

**BEFORE THE    MEP HEARINGS PANEL**

**IN THE MATTER OF    The Resource Management Act 1991**

**AND**

**IN THE MATTER OF    Proposed Marlborough Environment Plan**

**BETWEEN                Marlborough District Council**

**AND                        Port Marlborough New Zealand**

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**STATEMENT OF SUPPLEMENTARY EVIDENCE  
OF CRAIG MICHAEL FITZGERALD**

16 November 2018

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## **1.0 QUALIFICATION AND EXPERIENCE**

- 1.1 My full name is Craig Michael Fitzgerald.
- 1.2 I have qualifications and experience in acoustics as set out in paragraphs 1.2 to 1.4 of my Evidence on behalf of Port Marlborough New Zealand Limited (dated 22 October 2018).
- 1.3 I repeat the confirmation given in my Evidence that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Consolidated Practice Note (2014), and I agree to comply with it as if this hearing was before the Environment Court.

## **2.0 SCOPE OF SUPPLEMENTARY EVIDENCE**

- 2.1 I presented evidence to the MEP Hearings Panel on Tuesday 13 November 2018. The Hearings Panel sought clarification on the application of the 'notional boundary' assessment location in Port Landing Zone rule 14.2.3.1 and Marina Zone rule 15.2.3.2.
- 2.2 In this statement of supplementary evidence, I provide guidance from New Zealand Standard NZS 6802:2008 "Acoustics- Environmental Noise" on the recommended application of the notional boundary. I also refer to a relevant Court of Appeal decision "*North Canterbury Clay Target Assn Inc v Waimakariri District Council* [2016] NZCA 305".

## **3.0 NOTIONAL BOUNDARY**

- 3.1 The relevant New Zealand Standard for the assessment of environmental noise is NZS 6802:2008 "Acoustics- Environmental Noise". Section 8 is titled "Guidelines for setting noise limits". Sub section 8.4 is titled "Measurement Location". Paragraph 8.4.8 provides guidance on the recommended application of the notional boundary. This paragraph is reproduced below, along with the preceding two paragraphs to provide context.

*8.4.6 The notional boundary concept recognises that sound immissions<sup>1</sup> are the basis for protection from noise under the Resource Management Act. Unless special planning reasons exist to justify using the legal boundary rather than the notional boundary of dwellings where lot sizes are large and settlement density is low, the appropriate location for assessment of noise in rural character areas with large lot sizes, should be 'at any point within the notional boundary of a dwelling' and this may include some rural-residential areas.*

*8.4.7 Where notional boundary is used, it always relates to a building used for a noise sensitive activity, typically residential. The notional boundary is within 20m of any side of a dwelling (or other specified class of building). In this context, the term 'façade' is no longer used for legal reasons. If the legal boundary is 20m from the dwelling, then the measurement location is still at any point within the notional boundary.*

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<sup>1</sup> Definition of Immission in NZS 6802:2008 is 'Sound received at one location from a source or sources at other locations'.

8.4.8 An important distinction will often need to be made between existing dwellings and potential future dwellings. For reasons now called 'reverse sensitivity', the concept of people coming to a noise source or nuisance not being entitled to an amenity level as if the noise source did not exist has long been upheld. Thus it is common to find the noise assessment location specified as:

'at any point within the notional boundary of an existing dwelling'.

Sometimes this is expressed as:

'at any point within the notional boundary of any existing dwelling shown on map x attached',  
or

'dwellings existing at the date this consent comes into effect'.

- 3.2 Certainty is essential. Relevant case law includes *North Canterbury Clay Target Assn Inc v Waimakariri District Council* [2016] NZCA 305. In summary, the noise rules applied at the notional boundary, but did not explicitly limit the application to existing dwellings. Despite obtaining a certificate of compliance, a dwelling was subsequently built closer to the club and the notional boundary of the new dwelling was deemed to apply. Their existing operations became non-compliant.
- 3.3 To provide certainty and avoid reverse sensitivity effects, I recommend that the noise limits apply at the notional of consented dwellings at xxx date. Based on guidance from Ms Taylor, I understand the notification date of the MEP is appropriate in this context, which was 9 June 2016.
- 3.4 I recommend the following updated amendments shown in red below (additions are shown underlined and deleted text is shown ~~struckthrough~~):

#### Chapter 14. Port Landing Zone

14.2.3.1 An activity must be conducted to ensure that noise when measured at any point beyond within the notional boundary of consented dwellings at 9 June 2016 ~~or within the Port Landing Area~~ within any site zoned Coastal Living or Coastal Environment does not exceed the following noise limits:

7.00 am to 10.00 pm	<del>50</del> 55 dBA LAeq	
10.00 pm to 7.00 am	<del>40</del> 45 dBA LAeq	<del>70</del> 75 dB LAfmax

#### Chapter 15. Marina Zone

15.2.3.2 An activity undertaken within the Marina Zone must be conducted to ensure that noise when measured at any point within any site zoned Urban Residential 2 or Business 1, or notional boundary of consented dwellings at 9 June 2016 within any site zoned Open Space 1, Coastal Living or Coastal Environment Zone ~~Zone~~ does not exceed the following limits:

7.00 am to 10.00 pm	<del>50</del> 55 dBA LAeq	
10.00 pm to 7.00 am	<del>40</del> 45 dBA LAeq	<del>70</del> 75 dB LAfmax

Craig Fitzgerald  
16 November 2018