

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

**Decision No. [2019] NZEnvC 062**

IN THE MATTER of the Resource Management Act 1991 (the Act)  
AND of an application pursuant to s 311 of the Act  
BETWEEN NEIL CONSTRUCTION LIMITED  
(ENV-2019-AKI-000053)  
Applicant  
AND AUCKLAND COUNCIL  
First Respondent  
AND MINISTER OF DEFENCE  
Second Respondent

Court: Environment Judge J A Smith

Date of Decision: 5 April 2019

Date of Issue: 5 April 2019

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**DECISION OF THE ENVIRONMENT COURT ON APPLICATION FOR WAIVER AND  
DIRECTIONS**

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A: Subject to additional directions which may be given after an application for further service directions by the Council, Minister or other party, the Court orders *ex parte*:

- (a) That those parties in paragraph 4 and 5 of the application for waiver and directions are served. (e.g. Auckland Council, Minister of Defence and the submitters and further submitters on Plan Change 5 to the Auckland Unitary Plan: Operative in Part.)
- (b) That a waiver is granted for service by 22<sup>nd</sup> April 2019.
- (c) Service is to be confirmed by 30 April 2019.



- (d) Copies of the documents to the Court, are to be served on Auckland Council and Minister of Defence and sent on request to any party.
- (e) A copy of this decision is to be attached to service.

## REASONS

### Introduction

[1] On 5 April 2019 Neil Construction Limited (**Neil**) applied for the following declarations:

- (a) that aircraft noise generated within the area affected by Designation no. 4310 held by the Minister of Defence in the Auckland Unitary Plan: Operative in Part (**AUP**), being the area known as Whenuapai Airbase and also known as RNZAF Base Auckland and its surrounds (**Whenuapai Airbase**), must comply with the conditions of Designation no. 4310;
- (b) that an exceedance of the aircraft noise limits in condition 1 of Designation no. 4310 within the area affected by Designation no. 4310 is a breach of the designation, and potentially a breach of section 9 of the Resource Management Act 1991; and
- (c) that the use of NZS6805:1992 and FAA Integrated Noise Model for the measurement
- (d) of noise generated by the requiring authority is mandatory.

[2] The application for declarations was accompanied by an application for waiver and directions as to service in accordance with s 281 of the Act.

### Application for waivers and directions

[3] Neil proposes to serve notice of its application for declaration on Auckland Council and the Minister of Defence. Neil acknowledges that other parties are likely to be directly affected by the application. Accordingly, Neil seeks directions that:

- (a) Notice of the application for declaration shall be served on all submitters and further submitters on Plan Change 5 to the Auckland Unitary Plan: Operative in Part at the address for service (email or post) nominated in



their submissions on Plan Change 5.

[4] Neil seeks a waiver of the requirement that the persons identified above be served within 5 working days of the date the application is made to the Court, and directions that:

- (a) Those persons be served within 5 working days of these directions as to service being made with written confirmation as to service to be provided to the Court within 10 working days of these directions.

**Directions and Waivers**

[5] Subject to additional directions which may be given after an application for further service directions by the Council, Minister or other party, the Court order *ex parte*:

- (a) That those parties in paragraph 4 and 5 of the application for waiver and directions are served. (e.g. Auckland Council, Minister of Defence and the submitters and further submitters on Plan Change 5 to the Auckland Unitary Plan: Operative in Part.)
- (b) That a waiver is granted for service by 22<sup>nd</sup> April 2019.
- (c) Service is to be confirmed by 30 April 2019.
- (d) Copies of the documents to the Court, are to be served on Auckland Council and Minister of Defence and sent on request to any party.
- (e) A copy of this decision is to be attached to service.



  
A Smith  
Environment Judge