Plan as recommended within Council's various planners reports and evidence by these planners to the hearing.
 - b) Accepting the minor amendment to wording of Rule 25.8.3.13(a)(ii) proposed by Mr Styles which improves the interpretation of this rule.
 - c) I do not recommend adopting restrictive 'no complaint' covenants on land to be used for sensitive uses in the Large Lot Residential Zone.
 - d) I do not recommend amending Rule 24.8.3.14(a) to remove or adjust the existing non-notified basis on which an application to increase the night time noise limit by up to 5 dB are handled by Council.



Malcolm Hunt