

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Local Government (Auckland Transitional Provisions) Act 2010 ("LGATPA") and the Resource Management Act 1991 ("RMA")

AND of an appeal under s 157 of the LGATPA against a decision of Auckland International Airport Limited on a recommendation of the Auckland Council on the proposed Auckland Unitary Plan

BETWEEN HOUSING NEW ZEALAND CORPORATION

ENV-2016-AKL-000273

Appellant

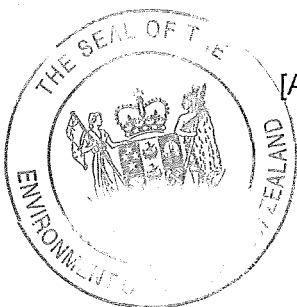
AND AUCKLAND INTERNATIONAL AIRPORT LIMITED

Respondent

Principal Environment L J Newhook Judge sitting alone under section 279 of the RMA

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 in part subject to the amendments set out in Annexure A to this order;

(2) the appeal is otherwise dismissed.

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

REASONS

Introduction

- [1] This order relates to the resolution of the appeal by the Housing New Zealand Corporation ("**Housing New Zealand**") against the decision of Auckland International Airport Limited ("**Auckland Airport**") on Designation 1100.
- [2] The Board of Airline Representatives New Zealand Inc and Auckland Council joined Housing New Zealand's appeal under s 274 of the RMA, and have signed the memorandum of the parties setting out the relief sought.
- [3] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 14 March 2017.
- [4] The Court is making this order under s 279(1)(b) of the RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297 of the RMA.
- [5] The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting this order.
 - (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 requirement and objectives of the RMA, including in particular Part 2.
 - (c) All parties are aware that the consent order is in settlement of all aspects of the appeal.

Order

- [6] The Court orders, by consent of the parties, that:
- (a) the appeal is dismissed;
 - (b) Auckland Airport's decision on Designation 1100 is confirmed, subject to the following amendments to Schedule 3 of the



Example Deed of Covenant contained in Attachment C to Designation 1100:

- (i) remove some of the descriptive context in paragraphs C, D and E of the introduction of Schedule 3;
- (ii) reinstate the expiry date of 31 March 2044 in the final paragraph of Schedule 3; and
- (iii) reinstate the exclusion for Housing New Zealand's tenants in the final paragraph of Schedule 3.



(c) The amendments to Schedule 3 are set out in **Annexure A** to this order.

(d) There is no order for costs.

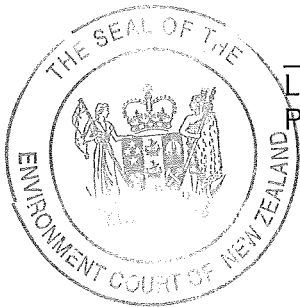
DATED at Auckland this


22nd

day of

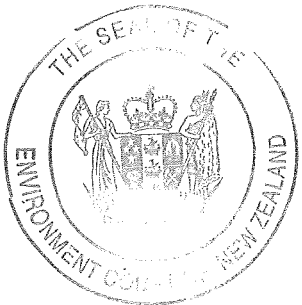
March

2017




L J Newhook
Principal Environment Judge

Annexure A



SCHEDULE 3

INTRODUCTION

- A. The Covenantor is registered as proprietor of the land more particularly described in Schedule 1 ("**Servient Tenement**").
- B. Auckland Airport is registered as proprietor of, or is entitled to use, and owns, the land more particularly described in Schedule 2 ("**Dominant Tenement**").
- C. Auckland Airport is the owner and operator of Auckland International Airport ("**Airport**") which is situated on the Dominant Tenement. ~~The Airport is New Zealand's largest and busiest airport and is a strategic infrastructure asset of critical national, regional and local importance. The Dominant Tenement is authorised by current zoning and designations for airport activity and airport development, and is the area earmarked by relevant planning documents for airport expansion.~~
- D. The Airport has noise contours around its site which ~~directly~~ correspond to levels of aircraft noise. These are respectively referred to as the high aircraft noise area ("**HANA**"), moderate aircraft noise area ("**MANA**") and aircraft noise notification area ("**ANNA**") in the Auckland Unitary Plan. ~~Within the HANA and MANA, the ability to develop and operate Activities Sensitive to Aircraft Noise ("**ASAN**") is restricted.~~
- E. The operation of the Airport results and is likely to result in environmental effects such as noise, disturbance and ~~other usual occurrences~~ associated with aircraft and airport activity, which may have consequences beyond the boundaries of the Dominant Tenement, including upon the Servient Tenement.
- F. The Servient Tenement is within the [**HANA/MANA**] and the Covenantor has accepted Auckland Airport's offer to install physical works and equipment in the building(s) on the Servient Tenement, for the purpose of mitigating the effects of such noise, more particularly described in Schedule 5 ("**Aircraft Noise Mitigation Works**").
- G. In consideration of Auckland Airport's offer the Covenantor has agreed with Auckland Airport to accept for itself and its successors in title to the Servient Tenement and any part or interest in the Servient Tenement, an obligation, in accordance with this Deed, not to lessen the effectiveness of, or remove, the Aircraft Noise Mitigation Works.

COVENANT

The Covenantor for itself and its successors in title, lessees and/or invitees to the Servient Tenement (or any part of it) (excluding any tenants occupying the Servient Tenement pursuant to a lease or tenancy vested in the Housing New Zealand Corporation or any statutory or regulatory successor to the Housing New Zealand Corporation), hereby covenants, acknowledges and agrees with Auckland Airport and its successors in title lessees and/or invitees to the Dominant Tenement or any part of it as a positive covenant for the benefit of the registered proprietors and users from time to time of the Dominant Tenement, that the Covenantor will henceforth and at all times hereafter observe and perform all the stipulations and restrictions contained in Schedule 4 to the end and intent that each of the stipulations and restrictions shall, in the manner and to the extent prescribed, ~~forever endure~~ until 31 March 2044 for the benefit of, and be appurtenant to, the whole of the Dominant Tenement, every part thereof and any other land zoned or set aside for airport activity in the Auckland Unitary Plan from time to time.

