

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

IN THE MATTER of the Resource Management Act 1991

AND of an appeal under clause 14(1) of Schedule 1 of the Act in relation to Proposed Plan Change 4 to the Operative Rotorua District Council Plan

BETWEEN THERMAL BREWING COMPANY LIMITED
(ENV-2018-AKL-000127)
Appellant

AND ROTORUA DISTRICT COUNCIL
Respondent

Environment Judge D A Kirkpatrick sitting alone under s 279 of the Act
In Chambers at Auckland

CONSENT ORDER

[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed subject to the amendments to the Plan set out in Annexure A and Annexure B to this order.
- (2) the appeal is otherwise dismissed.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

- [1] This appeal relates to Plan Change 4 (PC4) to the Operative Rotorua District Plan (ODP).
- [2] The specific relief sought by the Appellant on appeal was the removal of Performance Standard (PS) A11.6.3.2(a). The Appellant sought that PS A11.6.3.2(a) be replaced with either the existing standard in the ODP, or a superior standard which better achieved the objectives and outcomes of PC4.
- [3] In the notified version of PC4, PS A11.6.3.2(a) required new noise sensitive activities in the City Centre to meet the stated minimum acoustic insulation standard $D_{2m,nT,w+Ctr} > 30\text{dB}$ (acoustic insulation standard) for each habitable room's external building envelope. Compliance with the acoustic insulation standard was to be tested and verified in accordance with NZS and ISO standards. The decision version of PC4 repeated the same acoustic insulation standard in PS A11.6.3.2(a).
- [4] Following lodgement of this appeal, an acoustic review was undertaken by Marshall Day Acoustics to assist the parties with developing appropriate amendments to PS A11.6.3.2(a). Marshall Day recommended retaining the acoustic insulation standard, but using it instead as a tool to test and verify compliance with (rather than the setting of) internal noise limits. Marshall Day also advised that the 'Ctr' component of the acoustic insulation standard takes into account low frequency components of noise generated by traffic, entertainment and business activities. It was on this basis that Marshall Day suggested the inclusion of reference to traffic noise in PS A11.6.3.2(a).
- [5] While PC4 did not seek to introduce new provisions that explicitly stated that sounds from all road traffic noise are targeted, the parties agree that there is scope to include this in PS 11.6.3.2(a). This is because acousticians would have been required to take into account this noise source through the application of the referenced acoustic insulation standard.



Consideration

- [6] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 28 February 2019.
- [7] No person has given notice of an intention to become a party under s 274.
- [8] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting the order; and
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to the relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

- [9] Therefore the Court orders, by consent, that the Rotorua District Plan is amended as set out in the tracked change document which is **attached and marked "A"**. The final clean copy of the amended provisions is **attached and marked "B"**.
- [10] The appeal is otherwise dismissed.
- [11] There is no order for costs.

DATED at Auckland this 14th day of March 2019



D A Kirkpatrick
Environment Judge

"A"

Tracked changes to decisions' version

A11.6 PERFORMANCE STANDARDS

A11.6.3: Acoustic Treatment of Noise Sensitive Activities

2. Noise sensitive activities within City Centre and Commercial zones, and the Ohakuri Electricity Generation Core Site

In the City Centre 1 and 3, Commercial 1-6 zones and the Electricity Generation Core Site Noise Control Boundary identified on Planning Maps 213 and 540:

- a. Any new noise sensitive activities shall be designed and constructed to ensure that noise from activities on any other sites will not exceed meet the minimum acoustic insulation standard of $D_{2m,nT,w} + C_r > 30$ dB for the external building envelope of each habitable room and when tested and verified in accordance with the following when measured in accordance with *AS/NZS 2107:2016 Acoustics – Recommended design sound levels and reverberation times for building interiors* standards:

<u>In bedrooms 10 pm to 7 am on any day</u>	<u>35 dB $L_{Aeq(1h)}$</u> <u>45 dB L_{eq} at 63 Hz</u> <u>40 dB L_{eq} at 125 Hz</u>
<u>In all other habitable rooms at all times; and in bedrooms 7 am to 10 pm on any day</u>	<u>40 dB $L_{Aeq(1h)}$</u> <u>50 dB L_{eq} at 63 Hz</u> <u>45 dB L_{eq} at 125 Hz</u>

Compliance with the above indoor noise criteria shall be determined within habitable rooms when external noise sources shall represent the logarithmic sum of the following:

- i. (1) During night time hours, outdoor noise from road traffic existing at the time of establishing the new noise sensitive activity, at the external wall, logarithmically averaged between 10pm and 7am; and
- (2) During daytime hours, outdoor noise from road traffic existing at the time of establishing the new noise



sensitive activity, at the external wall, logarithmically averaged between 7am and 10pm; and

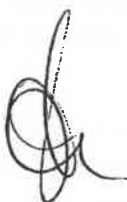
ii. the allowable noise permitted by the District Plan in the zone or any adjacent zone;

iii. noise due to activities on any site approved by way of resource consent; and

iv. existing lawfully established activities

- ~~AS/NZS ISO717.1:2004 Acoustics – Rating of sound insulation in buildings and of building elements – Airborne sound insulation.~~
- ~~ISO 16283-1:2014 Acoustics – Field measurement of sound insulation in buildings and of building elements – Part 1: Airborne sound insulation.~~

- b. Under this performance standard habitable areas do not include transit and utility areas such as corridors, kitchens, bathrooms and storage areas.
- c. If the internal noise criteria cannot be achieved with windows and doors open, then a forced-air ventilation or air conditioning system which complies with the NZ Building Code shall be provided so that the acoustic and ventilation criteria can be achieved simultaneously with windows and doors closed. Noise from any ventilation system shall not cause the internal noise criteria to be exceeded.
- d. At the time of application for building consent, an acoustic design certificate from a suitably qualified and experienced acoustic engineer will be required demonstrating how the internal noise criteria will be achieved.
- e. The acoustic design is not required to include mitigation from noise generated by large scale community events as detailed in A.11.6.1.10 and defined in Part 17 Definitions.



"B"

Clean version

A11.6 PERFORMANCE STANDARDS

A11.6.3: Acoustic Treatment of Noise Sensitive Activities

2. Noise sensitive activities within City Centre and Commercial zones, and the Ohakuri Electricity Generation Core Site

In the City Centre 1 and 3, Commercial 1-6 zones and the Electricity Generation Core Site Noise Control Boundary identified on Planning Maps 213 and 540:

- a. Any new noise sensitive activities shall be designed and constructed to ensure that noise from activities on any other sites will not exceed the following when measured in accordance with *AS/NZS 2107:2016 Acoustics – Recommended design sound levels and reverberation times for building interiors*:

In bedrooms 10 pm to 7 am on any day	35 dB $L_{Aeq(1h)}$ 45 dB L_{eq} at 63 Hz 40 dB L_{eq} at 125 Hz
In all other habitable rooms at all times; and in bedrooms 7 am to 10 pm on any day	40 dB $L_{Aeq(1h)}$ 50 dB L_{eq} at 63 Hz 45 dB L_{eq} at 125 Hz

Compliance with the above indoor noise criteria shall be determined within habitable rooms when external noise sources shall represent the logarithmic sum of the following:

- i. (1) During night time hours, outdoor noise from road traffic existing at the time of establishing the new noise sensitive activity, at the external wall, logarithmically averaged between 10pm and 7am; and
- (2) During daytime hours, outdoor noise from road traffic existing at the time of establishing the new noise sensitive activity, at the external wall, logarithmically averaged between 7am and 10pm; and



- ii. the allowable noise permitted by the District Plan in the zone or any adjacent zone;
 - iii. noise due to activities on any site approved by way of resource consent; and
 - iv. existing lawfully established activities.
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- b. Under this performance standard habitable areas do not include transit and utility areas such as corridors, kitchens, bathrooms and storage areas.
 - c. If the internal noise criteria cannot be achieved with windows and doors open, then a forced-air ventilation or air conditioning system which complies with the NZ Building Code shall be provided so that the acoustic and ventilation criteria can be achieved simultaneously with windows and doors closed. Noise from any ventilation system shall not cause the internal noise criteria to be exceeded.
 - d. At the time of application for building consent, an acoustic design certificate from a suitably qualified and experienced acoustic engineer will be required demonstrating how the internal noise criteria will be achieved.
 - e. The acoustic design is not required to include mitigation from noise generated by large scale community events as detailed in A.11.6.1.10 and defined in Part 17 Definitions.



