



IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of appeals under Clause 14 of the
First Schedule to the Act

BETWEEN

**WAIHEKE PROJECT
MANAGEMENT**

ENV-2009-AKL-000350

AND

WILLIAM JONES

ENV-2011-AKL-000055

Appellants

AND

**WATERCARE SERVICES
LIMITED**

AND

**AUCKLAND COUNCIL
(AUCKLAND CITY COUNCIL)**

Respondents

BEFORE THE ENVIRONMENT COURT

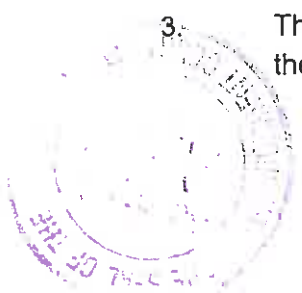
Environment Judge L J Newhook sitting alone under section 279 of the Act

IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction

1. The Court has read and considered the above appeal and the joint memorandum of counsel in support of this consent order dated 18 August 2011.
2. William Jones and Watercare Services have given notice of an intention to become interested parties to the appeal by Waiheke Project Management under section 274 of the Act and have signed the memorandum of the parties setting out the relief sought.
3. The appellant Waiheke Project Management has not signed the memorandum of the parties setting out the relief sought. The other parties advised the Court that it



has no interest in this aspect of its appeal. The Court requested that Waiheke Project Management advise the Court by 31 August 2011 of its position in relation to the consent order. No response was received within this timeframe.

4. The Court is making this order under s279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The Court understands for present purposes that:
 - (a) all parties to the proceedings except Waiheke Project Management 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 relevant requirements and objectives of the Resource Management Act, including in particular Part 2;

Order

5. Therefore this Court orders by consent that the changes to Table A7.2:Conditions applying to designated sites – inner islands contained in the Auckland Council District Plan (Auckland City Hauraki Gulf Islands Section)", as shown in mark-up in the attached **Appendix 1**, are made.
6. All consequential amendments to the numbering and cross-referencing are to be made as required.
7. This consent order resolves topic ENV-2009-304-000452 Owhanake Wastewater Treatment Plant in its entirety.
8. Appeal ENV-2009-AKL-000350 Waiheke Project Management v Auckland Council (Auckland City Council) is resolved in part by this order. Appeal ENV-2011-AKL-000055 Jones v Watercare Services is resolved in its entirety.
9. There is no order for costs in relation to this order.


DATED at Auckland this

13th

day of

September

2011



L J Newhook
Environment Judge



APPENDIX 1: AMENDED DESIGNATION



Table A7.2: Conditions applying to designated sites – inner islands

Planning map ref	Conditions
1-14	<p>Owhanake Wastewater Treatment Plant</p> <p>This designation is subject to the following conditions:</p> <p>1.0 General conditions</p> <p>1.1 The scope and extent of the activities and works authorised by the designation will be generally in accordance with the notice of requirement and accompanying information, subject to final design and any modifications required to comply with the conditions set out below.</p> <p>2.0 Concept development plan</p> <p>2.1 The requiring authority shall prepare a concept development plan for the Owhanake wastewater treatment plant showing the layout of works and facilities authorised by the designation. In determining the layout for new facilities the requiring authority shall, in addition to considering operational requirements, take the following matters into account:</p> <ul style="list-style-type: none"> - The avoidance or mitigation of adverse noise and odour effects associated with treatment plant operations (refer also condition 4.1 and advice note 3); - The landscape and visual impact of buildings and structures (refer also condition 3.1); - Existing indigenous vegetation on the site. <p>The concept development plan shall be submitted to the team leader - Hauraki Gulf Islands, Auckland City Environments for approval prior to the construction of any new facilities.</p> <p>2.2 The concept development plan shall be consistent with sketches A-C for a 250m³/day plant or D-F for a 750m³/day plant as submitted at the hearing by Metrowater dated November 2008:</p> <ul style="list-style-type: none"> - the footprint of all buildings shall be located within the existing development envelope as at 19 November 2008 - buildings shall be a maximum of 5m in height above ground level - existing landscaping on the site shall be retained - no development shall be undertaken within existing landscaped areas <p>3.0 Landscape and visual impact management conditions</p> <p>3.1 Prior to the construction of any new buildings, structures or facilities in accordance with an approved concept development plan, the requiring authority shall prepare a landscape management plan. This plan shall demonstrate how, as far as is practicable, and in accordance with this condition, the wastewater treatment plant facilities are to be appropriately visually integrated with the surrounding landscape, including:</p> <ol style="list-style-type: none"> a. The design and external appearance of buildings and structures, including the type and colour of roofing and cladding materials to be used. The exterior of buildings shall be finished in colours and/or materials that are sympathetic to the natural landscape of the site; b. Proposed landscape treatment, including details of plant species proposed to be used. Where practicable locally sourced native species shall be used; c. The dimensions, graphic content and colouring of proposed signage. All signs shall comply with the provisions of the relevant Auckland City bylaw (Part 27 - Signs). d. <u>Provision for a planting area of no less than 350m² to provide screening of the north-western corner of the Treatment Plant. The planting shall be locally sourced native species (of a type able to reach a height of at least 6 metres) where practicable and should wrap around the north-western corner of the treatment plan in an "L" shape as shown on plant Proposed WWTP upgrade - future works - Figure 4 prepared by Boffa Miskell and dated 27 July 2011. The planting shall be undertaken at least one planting season prior to the</u>

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Planning map ref	Conditions
	<p><u>commencement of construction of any new buildings.</u></p> <p>The landscape management plan shall be submitted to the team leader - Hauraki Gulf Islands, Auckland City Environments for approval prior to commencement of construction, with the approved landscape treatment subsequently being implemented no later than the first planting season immediately following completion of construction.</p> <p>In preparing and approving the landscape management plan, the requiring authority and team leader - Hauraki Gulf Islands, Auckland City Environments, respectively, shall consider the extent to which measures for addressing landscape and visual effects are reasonably necessary, taking into account the extent to which any dwellings or other potentially sensitive land uses have established after the requirement for designation for the Owhanake wastewater treatment plant was publicly notified.</p> <p>3.2 <u>Any artificial lighting used on the site shall not produce an illuminance exceeding 150 lux measured at any point on the site containing the light source. Any outdoor lighting on site shall be shielded in such a manner that the light emitted by the light fixture is projected below the horizontal plane of the light fixture.</u></p>

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1-14	<p>4.0 Noise</p> <p>4.1 Operational noise</p> <p>a. New facilities at the wastewater treatment plant shall be so designed and the use of the buildings and site shall be so conducted, that the following noise levels are not exceeded:</p> <p>i. The L_{eq} noise level shall not exceed the following limits:</p> <table border="1" data-bbox="432 389 1142 524"> <thead> <tr> <th>Day / time</th> <th>Noise level (L_{eq})</th> </tr> </thead> <tbody> <tr> <td>Monday to Saturday 0700 - 2200 hrs and Sunday 0900 - 1800 hrs</td> <td>55 dBA</td> </tr> <tr> <td>All other times including public holidays (night time)</td> <td>45 dBA</td> </tr> </tbody> </table> <p>ii. The maximum noise level (L_{max}) at 'night' time shall be the background noise level (L_{95}) plus 30 dBA; or 75 dBA, whichever is the lower.</p> <p>b. All noise measurements shall be made at 20m from any building where people may reside overnight on a permanent or temporary basis (on another site from the noise source) or at the legal boundary, when this is closer to the dwelling. This may be referred to as the notional boundary.</p> <p>c. Noise shall be measured in accordance with NZS 6801:1999 (Acoustics - Measurement of Environmental Sound).</p> <p>d. The noise measured shall be assessed in accordance with NZS 6802:1999 (Acoustics - Assessment of Environmental Noise) except that the averaging of noise measured will be in accordance with the following:</p> <p><i>Averaging</i></p> <p>A noise nuisance does not generally arise from a single isolated infringement. The amount by which limits are exceeded may vary between repeat infringements. Averaging of measured L_{eq} values for separate time intervals to derive a single figure for comparison with any limit, will be subject to the following constraints:</p> <p>i. Averaging of measured L_{eq} levels for comparison with any applicable noise limit, if employed, will only be performed on LR levels derived in accordance with appendix A of NZS 6802:1999 and will only relate to time intervals during which the sound of interest is present. Measured L_{eq} levels will not be averaged if comparison is to be made with night-time limits where sleep disturbance will be of concern.</p> <p>ii. The averaged value of the descriptor eg L_{eq} will not exceed the relevant limit, and in any case the limit will not be exceeded by more than 5dB for any single time interval. L_{eq} values will be averaged on an energy basis, ie the logarithmic mean will be determined.</p> <p>4.2 Noise from construction work and earthworks (refer also condition 9.2)</p> <p>a. Noise resulting from earthworks or construction work (construction work is defined in NZS 6803:1999) shall not exceed the following levels:</p> <p>i. When affecting all settlement areas and land units, with the exception of the transport area of the Matialia land unit:</p> <table border="1" data-bbox="352 1402 1197 1626"> <thead> <tr> <th rowspan="3">Time of the week</th> <th rowspan="3">Time period</th> <th colspan="4">Duration of the work</th> </tr> <tr> <th colspan="2">Typical duration work (dBA) 1</th> <th colspan="2">Short term duration work (dBA) 2</th> </tr> <tr> <th>L_{eq}</th> <th>L_{max}</th> <th>L_{eq}</th> <th>L_{max}</th> </tr> </thead> <tbody> <tr> <td>Monday to Friday</td> <td>0730 - 1800 hrs</td> <td>75</td> <td>90</td> <td>80</td> <td>95</td> </tr> <tr> <td>Saturday</td> <td>0800 - 1600 hrs</td> <td>75</td> <td>90</td> <td>80</td> <td>95</td> </tr> </tbody> </table> <p>1. 'Typical duration work' means construction work at any one location for more than 14 calendar days</p> <p>2. 'Short term duration work' means construction work at any one location for up to 14 calendar days</p>	Day / time	Noise level (L_{eq})	Monday to Saturday 0700 - 2200 hrs and Sunday 0900 - 1800 hrs	55 dBA	All other times including public holidays (night time)	45 dBA	Time of the week	Time period	Duration of the work				Typical duration work (dBA) 1		Short term duration work (dBA) 2		L_{eq}	L_{max}	L_{eq}	L_{max}	Monday to Friday	0730 - 1800 hrs	75	90	80	95	Saturday	0800 - 1600 hrs	75	90	80	95
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Planning map ref	Conditions												
1-14	ii. When affecting the transport area of the Matiatla land unit:												
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	<p>1. 'Typical duration work' means construction work at any one location for more than 14 calendar days</p> <p>2. 'Short term duration work' means construction work at any one location for up to 14 calendar days</p> <p>b. Measurements should be made outside occupied buildings affected by the construction noise. Measurements should be made approximately 1m from the wall most exposed to the sound under investigation, and 1.2m to 1.5m above the relevant floor level. No adjustment to measured sound levels is to be made for the reflected sound from the wall. The measured levels should be compared directly with the noise limits without any adjustments for special audible characteristics. The measured level must be adjusted for any significant background L_{eq} level in the area using the procedure set out in appendix A of NZS 6803:1999.</p> <p>c. Where circumstances require measurements inside buildings (eg when noise is travelling through common building elements such as a common wall) all windows and other means of ventilation must be closed or turned off and the upper limits of the noise measured will not exceed the levels stated in the tables in condition 4.2(a)(i) or (ii) above minus 20 dBA.</p> <p>d. Noise shall be measured with a sound level meter complying at least with the International Standard IEC 651 (1979) Sound Level Meters, Type 1.</p> <p>5.0 Access</p> <p>5.1 All internal access roads, vehicle manoeuvring and parking areas shall be formed, provided with an all weather surface, drained, and maintained to the satisfaction of the council.</p> <p>6.0 Earthworks</p> <p>6.1 In respect of earthworks that (apart from this designation) would require consent only from Auckland City Council under the relevant district plan:</p> <p>6.1.1 Suitable erosion and sediment control measures shall be implemented during all earthworks to ensure that the discharge of silt, sediment, or water containing silt or sediment into drains, natural watercourses, wetlands, estuaries, or coastal waters is minimised as far as practicable. Regard shall be had to the Auckland City Council brochure Earthworks on the Hauraki Gulf Islands and the Auckland Regional Council's Technical Publication No. 90 Erosion and Sediment Control: Guidelines for Land Disturbing Activities in the Auckland Region (1999). Any sediment controls deemed necessary shall remain in place until all exposed surfaces have been stabilised by mulching, paving, re-established in grass or planted; and</p> <p>6.1.2 Any stockpiling of excavated material on the site shall be undertaken in a manner that ensures that the discharge of silt, sediment, or water containing silt or sediment into drains, natural watercourses, wetlands, estuaries, or coastal waters is minimised as far as practicable.</p> <p>Note: In respect of earthworks that would require consent from the Auckland Regional Council under the Auckland Regional Plan: Sediment Control (or any successor to that plan), the requiring authority will be obliged to comply with the requirements of that consent.</p> <p>7.0 Stormwater</p> <p>7.1 Adequate provision shall be made for the protection and/or redirection of any existing stormwater overland flow paths within the site, which are affected by new development works. Peak rate of discharge to the receiving environment shall not be increased significantly as a result of any works undertaken.</p>												

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Planning map ref	Conditions
1-14	<p>8.0 Archaeological and cultural heritage impact management conditions</p> <p>8.1 Should construction work expose any archaeological remains, including human remains, the following procedures shall apply:</p> <ul style="list-style-type: none"> - Immediately it becomes apparent that an archaeological or traditional site has been exposed, all works in the affected area shall cease; - The affected area shall be secured in a way that ensures that any artefacts or remains are untouched; - The requiring authority shall as soon as practicable notify local iwi, the New Zealand Historic Places Trust and, in the case of human remains, the police that artefacts or remains have been exposed so that appropriate action can be taken. Works shall not recommence in the affected area until any necessary authority required by the New Zealand Historic Places Trust is obtained. <p>9.0 Construction management</p> <p>9.1 Prior to the construction of any new buildings, structures or facilities in accordance with an approved concept development plan and landscape management plan, the requiring authority shall prepare a construction management plan. This plan shall include specific details relating to the demolition, construction and management of all works associated with the upgrading of the existing wastewater treatment plant, including:</p> <ul style="list-style-type: none"> a. Details of the site manager, including their contact details; b. The location of a noticeboard (in accordance with the relevant Auckland City bylaw - Part 27 Signs) on the site that clearly identifies the name, telephone number and address for service of the site manager; c. Measures to be adopted to maintain the site in a tidy condition in terms of disposal/storage of rubbish, storage and unloading of building materials and other construction activities; d. Location of worker's conveniences (eg porta-loos); e. Ingress and egress to and from the site for vehicles during the construction period (including construction machinery); f. Proposed numbers and timing of truck movements throughout each day and the proposed routes to be used by trucks; g. Procedures for controlling sediment runoff, dust and the removal of soil and debris from public roads or places. <p>The construction management plan shall be submitted to the team leader - Hauraki Gulf Islands, Auckland City Environments for approval prior to commencement of construction. The approved plan shall be implemented and maintained throughout the entire construction period.</p> <p>9.2 All construction works shall be restricted to the hours between 0730 - 1800 Monday to Friday and 0800 - 1600 on Saturday. No work shall occur on Sundays or public holidays.</p> <p>10.0 Operational and Management Plan</p> <p>10.1 Prior to commencement of works authorised by the designation, an Operational and Management Plan, incorporating the actual works that are to occur on the site shall be prepared. This plan shall be submitted to and approved by the Team Leader, Planning Hauraki Gulf Islands and include among other matters details of dealing with emergencies and complaints. Thereafter, the Operational and Management Plan shall be maintained as a document that reflects any new activities (within the scope of the designation) or where there is a substantial alteration to existing activities.</p> <p>11.0 Other</p> <p>11.1 The designation shall be compatible with the resource consent for discharge</p>

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Planning map ref	Conditions
	<p>currently held.</p> <p><u>Advice notes</u></p> <ol style="list-style-type: none"> 1. The requiring authority needs to obtain all other necessary consents and permits, including those under the Building Act 1991, and comply with all relevant council bylaws. 2. Under the Historic Places Act 1993 an authority must be obtained from the New Zealand Historic Places Trust for the modification, damage or destruction of any archaeological site. 3. It is noted that the wastewater treatment plant is subject to an air discharge permit issued by the Auckland Regional Council which requires (amongst other things) that the plant be operated and maintained so that discharges of odour will not be of a noxious, offensive or objectionable nature beyond the boundaries of the site (Lot 37 DP183455). 4. The storage and handling of any hazardous substances used in conjunction with wastewater treatment plant operations shall be undertaken in accordance with the provisions of the Hazardous Substances and New Organisms Act 1996 and the relevant Hazardous Substances Regulations.

[Note - rest of table A7.2, which covers other designations, is not shown here]

[Note - rest of appendix 7, which covers outer island designations, is not shown here]

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