

ANNEXURE 10

ACOUSTIC CONTROL CONDITION

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CP306/98

UNDER

the Judicature Amendment Act 1972

IN THE MATTER

of the Resource Management Act 1991

BETWEEN

PORTS OF AUCKLAND LIMITED an
incorporated company having its registered
office at Auckland and carrying on business
as a port operator

Applicant

AND

AUCKLAND CITY COUNCIL a territorial
local authority in terms of the Local
Government Act 1974 with its principal
office at Auckland

First respondent

AND

SOUTHERN TRADING COMPANY LIMITED
an incorporated company having its
registered office at Auckland and carrying on
business as a property developer

Second respondent

AND

BROADWAY DEVELOPMENTS LIMITED an
incorporated company having its registered
office at Auckland and carrying on business
as a property developer

Third respondent

SEALED JUDGMENT OF THE COURT

28 OCT 1999 11:26 813019

35.00

RUSSELL McVEAGH McKENZIE BARTLEET & CO

BARRISTERS, SOLICITORS & NOTARIES PUBLIC

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AND **CITY WISE PROJECTS LIMITED** an incorporated company having its registered office at Auckland and carrying on business as a property developer

Fourth respondent

AND **COVINGTON CORPORATION LIMITED** an incorporated company having its registered office at Auckland and carrying on business as a property developer

Fifth respondent

AND **MAGELLAN ORAKEI LIMITED** an incorporated company having its registered office at Auckland and carrying on business as a property developer

Sixth respondent

AND **NGATI WHATUA O ORAKEI MAORI TRUST BOARD** a duly incorporated Trust Board incorporated pursuant to the Orakei Act 1991 and the Maori Trust Boards Act 1955

Seventh respondent

THIS proceeding coming on for mention on the 29th day of September 1999, before the Honourable Justice Baragwanath at Auckland, after reading the memorandum of counsel for the applicant dated 26 August 1999, the third affidavit of Christopher William Day sworn 26 August 1999, the joint memorandum of counsel for the applicant and counsel for the first respondent dated 24 September 1999 and the memorandum of counsel for the applicant dated 27 September 1999, and after hearing Mr Fardell and Mr Royle of counsel for the applicant, Mr McNamara of counsel for the first respondent, Mr Gould of counsel for the third and sixth respondents and Mr Wackrow of counsel for the seventh respondent, it is hereby adjudged by consent that:

1. Subject to paragraph 2 below, the first respondent shall:
 - (a) forthwith incorporate into all current and future resource consents for developments on the railway land which incorporate residential accommodation (including all resource consents currently held by the third respondent in relation to 18-52 The Strand, but excluding any resource consents for developments in relation to which the applicant has agreed alternative terms), an acoustic control condition in the form annexed to this judgment ("**acoustic control condition**");
 - (b) promptly provide the applicant with copies of all engineers' certificates supplied pursuant to paragraphs 1 and 2 of the acoustic control condition annexed hereto (as a matter of information only, and with no further obligation upon the first respondent in the event that any such certificate is not to the satisfaction of the applicant).
2. Where the first respondent considers it necessary or appropriate to depart from the acoustic control condition, the first respondent shall advise the applicant accordingly within 7 days of the relevant decision of the first respondent, such advice to include a statement of the reasons for the relevant decision (again, as a matter of information only, and with no further obligation upon the first respondent to advise the applicant regarding the departure from the condition).
3. There be no orders as to costs.



Sealed this 29th day of September 1999

[Signature]
 (Deputy) Registrar
 T.E. MOSLEY

Sealed this 29th day of October 1999

ACOUSTIC CONTROL CONDITION

1. The consent holder shall, prior to the commencement of construction of the building or any site works, submit to the Manager: City Planning a report signed by an engineer specialising in acoustic design certifying that the building has been designed so that:
 - (a) using the assumption that noise from the Port at each external facade of the building is at the level determined by reference to the attached Former Railyards Precinct Noise Zone Map, the following internal noise levels in respect of noise from the Port will be achieved between the hours of 11.00pm and 7.00am:
 - (i) in all bedrooms, no more than 35dBA L₁₀; and
 - (ii) in all other habitable spaces (as defined in the Building Code), no more than 40dBA L₁₀; and
 - (b) at the same time and under the same physical conditions as the internal noise levels in (a) above will be achieved, all bedrooms and other habitable spaces will be adequately ventilated in accordance with the Building Code.
2. After completion of the construction of the building, the consent holder shall submit a further report to the Manager: City Planning signed by the same or a similarly qualified engineer certifying that the building has been built in compliance with the noise and ventilation criteria specified in paragraph 1 above.
3. For the avoidance of doubt:
 - (a) in assessing compliance with the ventilation requirements of the Building Code for the purposes of paragraph 1(b) above, no source or means of ventilation shall be taken into account unless:
 - (i) ventilation from that source or means that is relied upon to meet the ventilation requirements of the Building Code will be available at all times when the internal noise levels in paragraph 1(a) above will be achieved; and
 - (ii) the internal noise levels in paragraph 1(a) above will be achieved at all times when ventilation from that means or source is relied upon to meet the ventilation requirements of the Building Code. For example, adjustable doors, windows or louvres may not be relied upon to meet the ventilation requirements of the Building Code if they can be adjusted to allow internal noise levels to exceed those specified in paragraph 1(a) above.
 - (b) any report signed by an engineer in accordance with paragraph 1 or paragraph 2 above shall not be deemed to be a producer statement or building certificate under the Building Act 1991, or relied upon by the Council for the purposes of that Act.



FORMER RAILYARDS PRECINCT NOISE ZONE MAP

(Relative to 60 dBA on the southern side of Quay St)

- No reduction in 60dBA level in this area
- 2 dBA reduction from 60dBA level in this area
- 4 dBA reduction from 60dBA level in this area
- 6 dBA reduction from 60dBA level in this area
- Port precinct
- Area designated for Railway Purposes (Auckland Railway Station & Railway)

