

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TAMAKI MAKAU**

**Decision No. [2023] NZEnvC 210**

IN THE MATTER OF

appeals under clause 14 of the First  
Schedule of the Resource Management  
Act 1991

BETWEEN

D J & A P FOSTER  
(ENV C 281/04)

NIMBUS CONSULTANTS LIMITED  
(ENV C 308/04)

CANTERBURY REGIONAL  
COUNCIL  
(ENV C 250/04)

CHRISTCHURCH  
INTERNATIONAL AIRPORT  
LIMITED  
(RMA 467/01)  
(ENV C 260/04)

Appellants

AND

SELWYN DISTRICT COUNCIL

Respondent

Court: Environment Judge J A Smith

Hearing: In chambers at Auckland

Last case event: 25 August 2023

Date of Decision: 26 September 2023

Date of Issue: 26 September 2023

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**DECISION OF THE ENVIRONMENT COURT ON APPLICATION TO  
ACCESS COURT DOCUMENTS**

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Foster v Selwyn District Council

A: The application is granted. I direct the Registry to provide Saunders & Co Lawyers with copies of statements of evidence from experts as requested.

## **REASONS**

### **Introduction**

[1] In 2007 the Court issued a decision<sup>1</sup> regarding appeals relating to land zoning issues and airport noise contours around Rolleston.

### **Application for access to Court documents**

[2] On 25 August 2023, Saunders & Co Lawyers filed an application to access statements of evidence from experts.

### **District Court (Access to Court Documents) Rules 2017**

[3] Rule 8(1) of the District Court (Access to Court Documents) Rules 2017 stipulates that every person has the right to access the formal court record relating to a civil proceeding. The formal court record is defined by rule 4 as documents kept in the registry of the court and include a register or index, a published list that gives notice of a hearing, a judgment, an order, or a Minute of the court, including any record of the reasons given by a judicial officer. The definition does not include statements of evidence from experts as sought by the application.

[4] Where a person is not entitled to access a document relating to a proceeding as of right, rule 11 provides the option to make a written request for access. Rule 11 has several procedural requirements, including that the applicant must detail the documents sought and the reasons and purpose for doing so.

[5] The application states Saunders & Co Lawyers are seeking access to these documents because:

Similar issues have arisen in relation to Waimakariri PDP and the evidence from *Foster v Selwyn District Council* would be helpful for better understanding the opinion of experts provided on the same issue in that case.

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<sup>1</sup> C138/2007. Oral decision delivered 23 October 2007, written decision issued 1 November 2007

[6] In relation to any conditions Saunders & Co Lawyers would be prepared to meet were a Judge to impose conditions on the right access, the application states:

We are not aware of the need for any conditions as these statements are a matter of public record, no privacy issues arise, and similar issues arise in the present case.

### **Referral to parties**

[7] Rule 11 sets out that the Registrar must promptly give a copy of the request to the parties to relevant proceeding or appeal, or to their lawyers. Rule 11 goes on to say however, that a Judge may dispense with service if it would be impractical to require notice to be served.

[8] Given the time that has passed since the issuing of the decision in 2007, I consider it would be impractical to seek the views of the parties on the application. In particular the counsel involved will have completed their work over 15 years ago and are unlikely to have client instructions. Moreover, this case was prior to the Christchurch Earthquake and records may not have survived. In particular it has taken some time for the court to find its records on the matter. I therefore dispense with the need for service of the application in the case.

### **Consideration**

[9] In considering applications of this kind, the Judge must consider the nature of the request, the reasons given for it and any relevant factors to the proceedings which may include but are not limited to:

- (a) the orderly and fair administration of justice;<sup>2</sup>
- (b) the right to bring and defend civil proceedings without the disclosure of any more information concerning private or commercial sensitive matters than is necessary to satisfy the principle of open justice;<sup>3</sup>

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<sup>2</sup> District Court (Access to Court Documents) Rules 2017, rule 12(a).

<sup>3</sup> District Court (Access to Court Documents) Rules 2017, rule 12(c).

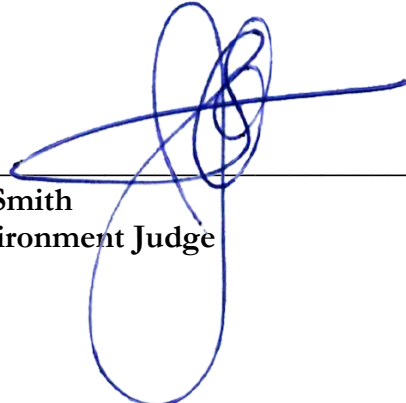
- (c) the principle of open justice, including the encouragement of fair and accurate reporting of, and comment on, court hearings and decisions;<sup>4</sup>
- (d) the freedom to seek, received and impart information;<sup>5</sup> and
- (e) any other matter that the Judge thinks appropriate.<sup>6</sup>

[10] When considering requests for access to documents that are not part of the formal court records, there is a need to strike the correct balance between providing for open justice and protecting the privacy interest of parties. I have had registry staff go over the relevant records and on a brief reading there do not appear to be any sensitive or confidential issues.

[11] The information relates to airport noise modelling and resulting noise contours over Rolleston, a matter of public interest. I am satisfied that the disclosure of the requested documents will provide background information for a better understanding of similar issues arising in relation to Waimakariri PDP.

### **Outcome**

[12] The application is granted. I direct the Registry to provide Saunders & Co Lawyers copies of the statements of evidence from experts as requested.

  
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**J A Smith**  
**Environment Judge**



<sup>4</sup> District Court (Access to Court Documents) Rules 2017, rule 12(e).

<sup>5</sup> District Court (Access to Court Documents) Rules 2017, rule 12(f).

<sup>6</sup> District Court (Access to Court Documents) Rules 2017, rule 12(h).