

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2023] NZEnvC 155

IN THE MATTER OF an appeal under clause 14 of the First
Schedule of the Resource Management
Act 1991

BETWEEN GENESIS ENERGY LIMITED

(ENV-2022-AKL-000060)

Appellant

AND WAIKATO DISTRICT COUNCIL

Respondent

Court: Environment Judge S M Tepania sitting alone under s 279 of the
Act

Last case event: 29 June 2023

Date of Order: 26 July 2023

Date of Issue: 26 July 2023

CONSENT DETERMINATION

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

- (1) Table 25 in Appendix 1 – Acoustic insulation (APP1) in Part 4 –
schedules and appendices to the Proposed Waikato District Plan be

Genesis Energy Limited v Waikato District Council – Topic 5 – Infrastructure Reverse
Sensitivity / Setbacks



amended in accordance with Appendix A to this determination (additions marked as underlined and deletions as ~~striketrough~~); and

- (2) Paragraphs 26 to 29 of the appeal categorised as Topic 5 – Infrastructure Reverse Sensitivity / Setbacks is otherwise dismissed.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This consent determination relates to an appeal against the decisions of Waikato District Council on the Proposed Waikato District Plan (**PDP**) in relation to Table 25 in APP1 which requires residential units and other buildings containing sensitive land uses within 350m of the Huntly Power Station site boundary to be insulated to achieve a specified internal design sound level.

[2] This determination resolves the appeal in part.

Background

[3] Genesis Energy Limited (**Genesis**) owns and operates the Huntly Power Station.

Original submission and PDP decision

[4] Genesis made a submission and further submission on the PDP seeking a variety of amendments to various objectives, policies, rules and planning maps/overlays to enable the current and future operations of the Huntly Power Station to continue.

[5] In relation to Table 25, Genesis' submission supported imposing specific internal design sound levels for buildings containing noise-sensitive activities within 350m of the Huntly Power Station site boundary and sought that the table be retained in the same or similar form.

[6] Both Council and Genesis engaged acoustic experts to provide evidence and/or acoustic advice at the PDP hearings. Genesis' noise expert presented at Hearing 7: Industrial Zones and sought that the internal design sound level for bedrooms within 350m of the Huntly Power Station be reduced from 40dB L_{Aeq} to 35dB L_{Aeq} and to introduce a time period (24 hours) for measuring noise within both habitable rooms and bedrooms.

[7] The IHP did not recommend any amendments to Table 25 in any of their decision reports and instead adopted the version of the table as notified.¹ The IHP did not adopt the recommendations of the acoustic experts engaged by either the Council or Genesis. The relevant rule in Table 25 of the PDP decisions version provides that the permitted internal design sound level for all residential buildings and buildings containing sensitive land uses within 350m of the Huntly Power Station shall be 40dB L_{Aeq} , with no other requirements on how or when to measure the internal design sound level.

Appeal

[8] Of relevance to this determination, Genesis seeks an amendment to Table 25 to reduce the internal design sound level for bedrooms within 350m of the Huntly Power Station from 40dB L_{Aeq} to 35dB L_{Aeq} and to introduce a time period (24 hours) for measuring noise for both habitable rooms and bedrooms, in accordance with the recommendations of Genesis' noise expert.²

[9] This part of the appeal has been assigned to Topic 5.1 – Linear Infrastructure (energy and transport).

[10] Genesis seeks these amendments to Table 25 on the basis that:

- (a) 40dB L_{Aeq} is too high a noise level to protect bedrooms, the primary location for sleeping; and
- (b) the noise limit in the rule should incorporate a time basis to be technically correct and achievable (i.e., to set the time period in which

¹ Table 14 notified PDP.

² Paragraphs 26 – 29 of the appeal.

the acoustic assessment should be undertaken to address fluctuating noise from the Huntly Power Station); and to be clear to avoid ambiguity.

[11] The noise standards in Table 25 are triggered by GRUZ-S14 when a new noise sensitive activity (i.e., dwelling, addition, or alteration) is located within 350m of the Huntly Power Station site boundary. The purpose of the rule is to ensure a new activity is appropriately acoustically insulated from the Huntly Power Station to ensure noise effects on receivers are appropriate, and to prevent reverse sensitivity effects on the Huntly Power Station.

[12] No other person has given notice of an intention to become a party to this part of the appeal under section 274 of the Act.

Agreement reached between the parties

[13] Since the appeal was filed, Genesis and the Council have engaged in direct discussions with the assistance of their respective acoustic experts. The parties have reached agreement to fully resolve the Appellant's interest in Topic 5.1 relating to Table 25 in APP1 in the PDP. The agreed amendment will also fully resolve the Appellant's interest in Topic 5: Infrastructure Reverse Sensitivity / Setbacks as it has no remaining interest in Topics 5.1 and 5.2.

[14] The agreed amendment to Table 25 in APP1 – Acoustic insulation is as follows (additions marked as underlined and deletions as ~~strike through~~):

Appendix 1 - Acoustic insulation: Table 25 – Internal sound levels

Area	Internal design sound level
<u>Within 350m of the Huntly Power Station site boundary</u>	<u>Bedrooms: 35dB L_{Aeq} (1 hour)</u> <u>Other habitable rooms:</u> <u>40dB L_{Aeq} (1 hour)</u>
Within 350m of the Huntly Power Station <ul style="list-style-type: none"> Residential units in the LCZ – Local centre zone 	40dB L _{Aeq}

<ul style="list-style-type: none"> • Residential units in the COMZ – Commercial zone • Residential units in the TCZ – Town centre zone • Within 100m of the Tamahere Commercial Areas A, B and C • Multi-Unit development • Comprehensive Development – Rangitahi Peninsula 	
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[15] This amendment aligns the Huntly Power Station standard in Table 25 with the residential building internal design sound levels for the Horotiu Acoustic Area set out in Table 22 of APP1. Table 22 applies a one-hour L_{Aeq} for the measurement for internal design sound levels. The parties agree that it is appropriate to align rules that manage effects of industrial noise on neighbouring residential activities so that APP1 is consistent on this matter.

Section 32AA assessment

[16] Section 32AA of the Act requires a further evaluation for any changes to a proposal since the evaluation report for the proposal was completed. The parties have provided that evaluation as part of their joint memorandum in support of consent orders.

[17] It is agreed by both parties and their acoustic experts that the amendments to Table 25 are appropriate for the following reasons:

- (a) reducing the internal design sound level for bedrooms within 350m of the Huntly Power Station site boundary from 40dB L_{Aeq} to 35dB L_{Aeq} has benefits for the receiving environment. The acoustic experts agreed that it was appropriate to have a reduced internal design sound level for bedrooms to account for the need for quieter noise conditions to facilitate sleep at night. This approach aligns with both NZS 6802:2008 *Acoustics - Environmental Noise* and international guidance on this matter;
- (b) applying a one-hour time basis for measuring internal design sound levels ensures the rule is clear to understand and simple to demonstrate

compliance with. It is also an appropriate measure for industrial noise that fluctuates throughout the day, so the sound levels can be tested at a time when the Huntly Power Station is operational, rather than being averaged out over a longer time period that would capture time when the Power Station is not operational;

- (c) the rule is consistent with the way in which other industrial activities that generate noise are managed in APP1;
- (d) the benefit of this approach for landowners within the 350m setback is that the agreed provisions are very similar to the status quo under the Operative District Plan (**ODP**), except it is now clearer that a one-hour measurement of noise is required to demonstrate compliance.³ This means landowners will encounter the same internal design sound level requirements as they did under the ODP should they decide to construct a new or altered building but they will have more clarity on how to demonstrate compliance. The costs to landowners are the same as under the ODP. Genesis also benefits from clear, enforceable internal design sound levels and the costs to Genesis are also the same as under the ODP; and
- (e) the risks of acting are minimal as the agreed provisions are either the same as, or very similar to, the ODP. Landowners which are not involved in these proceedings will not be disadvantaged by the amendments to clarify how the limits are measured. The methods for measuring indoor noise levels are well understood and dictated by both New Zealand standards and international guidelines so there is minimal uncertainty as to how the provisions will be implemented or enforced.

³ The layout of Appendix M – Acoustic Insulation in the ODP is confusing and it is not clear which noise standards apply within the 350m setback from the Huntly Power Station (Rule 25.68.1) as none of the standards in Appendix M are expressly attributed to this rule. It was accepted by the acoustic experts that having different noise limits for habitable rooms (40 dB) compared to bedrooms (35 dB) was already required under Appendix M but there was debate as to whether 1 24-hour, 1-hour or no duration limit was to be applied to measure compliance. The notified version of the PDP introduced a 40 dB limit for both habitable rooms and bedrooms.

The risk of not acting is that the indoor design sound levels within 350m of the Huntly Power Station are too high to protect the receiving environment from adverse industrial noise during night time hours.

[18] It is on the above basis that the proposed amendments to Table 25 of APP1 are considered to be the most appropriate way to give effect to the following objectives and policies in the PDP:

- | | |
|-------------------|---|
| Objective AINF-O2 | Infrastructure is protected from reverse sensitivity effects, and its construction, operation, maintenance, repair, replacement and upgrading is not compromised. |
| Policy AINF-P1 | <p>Provide for the development, operation, maintenance, repair, replacement, upgrading and removal of infrastructure throughout the district by recognising:</p> <ul style="list-style-type: none"> (a) Functional and operational needs; (b) Location, route and design needs and constraints; (c) Locational constraints related to the need to access suitable resources or sites; (d) The benefits of infrastructure to people and communities; (e) The need to quickly restore disrupted services; and (f) Its role in servicing existing consented and planned development; (g) The need for physical access to infrastructure |

Further enquiries by the Court

[19] The Court wrote to parties noting that Genesis' appeal referred to "within 350m of Huntly Power Station" whereas the draft consent order referred to "within 350m of Huntly Power Station site boundary". The Court queried whether there is a significant difference between the two, such that the latter might mean that certain persons/properties are now captured that perhaps might not have been without that additional wording.

[20] Genesis and the Council filed a joint memorandum dated 29 June 2023. The parties advised that all references to Huntly Power Station are intended to capture the entire site, as the whole site is used for electricity generation purposes. The coal stockpile area to the west of the station building is an ancillary activity and is

considered as forming part of the Huntly Power Station. The activities at the coal stockpile area will have a noise effect (for example, conveyor belt and trucking/stockpiling of coal).

[21] The Court was advised that it was highlighted by Genesis during negotiations that the words ‘site boundary’ were included in the ODP.

[22] After discussions on this matter between the parties, it was concluded that the omission of the words in the Proposed Plan was most likely a drafting error as opposed to an intentional omission. It was therefore agreed to reinsert the words ‘site boundary’ as a consequential amendment on the basis that it was a minor change which aligned with the ODP wording and increased certainty as to how the rule was to be applied. It was also consistent with the position put forward by Genesis in its submission on the Proposed Plan and evidence at the Council hearing.

[23] In terms of significance, it was agreed by the parties that the amendment would not increase the size of the area where the rule applied, but would merely realign the wording of the rule so that it was clear that it applied to the exact same area as in the ODP.

[24] The parties noted that:

- (a) the acoustic insulation rules in the notified and decisions version of the Proposed Plan both refer to “within 350m of the Huntly Power Station site boundary”;
- (b) with reference to the setback rules,⁴ the Proposed Plan uses *Huntly Power Station* and *Huntly Power Station site boundary* interchangeably, however, *Huntly Power Station site boundary* is the most frequently applied term; and
- (c) when providing for coal related activities, the Proposed Plan refers to the Huntly Power Station – Coal and Ash Management specific control area rather than the Huntly Power Station generally.⁵ Genesis consider that this specificity is applied for clarity to ensure coal and ash activities

⁴ GRUZ-S17, S18.

⁵ GRUZ-R31, R32, R33, and S6, S14, S17, S18.

are being carried out in specific controlled areas within the Huntly Power Station.

[25] Genesis' submission makes it clear that the Huntly Power Station is not limited to the buildings on the site but encompasses the full area. It is clear from the acoustic evidence for Genesis for the Council hearing that the setback provision is intended to be from the Huntly Power Station site boundary.

[26] The parties submitted the reference to "site boundary" can properly be considered as further and consequential relief, particularly given the relevant section of the Proposed Plan refers to "within 350m of the Huntly Power Station site boundary".

[27] The parties submitted it would have been clear to anyone with an interest in Genesis' submission and position at the Council hearing that all references to the Huntly Power Station are intended to capture the entire site, unless expressly stated otherwise.

[28] The reference to "site boundary" is proposed for the avoidance of doubt, and to ensure Table 25 aligns with the wording above Table 25.

Consideration

[29] In making this order the Court has read and considered:

- (a) the notice of appeal dated 1 March 2022;
- (b) the Joint Memorandum of the parties dated 17 May 2023; and
- (c) the Joint Memorandum of the parties dated 29 June 2023.

[30] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this 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 Act including, in particular, Part 2.

[31] The Court is satisfied that the changes sought are within the scope of the Genesis submission and appeal.

Outcome

[32] The Court orders, by consent, that:

- (a) Table 25 in APP1 in Part 4 – schedules and appendices to the Proposed Waikato District Plan be amended in accordance with **Appendix A** to this order (additions marked as underlined and deletions as ~~striketrough~~);
- (b) paragraphs 26 to 29 of the appeal categorised as Topic 5 – Infrastructure Reverse Sensitivity / Setbacks is otherwise dismissed; and
- (c) the remaining parts of the appeal set out below remain unresolved:
- (i) paragraphs 8-12 – Topic 3 Ecosystems and biodiversity; and
- (ii) paragraphs 20-25 – Topic 17 Natural hazards and climate change;
- (d) there is no order as to costs.



S M Tepania
Environment Judge



Appendix A

Note: changes are shown in strikethrough and underline

Part 4: Schedules and appendices / APP1 – Acoustic insulation

6. Acoustic insulation for other areas

- Residential units within the LCZ – Local centre zone
- Residential units within the COMZ – Commercial zone
- Residential units within the TCZ – Town centre zone
- Buildings containing noise-sensitive activities within 350m of the Huntly Power Station site boundary
- Buildings containing noise-sensitive activities within 100m of the Tamahere Commercial Areas A, B and C
- Residential units within a Multi-Unit Development, and
- Residential units within a Comprehensive Development – Rangitahi Peninsula

Residential units and other buildings containing sensitive land uses within high noise environments are to be acoustically insulated to an appropriate standard to achieve the internal design sound level specified in Table 25 – Internal sound level.

6.1 Standards for permitted activities

- (1) Compliance with the internal design sound levels shall be demonstrated through the production of a design certificate from an appropriately-qualified and experienced acoustic specialist certifying that the internal sound level will not exceed the levels listed in Table 25.

Table 25 – Internal sound levels

Area	Internal design sound level
<u>Within 350m of the Huntly Power Station site boundary</u>	<u>Bedrooms: 35dB L_{Aeq} (1 hour)</u> <u>Other habitable rooms: 40dB L_{Aeq} (1 hour)</u>
Within 350m of the Huntly Power Station <ul style="list-style-type: none"> • Residential units in the LCZ – Local centre zone • Residential units in the COMZ – Commercial zone • Residential units in the TCZ – Town centre zone • Within 100m of the Tamahere Commercial Areas A, B and C • Multi-Unit development • Comprehensive Development – Rangitahi Peninsula 	40dB L _{Aeq}

Mechanical ventilation

- (2) Buildings that are required to have acoustic insulation must be designed, constructed and maintained with a mechanical ventilation system so that windows can be kept closed. The mechanical ventilation system must achieve the following requirements:

(a) For habitable rooms for a residential activity:

- (i) Provide mechanical ventilation to satisfy clause G4 of the New Zealand Building Code;
- (ii) Be adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour;
- (iii) Provide relief for equivalent volumes of spill air;
- (iv) Provide cooling and heating that is controllable by the occupant and can maintain the inside temperature between 18 degrees Celsius and 25 degrees Celsius; and
- (v) Generate less than 35 dB LAeq(30s) when measured 1m away from any grill or diffuser.
- (vi) For other spaces, a specification as determined by a suitably qualified and experienced person.

(3) A commissioning report must be submitted to the Council prior to occupation of the building demonstrating compliance with all of the mechanical ventilation system performance requirements in 6.1(2)(a).