

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of a Hearing to consider Variation 1 – Ruakura to the  
Hamilton City Council Proposed District Plan

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**Statement of Evidence of Jon Styles on behalf of Tainui Group  
Holdings Ltd**

**15 July 2016**

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## **Introduction**

1. My name is Jon Robert Styles and I am the Director and Principal of Styles Group Acoustics and Vibration Consultants. I lead a team of 7 consultants specialising in noise and vibration disciplines. I have a Bachelor of Applied Science majoring in Environmental Health as well as several other qualifications in acoustics and related fields. I have completed the Making Good Decisions course with the Ministry for the Environment.
2. I have approximately 15 years of experience in environmental acoustics. I have been involved in a number of large projects involving rail noise, road noise and industrial noise. Some of the projects I have been involved with recently include Auckland's City Rail Link, Mackays to Pekaheka, Christchurch Southern Motorway, Nelson Airport noise measurements, Oakleigh to Marsden Rail Link, several sections of the Waikato Expressway, Hamilton's Southern Links and appeals relating to the Rototuna Structure Plan. I have also been the Auckland Council's witness on noise and vibration matters for the development of its Unitary Plan and I have provided expert advice and evidence on a large number of other District Plan reviews and District Plan changes.
3. I provided expert advice on noise and vibration matters and appeared before the Board of Inquiry (BoI) on behalf of Tainui Group Holdings and Chedworth Properties Limited in the BoI plan change process in 2014. This prior involvement in the development of the Ruakura provisions, including a number of visits to the area and undertaking a series of long term noise measurements in the area has provided me with a detailed understanding of the area generally and the noise and vibration related provisions of the BoI decision. I have also provided advice to other clients in respect of other provisions in the Hamilton City Councils Proposed District Plan.
4. I have been engaged by Tainui Group Holdings to provide advice on the noise and vibration matters arising from the Ruakura Variation. This evidence sets out that advice.

## **Code of Conduct**

5. I confirm that I have read the 'Code of Conduct for Expert Witnesses' as contained in the Environment Court Practice Note 2014. I agree to comply with this Code of Conduct. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

### **Scope of Evidence**

6. The scope of my evidence includes discussion of the following matters:
- (i) The consistency of the Ruakura Variation provisions with those in the Bol decision;
  - (ii) The requirement for acoustic insulation provisions for new dwellings in the Percival / Ryburn Rd areas to limit any reverse sensitivity noise effects on the Logistics and Industrial zones arising;
  - (iii) The use of noise-related no complaints covenants for any new dwelling in the Percival / Ryburn Road area;
  - (iv) The retention of 'notional boundary' in Rule 25.8.3.14; and
  - (v) The appropriateness of those provisions.

### **Consistency of Ruakura Variation and Bol Decision**

7. I have reviewed Rules 25.8.3.11 through to 25.8.3.14 of the Ruakura Variation rules<sup>1</sup>. These are the principal rules that control noise and vibration effects for the area covered by the Ruakura Variation. I have also read the report from Malcolm Hunt Associates (the MHA report) dated April 2016 which supports and comments on many of the changes to the Variation Rules.
8. I note that the noise limits set out in Rule 25.8.3.13 are consistent with those set out in the Bol provisions and also with the Joint Witness Statement – Noise and Vibration (the JWS) signed by a number of expert witnesses involved in the Bol process, including Mr Hunt who is the author of the MHA report informing the noise-related provisions of the Ruakura Variation. The analysis of these rules in section

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<sup>1</sup> Appendix B to Evidence of Ms Rolfe on Chapter 25.8 Noise

5.2 of the MHA report appears to contain several typographical errors relating to timeframes for the application of noise limits, but I agree with the recommendations in that section of the MHA report and I note that they are consistent with the Bol provisions and the Ruakura Variation Rules.

9. I agree with the need for a technical correction as noted in section 6 of the MHA report but I do not agree with the changes to the wording of Rule 25.8.3.13(a) as set out in that report. In particular, the change to (ii) as proposed in the MHA report changes the measurement and assessment from “*at or within the boundary of any site in the Residential Zones and Knowledge Zone...*” to “*at or within the boundary of the Residential Zones and Knowledge Zone...*”. The key difference is the absence of the reference to ‘site’ in the rule. Deletion of the reference to site in (ii) as suggested in the MHA report leads to a different outcome to the Bol provisions and indeed any other noise rule in the Plan. All other noise limits apply within sites, and not at the boundary of a zone.
10. The boundary of zones may be at locations arbitrary to the assessment of noise and protection of those on sites in the zone, which is more important and a defined place to measure.
11. I therefore recommend that Rule 25.8.3.13(a) be worded as follows (changes shown shaded):

25.8.3.13 (a) Activities shall not exceed the following noise limits ~~within the boundary of any other site in the~~:

- i) At or within the notional boundary of any residential unit on any other site within the Ruakura Logistics Zone or...
- ii) At or within the boundary of any site in the Residential Zones and Knowledge Zones...

## Acoustic Insulation in the Percival / Ryburn Area

12. TGH have proposed that a new rule should apply to any dwelling established within the Percival / Ryburn Road areas which would require them to be acoustically insulated to limit reverse sensitivity effects arising on the Ruakura Logistics and Ruakura Industrial Park zones.
13. A reverse sensitivity effect could be generated if a new dwelling was established in the area which required action on the part of any activity in the Ruakura Logistics and Ruakura Industrial Park zones to reduce its noise emissions where it may have already been complying with the noise limits for permitted activities.
14. In this case, all activities in these Ruakura Logistics and Ruakura Industrial Park zones are subject to noise limits that apply at the notional boundary of any residential unit on any other site and within the Percival Road and Ryburn Road Large Lot Residential Zone. These noise limits apply for any dwelling in those areas whether existing now or developed in the future.
15. The noise limits applying to activities in the Ruakura Logistics and Ruakura Industrial Park zones are set out in Rule 25.8.3.13 of the Ruakura Variation. They require compliance with limits of  $L_{Aeq}$  55dB during the day,  $L_{Aeq}$  50dB in the evening and  $L_{Aeq}$  40dB and  $L_{Amax}$  75dB at night. These limits are adequate for the protection of health and amenity for residential purposes both indoors and outdoors.
16. Because all activities in the Ruakura Logistics and Ruakura Industrial Park zones are required to comply with noise limits that already provide for adequate acoustic amenity for residential use, I consider that additional acoustic insulation requirements for new dwellings in the Percival / Ryburn Rd area is not required.
17. Notwithstanding, I note that the proximity of the Percival / Ryburn Rd area to the Railway Line and the Waikato Expressway means that in some cases a new dwelling may be required to provide acoustic insulation (through Rule 25.8.3.10) in respect of those sources of noise which is appropriate.
18. Overall, I consider that no changes are required to the acoustic insulation rules for new dwellings in the Percival / Ryburn Road Large Lot Residential Zone. I note that

my views align with those set out in section 5.4 of the MHA report.

### **No Complaints Covenants**

19. TGH have proposed in their submission that Rule 4.3.1 Activity Status Table - General Residential Zone, Residential Intensification Zone and Large Lot Residential Zone be amended to include the requirement for a no complaints covenant relating to noise matters in favour of the adjoining Industrial and Logistics Zone activities.
20. My views on the use of no complaints covenants for noise-related matters are based on my experience of their implementation on a number of other projects and District Plan rules.
21. I support the use of a no complaints covenant as suggested by TGH in this case as a means of providing a clear notice to prospective purchasers, developers or incoming tenants that it is likely that there will be noise emissions arising from activities in the Ruakura Logistics and Ruakura Industrial Park zone and that some degree of tolerance is required when the activities are operating lawfully and in compliance with the relevant noise limits.
22. In my experience, the use of a no complaints covenant for this purpose is relatively common and can be very effective in setting expectations for residential occupiers. I note that they have been applied to property titles near to a large number of significant noise generating activities all over New Zealand and I understand that they generally work well where they are worded correctly.
23. In my opinion it is vital that the covenants do not limit the right of owners or occupiers to complain about noise when the noise emissions are above the limits set out in the relevant rule or consent. I note that the submission point from TGH limits the application of the covenant only to situations where activities in the Logistics and Industrial zones are compliant with the relevant noise limits. I therefore support their submission in relation to this point.
24. I also consider that it would be inappropriate for any covenant to limit complaints or objection to, or otherwise remove participation rights in any application to increase the relevant noise limits in the future. I note that the provision suggested

by TGH does not provide for this.

25. To the extent that a no complaints covenant is only applied to provide a clear notice to incoming purchasers, developers or occupiers that noise may be an issue at times, I support the TGH submission in this regard.
26. I note that section 5.3 of the MHA report states that the cases cited therein where covenants have been applied all relate to cases where the noise levels at residential receivers have been so high as to exceed the guidance set out in NZS6802 and where acoustic insulation controls are necessary to ensure an adequate level of indoor amenity. The MHA report states that this case is different because the noise levels will be within the guidance of NZS6802 and that because acoustic insulation controls are not necessary for dwellings then the covenants are not needed.
27. In contrast, I have been involved in a large number of cases where no-complaints covenants have been applied where the noise levels are within the guidance provided by NZS6802 and where acoustic insulation controls are not required. Such cases include quarries and industrial activities. The covenants have worked well in these cases.
28. Given that the primary reason for having a covenant is to create awareness for the incoming owner/occupier that there may be noise effects apparent from other sites albeit controlled to a certain level, I see no reason to exclude sites in the Large Lot Residential Zone from this concept. This is especially so where the noise generating activities will not be present in the environment potentially for some time, and that the development of the area will take place over an extended time period.
29. I note that section 2 of the MHA report discusses the importance of setting noise limits that protect the 'average reasonable person' from the effects of unreasonable noise. I agree with this section of the report where it notes that there may be more sensitive people in the community that are more annoyed or affected than the 'average reasonable person' at the same noise level, but that it is not practicable to set noise limits that protect the most sensitive people in the community. The corollary of this is that there may be some people who move into the Percival / Ryburn area who are more sensitive to noise than the 'average reasonable person' and have expectations of amenity that are higher than what the rules provide for. I

consider that the no-complaints covenant concept is a good way to manage the expectations of future residents in the area who will be adjacent to an area of land that may be currently vacant, but at some time in the future will be developed intensively with numerous sources of noise, and ultimately to an extent where the level of acoustic amenity for those residents will be considerably different to how it is now.

### **Retention of the Notional Boundary Concept**

30. Rule 25.8.3.14 (a) of the Variation has been transposed from the BoI conditions but the utilization of the notional boundary of any residential unit as set out in the BoI conditions has been dropped in favour 'at the boundary' in the Variation rules.
31. I consider that given the receiving environment that is relevant to this rule includes the Large Lot Residential Zone, it is appropriate to retain the notional boundary concept. The notional boundary is specifically designed to protect the 20m curtilage around a dwelling where outdoor amenity is important. It is often applied in rural zones and also for any zone where large lots are possible. If applied to smaller lots in the general residential zones, the use of the notional boundary concept will protect the entire site.
32. I consider the requiring the measurement and assessment of noise 'at' the boundary is rather nonsensical, especially for properties where the dwelling and the outdoor area of importance is set back from the boundary by more than 20m. Requiring measurement 'at' the boundary would be inconsistent with best practice and would in my opinion result in assessments that would not be accurate in terms of the effects at the receiving sites, and would also be inconsistent with Rule 25.8.3.13 which sets the noise limits for permitted activities at the notional boundary.
33. I note that the MHA report recommends in section 5.6 that the notional boundary concept be retained (according with the TGH submission) but suggests different wording to the TGH submission. The MHA report suggests that rule 25.8.3.14 (a) simply refers to the measurement point in Rule 25.8.3.13 (a). Whilst this achieves the same objective, I consider that the additional cross reference is not necessary and the simple reintroduction of 'at the notional boundary' as in the TGH submission is the most simple and effective method of achieving the same outcome.

34. I therefore support the TGH submission to retain the notional boundary concept in Rule 25.8.3.14(a) to be consistent with the BoI conditions, Rule 25.8.3.13, the intent of the recommendations in the MHA report and best practice.

**Appropriateness of the Ruakura Variation Provisions**

35. Subject to the amendments noted in my evidence above I consider that the rules relating to noise and vibration as set out in the Ruakura Variation are appropriate.

Jon Robert Styles

15 July 2016