IN THE COURT OF APPEAL OF NEW ZEALAND

CA21/2015
[2016] NZCA 305

BETWEEN	NORTH CANTERBURY CLAY TARGET ASSOCIATION INCORPORATED Appellant
AND	WAIMAKARIRI DISTRICT COUNCIL Respondent

Hearing: 2 June 2016

Court: Harrison, Miller and Cooper JJ

Counsel: P A Steven QC for Appellant
A J Schulte for Respondent

Judgment: 5 July 2016 at 2.15 pm

JUDGMENT OF THE COURT

A We answer the questions of law as follows:

(1) Does rule 31.11.1.2 of the Waimakariri District Plan require compliance with specified noise limits at the notional boundary of any dwellinghouse in the Rural Zone in existence from time to time, notwithstanding that the dwellinghouse was not in existence at the time the permitted activity was established?

Answer: Yes.

(2) Where a certificate of compliance has been issued under s 139 of the Resource Management Act, is the holder of the certificate subject to a continuing obligation to abide by the noise limitations specified in rule 31.11.1.2, notwithstanding the changing surrounding physical environment?

Answer: Yes.

REASONS OF THE COURT

(Given by Miller J)

Introduction

[1] The Resource Management Act 1991 (the Act) provides that on request, and subject to an administrative charge and any further information that it may require, a consent authority must issue a certificate of compliance for an activity that can be done lawfully in a particular location without a resource consent.[1] The Act treats a certificate as an appropriate resource consent issued subject to any conditions specified in the relevant plan.

[2] The North Canterbury Clay Target Association Inc (the Association) has conducted target shooting meetings and practices at 269 Boundary Road, Cust, for many years. It formerly operated under a resource consent granted by the respondent Council, but when the Waimakariri District Plan changed in 2005 its activity became a permitted use within the Rural Zone in which it is situated. It was given a certificate of compliance in 2008, after having satisfied the Council that its activities complied with applicable noise limits, measured at the notional boundary of any dwellinghouse in the vicinity. The nearest house was 1.2 km away.

[3] Since 2008, houses have been built much closer to the Association's property and their owners have complained about gunfire noise. It is not yet clear whether noise limits have been breached at those locations. This appeal addresses the prior

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[1] Section 139 of the Resource Management Act 1991. We are concerned with the legislation as it stood before amendment by s 99 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009, but it is not substantively different.

questions of how the noise rule should be interpreted and whether the certificate protects the Association's activities even if noise levels at subsequently-built houses exceed prescribed limits.

[4] The Environment Court held that the noise rule in the District Plan, r 31.11.1.2,[2] requires continuing compliance with noise standards in a receiving environment that can be expected to change over time.[3] Mander J dismissed an appeal.[4] If the Courts below are correct, the Association risks having its long-established and permitted activities curtailed.

[5] This Court has granted leave to appeal on two questions of law:[5]

> (1) Does rule 31.11.1.2 of the Waimakariri District Plan require compliance with specified noise limits at the notional boundary of any dwellinghouse in the Rural Zone in existence from time to time, notwithstanding that the dwellinghouse was not in existence at the time the permitted activity was established?
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> (2) Where a certificate of compliance has been issued under s 139 of the Resource Management Act, is the holder of the certificate subject to a continuing obligation to abide by the noise limitations specified in rule 31.11.1.2, notwithstanding the changing surrounding physical environment?

The District Plan: permitted activities and noise constraints

[6] The relevant provisions of the District Plan have not changed since the certificate was sought. Generally, any activity is permitted in the Rural Zone provided it is not listed as a discretionary activity and it meets conditions applicable to permitted activities in the zone. Rule 31.1 defines a permitted activity, providing that any land use in the Rural Zone is permitted if it:

> i. is not otherwise listed as a discretionary activity (restricted) under Rule 31.12;

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2 The numbering of the rules in the Waimakariri District Plan seems to have changed between the hearings in the Environment Court and the High Court. What was r 31.11.1.2 is now r 31.12.1.2. This judgment will use the earlier iteration in the interests of consistency with the judgments of the lower Courts and the parties' submissions.

3 *Waimakariri District Council v North Canterbury Clay Target Association* [2014] NZEnvC 114 (Environment Court judgment) at [75]–[83].

4 *North Canterbury Clay Target Association Inc v Waimakariri District Council* [2014] NZHC 3021, (2014) 18 ELRNZ 133 (High Court judgment).

5 *North Canterbury Clay Target Association Inc v Waimakariri District Council* [2015] NZCA 225.

ii. complies with the conditions under Rule 31.11.1; and

iii. complies with all the conditions and provisions for permitted activities in this and all other chapters.

[7] Rule 31.12.1 defines a restricted discretionary activity as:

> Any land use which does not comply with one or more of Rules 31.11.1.1 to 31.11.1.11 is a discretionary activity (restricted), except where exempted under Rule 31.11.2.

[8] It will be seen that both definitions refer to conditions imposed under r 31.11.1. That rule contains 12 sub-rules which impose conditions on permitted activities. The noise rule, r 31.11.1.2, is one of them:

> Activities … shall not exceed the following noise limits within measurement time intervals in the time-frames stated *at any point within the notional boundary of any dwellinghouse in the Rural Zone*…:
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> a. Daytime: 7 am to 7 pm Monday to Saturday, and 9 am to 7 pm Sundays and Public Holidays: 50dBA L_{10}
>
> b. Other times: 40dBA L_{10}
>
> c. Daily 10 pm–7 am the following day: 70DBA L_{max}
>
> (emphasis added)

[9] Other provisions of the Plan inform understanding of this rule. First, the Plan aims to mitigate potential adverse environmental effects from noise. To that end it adopts a policy of avoiding noise affecting amenity values and health and safety of people on neighbouring sites.

[10] Second, the notional boundary of a dwellinghouse in the zone is defined as a line 20 m from any part of a dwellinghouse, or the legal boundary of any site where this is closer to the dwelling house.[6] There is a minimum setback depth of 20 m in the Rural Zone. The explanation given in the Plan is that the notional boundary emphasises the need to control noise where people live and sleep. That aside, there is no need to control noise at the boundary, and to do so might be to preclude some agricultural activity.

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6 Waimakariri District Plan at 20, definition of "notional boundary".

[11] Third, there are exceptions to the noise limits. The principal exception is for noise associated with agricultural activity, which is the main activity in the zone.[7] The Plan envisages that noise associated with that activity is to be expected provided it is not constant.[8]

[12] Finally, noise levels are measured and assessed according to two New Zealand Standards, NZS 6801:1991 and NZS 6802:1991, with modifications that are not presently relevant. The Plan recognises that speech interference occurs at 65dBA, at which noise levels are too high to provide a comfortable living environment.

[13] In summary, under the District Plan the Association's activity may be a permitted activity provided it complies with the Plan's conditions applicable to permitted activities. This includes the noise rule, from which the Association is not exempt. The limit exists to protect neighbours' amenity values and health and safety in their homes, where they live and sleep. Compliance is measured within the notional boundary of "any dwellinghouse in the Rural Zone". Failing compliance, the Association's use becomes a discretionary activity (restricted) and may require a resource consent.

The certificate of compliance

[14] In 1995, under the former district plan, the Association was granted a resource consent to hold 13 shoot meetings and 13 practices per annum. In October 2007, under the current Plan, the Association applied under s 139 of the Act for a certificate of compliance confirming that it was lawful for the Association to hold 52 shoot meetings and 52 practices per annum. Relying on a report by Malcolm Hunt Associates (MHA), which stated that noise at the nearest house was within the permitted activity noise limits for the Rural Zone, the request maintained that shooting was a permitted activity. The MHA Report acknowledged that r 31.11.1.2's references to L_{10} and L_{max} descriptors were not entirely appropriate for assessing gunfire noise, but concluded that the highest noise levels from the site were within the Plan's noise limits.

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7 Rule 31.11.2.1.

8 See ch 12 of the Waimakariri District Plan at 10 and 21.

[15] The certificate of compliance was issued in September 2008. It stated that it was issued:

> … to operate a clay target shooting club at 269 Boundary Road, Cust with 52 shoot meetings and 52 practices per annum with the provision of 9 parking spaces … can be lawfully carried out [sic].

[16] A report prepared for the Council in 2012, presumably after complaints, noted that the noise metrics and levels specified in r 31.11.1.2 were inapplicable, because gunfire noise was outside the scope of the applicable Standards, and opined that as a result the shooting was a restricted discretionary activity. The report also opined, by reference to United Kingdom guidelines and the assessor's experience, that an appropriate range was 50–55 dB L_{AFmax} and stated that noise levels at all houses tested exceeded that range.

[17] It was agreed in the Environment Court that gunfire noise cannot be assessed under NZS 6802:1991.[9] Clause 1.2 of the Standard says as much. The Court nonetheless found that the MHA Report complied with NZS 6802:1991 so far as applicable and correctly interpreted rr 31.11.1.1 and 31.11.1.2.[10] The Court declared that shooting was correctly assessed to be a permitted activity under r 31.11 at the time the certificate of compliance was issued.[11]

Section 139

[18] When the Council issued the certificate s 139 read as follows:

> *Certificates of compliance or existing use*
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> **139 Consent authorities to grant certificates of compliance**
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> (1) Where an activity could be lawfully carried out without a resource consent, in respect of any particular location, the consent authority shall, upon request and payment of the appropriate administrative charge, issue to any person who so requests a certificate that a particular proposal or activity complies with the plan in relation to that location.
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> (2) A consent authority may require an applicant for a certificate of compliance to provide further information relating to the request if,

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9 Environment Court judgment, above n 3, at [32].
10 At [52] and [61].
11 At [62].

> in the opinion of the consent authority, the information is necessary to determine whether the particular proposal or activity complies with the plan.
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> …
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> (4) A certificate of compliance shall describe the particular proposal or activity and the location concerned and be issued within 20 working days of the receipt by the consent authority of the request, or of further information requested under subsection (2), whichever is the later.
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> (5) A certificate of compliance shall state that the particular proposal or activity was permitted, or could be lawfully carried out without a resource consent, on the date of receipt of the request by the consent authority.
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> (6) Subject to sections 10, 10A, and 20A(2), a certificate of compliance shall be deemed to be an appropriate resource consent issued subject to any conditions specified in the plan, and the provisions of this Act shall apply accordingly, except that, with the exceptions of sections 120, 121, 122, 125, 134, 135, 136, and 137, this Part does not apply.
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> (7) Sections 357A and 357C to 358 apply in relation to an application for a certificate of compliance.

[19] The exceptions referred to at subs (6) concern the right to appeal to the Environment Court against decisions of consent authorities,[12] the definition of the nature of a resource consent,[13] the lapsing of a resource consent,[14] the attachment of land use consents to land,[15] and the transferability of coastal, water and discharge permits.[16] The sections referred to in subs (7) are those allowing applicants to object to consent authorities' decisions and rights of appeal from the decision on those objections.[17]

[20] Section 139(6) was replaced by what is now s 139(10) as part of amendments introduced in 2009 to simplify the legislation. The section now provides:[18]

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12 Resource Management Act, ss 120–121.
13 Section 122.
14 Section 125.
15 Section 134.
16 Sections 135–137.
17 Sections 357A and 357C–358.
18 We note for completeness that subs (9) of the current iteration of s 139 maintains that ss 157A and 357C–358 apply to a request; subs (11) maintains that a certificate treated as a resource consent is subject to ss 10, 10A and 20A(2); and subs (12) maintains the exclusion of ss 120–122, 125 and 134–137.

> (10) A certificate is treated as if it were an appropriate resource consent that—
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> (a) contains the conditions specified in an applicable national environmental standard; and
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> (b) contains the conditions specified in an applicable plan.

The parties agree that for our purposes the 2009 amendments effected no material change.

The Environment Court judgment

[21] The Council moved for declarations to the effect that by reason of excess noise the Association's activities were not a permitted activity, either now or when the certificate of compliance was issued.[19] As noted above, the Court found that the Association did comply with the noise limit when the certificate was sought, so it issued a declaration to that effect. But it concluded that the phrase "within the notional boundary of any dwellinghouse in the Rural Zone" refers to dwellings in existence from time to time.[20] Accordingly, the certificate of compliance does not allow the Association to exceed noise limits at houses built since the certificate was applied for. No declaration to that effect was made, partly because the question whether the certificate had that effect had been raised by the Court itself, in a minute after the hearing.

[22] The Court held that:

> [72] Section 139(6) deems certificates of compliance to be resource consents, "subject to any conditions specified in the plan". However, … certificates of compliance differ from resource consents in that they can neither relieve an activity from any conditions specified in a plan nor impose any new or modified conditions on an activity. As s 139(6) provides (and the name suggests), a certificate of compliance can do no more or less than specify what the plan imposes as the applicable permitted activity conditions.
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> [73] Hence, the Association's Certificate of Compliance does not overtake, nor avoid the need to comply with, Rule 31.11.1.2. Rather, the issue posed by the Court's question turns on the proper interpretation of Rule 31.11.1.2 …

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19 Under ss 310–313.

20 Environment Court judgment, above n 3, at [83].

[23] The Court held that on its true construction r 31.11.1.2 sets a receiving environment standard. A noise limit differs in this respect from site-specific conditions. The receiving environment changes from time to time, to some extent as anticipated by the relevant objectives, policies and rules. Had the rule been intended to protect an incumbent activity from compliance with specified noise limits at dwellings built after the activity began, it would have said so. Instead it uses "activities" and "dwellinghouse" in an unqualified way. Nothing in the wider Plan provisions points to a narrower construction. Rather, the Plan's objectives and policies suggest "an intention to secure a balanced outcome in noise management, according to context".[21]

The High Court judgment

[24] Faced with the risk of the Council taking enforcement action if noise levels measured at post-certificate dwellings exceed the limit, the Association appealed to the High Court. There were two issues: whether the noise condition had been interpreted correctly, and whether the certificate of compliance protected the Association so long as its activity complied with the rule when the certificate was requested.

[25] On the first issue, Mander J agreed with the Environment Court. He acknowledged that the noise limit might become increasingly onerous if the receiving environment changed, but the rule recognises that the receiving environment is dynamic. The reference to "any dwellinghouse" is unqualified and the plan's objectives and policies do not suggest a more restricted meaning.[22]

[26] On the second issue, Mander J held that a certificate of compliance is not the equivalent of a resource consent issued under s 88 of the Act.[23] A resource consent may authorise departure from a plan, and it is granted after a detailed assessment of the merits and circumstances in which competing interests and values are weighed. A certificate of compliance does not employ the same processes and does not authorise any activity that is inconsistent with the plan. The object of s 139 is not

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21 Environment Court judgment, above n 3, at [59].
22 High Court judgment, above n 4, at [32].
23 At [58].

that of deeming a certificate to be a resource consent for all purposes. Rather, it confirms that an activity that has yet to be established complies with the relevant plan, so protecting the holder from changes to the plan after the certificate was sought.

[27] We turn to the questions on appeal. We find it convenient to begin with question (2).

Do post-certificate changes in the receiving environment affect the holder's obligation to abide by noise limits?

[28] Ms Steven QC did not take issue with the High Court's description of the purpose of a certificate of compliance, being "to assess compliance by the activity (usually a future activity) with the plan".[24] She submitted that there is nonetheless uncertainty about the extent to and purpose for which a certificate is to be treated as a resource consent. She contended that the Courts below read down s 139, inconsistently with the judgment of the Planning Tribunal in *Cooke v Auckland City Council* and that of the High Court in *Marlborough District Council v Franklin*, and with the result that a certificate of compliance may be worthless.[25] She submitted, as we understood her, that the certificate is tantamount to a declaration of existing use rights under s 10 of the Act, meaning that it authorises effects of a given character, intensity and scale, and that because these are treated as resource consents, they endure over time. Mander J was wrong to point to the absence of any process for evaluating effects; the activity is permitted, so no such assessment is required.

[29] We begin by noting that a certificate of compliance states that the activity described in it can be done at a particular location without a resource consent, as at the date on which the authority received the request for it. It must be issued within a prescribed time, and it cannot be qualified; the activity is either permitted or it is not. The certificate lapses if not given effect within five years.[26] It is not property, but

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24 High Court judgment, above n 4, at [61].

25 *Cooke v Auckland City Council* (1996) 2 ELRNZ 271 (PT); and *Marlborough District Council v Franklin* [2013] NZHC 1391, [2013] NZRMA 323.

26 Section 125.

certain property rights attach to it,[27] and it is transferrable, in the case of land use, to the owner and occupier of the land for the time being.[28]

[30] A certificate is subject to s 10, which provides that land may be used in a manner that contravenes a rule in a district plan or proposed district plan if it was lawfully established before a specified time and the effects of the use are the same or similar in character, intensity and scale to those existing before that time. The specified time is when the rule became operative[29] or the proposed plan was notified.

[31] Accordingly, a certificate gives the holder a guarantee of land use rights, protected for a time from the effects of changes to the relevant plan. Notably, it takes effect from the date on which it was requested, so protecting the holder from plan changes that otherwise might be notified before the certificate issued. This eliminates a risk that might otherwise attend planned developments, so facilitating investment decisions that must be made before a given use is actually established.[30] Protection beyond the statutory life of five years depends on the certificate being given effect to, which can only mean that the use must have been established within that period.

[32] That this is the point of a certificate of compliance is confirmed by a report by Antony Hearn QC, which was commissioned in August 1986 by the Government as a review of the Town and Country Planning Act 1977.[31] He referred to cases in which plan changes had been notified after a local authority had learned of a proposed development,[32] and recommended that the legislation allow any person "proposing to put land … to any use or to carry out any development or erect any building" to apply for a certificate, which should take effect from the date it was requested and subsist for the life of a building permit (two years).[33]

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27 Section 122.

28 Section 134.

29 As to which, see s 86B, inserted into the Resource Management Act by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

30 *Culpan v Vose* (1993) 1A ELRNZ 331 (PT) at 334.

31 Antony Hearn *Review of the Town and Country Planning Act 1977* (Department of Trade and Industry, August 1987) at 44–46.

32 *Northern Contractors Ltd v Mount Eden Borough Council* (1985) 11 NZTPA 151 (PT); and *Ackmead Holdings v Auckland City Council* (1985) 11 NZTPA 59 (HC).

33 Hearn, above n 31, at 45. This proposal was carried forward without significant comment into the Resource Management Act as enacted.

[33] To explain this is to answer Ms Steven's submission that if the Courts below are correct a certificate means little to a holder whose use was already established when the certificate was requested. Certificates are aimed at uses not yet established. We note that this is not to assume that they offer no utility at all for those who enjoy existing use rights. There may be circumstances in which official confirmation that an existing use is permitted has some value.

[34] The legislation stated that a certificate was deemed to be an appropriate resource consent, but it immediately went on to specify that only prescribed sections of pt 6 apply to it. (As noted, it is now expressed differently but its effect has not changed.) We have mentioned those provisions at [19] above. None of the Act's provisions for notification, hearings and decisions on resource consents apply;[34] in particular, there is no provision ensuring decision-makers have regard to adverse effects of the activity on the environment, or for the imposition of conditions intended to limit adverse effects. Nor can the holder of a certificate invoke s 319(2) in answer to an application for an enforcement order, to which it is a defence that the defendant is acting under a resource consent and the effects concerned were expressly recognised by the person granting it.

[35] Ms Steven sought to explain this by pointing out that a certificate may be issued only if the activity complies with the plan at the relevant date. But at the heart of the Association's case lies the proposition that the certificate added to its existing use rights by exempting it from compliance with a rule that was already in effect. Processes like those surrounding resource consents would have been employed had it been intended that a certificate of compliance would excuse the holder from compliance with existing rules.

[36] That leads us to observe further that the Association's argument is positively inconsistent with s 10, to which certificates are expressly subject. Under s 10 a given use is not protected from a rule that became operative before the use was established.[35]

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[34] See ss 93–95, 100–103 and 104–104D respectively. These provisions are also found in pt 6.

[35] As to which, see *Rodney District Council v Eyres Eco-Park Ltd* [2007] NZRMA 320 (CA) at [14].

[37] The authorities cited by counsel do not advance the Association's case. Notably, *Cooke v Auckland City Council* establishes only that but for the deeming provisions of s 139 a certificate would not be a resource consent and the legislation lists all the ways in which it is to be treated as one.[36] *Marlborough District Council v Franklin* concerned existing use certificates, which are issued under s 139A, and it dealt with an existing use that had allegedly been discontinued. It establishes relevantly that existing use rights may be exercised so long as s 10 is complied with, regardless of any existing use certificate.[37] The same is true of a certificate of compliance.

[38] This is a convenient point to emphasise that we express no view about any existing use rights the Association may enjoy vis-à-vis the noise rule. The use is long-established — indeed, the Association formerly enjoyed the protection of a resource consent — but as noted at [14] above it appears the use may now be significantly more intensive than it once was.

[39] These matters of statutory interpretation having been addressed, it can now be seen that the appeal turns on the meaning of the noise rule; specifically, whether it is ambulatory in the sense that it requires compliance at dwellings built since the use was established. This is a question of construction and it is properly framed by reference to the date when the existing use was established. As explained, the certificate establishes only that the use complied in fact at a given date, in the environment as it was at that time.

Does r 31.11.1.2 require compliance with the noise limit at any dwellinghouse in the Rural Zone from time to time, whether or not it had been built when the permitted activity was established?

[40] We can answer this question quite shortly, for we agree with the Courts below and substantially for the same reasons.

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36 *Cooke v Auckland City Council*, above n 25.

37 *Marlborough District Council v Franklin*, above n 25, at [47].

[41] Ms Steven drew attention to leading authorities on the interpretation of a planning instrument.[38] She submitted that words should be given their plain ordinary meaning unless that is plainly contrary to a relevant purpose or otherwise results in absurdity or anomaly. Interpretation should reflect expectations of property owners, interfering with their rights only where the plan clearly authorises it, and it should recognise implications for practical administration at council level. It cannot be the case that the status of an existing and permitted activity is now contingent on the happening of an external event. That would be incompatible with expectations established when the permitted activity was established.

[42] Counsel acknowledged that the noise rule uses "any" in an apparently unqualified way, but pointed out that the word is ambiguous; it may mean "every" or "a" depending on the context. The rule clearly means to regulate effects at an existing dwelling in sufficiently close proximity to the noisy activity. Had the Council intended to protect future dwellings it could have done so by requiring compliance at the site boundary. In any event, clear words would be required. The Courts below were too much influenced by *Queenstown Lakes District Council v Hawthorn Estates Ltd*, in which this Court considered a resource consent application that would permit subdivision in an area affected by multiple consents that had been granted but not yet implemented.[39] This Court held that when considering the actual and potential environmental effects of a proposed activity, it is permissible — and may be necessary — to consider the future state of the environment.[40] Finally, she submitted that the interpretation adopted in the Courts below would require the Council to monitor continuously all permitted activities and require resource consents should a rule be breached through some change in the receiving environment.

[43] We accept that "any", which here serves as an adjective, can mean "one", "a number of", or "every", depending on context,[41] but that suggests a degree of

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38 *Powell v Dunedin City Council* [2004] 3 NZLR 721 (CA) and *Nanden v Wellington City Council* [2000] NZRMA 562 (HC).

39 *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299 (CA).

40 At [57].

41 "Adj… **a.** one, no matter which, of several … **b.** some, no matter how much or many or of what sort": Tony Deverson and Graeme Kennedy (eds) *The New Zealand Oxford Dictionary* (Oxford University Press, Melbourne, 2008) at 44, definition of "any".

ambiguity that the noise rule does not actually exhibit. The rule manifestly does not speak of a single dwelling when it refers to noise measured at "…any dwellinghouse in the Rural Zone". Nor does it require measurement at every dwelling in the entire Zone. Rather, it permits measurement at every dwelling in the Zone that may be affected by noise from a given activity. The real question is whether the rule insists on measurement only at dwellings that were in the Zone when the use was established or permits measurement at dwellings erected since then.

[44] The question must be answered by interpreting the Plan as a whole. Several points should be made. First, by its very nature the noise rule requires that continuing compliance may require measurement from time to time; that is so because noise may vary in character, level, timing and persistence. In this respect the rule differs from others, such as those relating to building setbacks, for which compliance need be checked only once, when the activity is established. Property owners must be taken to understand that there is a continuing obligation to comply.

[45] Second, as noted earlier the noise rule exists to regulate noise that adversely affects amenity values and health and safety of people on neighbouring sites. It recognises that the Council need not control noise at the boundary of two rural sites, and further that to do so would be to inhibit the dominant activity, farming, which is relatively but sporadically noisy. The Plan accordingly focuses on dwellinghouses, aiming to control noise in the places where people live and sleep. It achieves a balancing of interests under which activities may take advantage of the absence of near neighbours, but only while that situation continues.

[46] Third, specified activities, notably farming, are exempt, meaning that the rule is not breached by such activities even if noise measured at a dwelling in the Zone exceeds the limits. The Association's use is not exempt.

[47] Fourth, the Plan recognises that the receiving environment may change because new dwellings are erected in the Zone. Mr Schulte pointed out that a dwelling is a permitted activity on any allotment greater than four ha in size.

[48] Against this background we do not find the rule ambiguous. We agree with the Courts below that if the Plan meant to protect a given non-exempt use from changes in the receiving environment it must have said so clearly. Otherwise the natural meaning of the rule is that compliance may be measured at any dwelling in the Zone, whenever built. It follows that no question arises of assessing future compliance with the noise rule when issuing a certificate of consent, for the certificate does not protect the holder from changes in the receiving environment.[42] Nor does the rule impose an unlawful contingent condition on a permitted use.[43]

[49] We record finally that the Association's concern about practicalities of administration is not shared by the Council, for which noise monitoring is an activity undertaken as needed.

Decision

[50] We answer the questions of law as follows:

(1) Does rule 31.11.1.2 of the Waimakariri District Plan require compliance with specified noise limits at the notional boundary of any dwellinghouse in the Rural Zone in existence from time to time, notwithstanding that the dwellinghouse was not in existence at the time the permitted activity was established?

Answer: Yes.

(2) Where a certificate of compliance has been issued under s 139 of the Resource Management Act, is the holder of the certificate subject to a continuing obligation to abide by the noise limitations specified in rule 31.11.1.2, notwithstanding the changing surrounding physical environment?

Answer: Yes.

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[42] Compare *Queenstown Lakes District Council v Hawthorn Estate Ltd*, above n 39.
[43] Compare *Western Bay of Plenty District Council v Muir* (2000) 6 ELRNZ 170 (HC).

[51] The Council has succeeded in the result. However, Mr Schulte did not seek costs.

Solicitors:
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Cavell Leitch, Christchurch for Respondent