

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER of an appeal under cl 14 of Schedule 1 to
the Resource Management Act 1991

BETWEEN M AND S SMITH
(ENV-2019-AKL-000167)
Appellants

AND WESTERN BAY OF PLENTY
DISTRICT COUNCIL
Respondent

Court: Environment Judge J A Smith sitting alone under s 279 of the
Act

Date of Order: 19 March 2021

Date of Issue: 19 March 2021

CONSENT ORDER

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

- (1) the appeal is allowed subject to the amendments set out in this order;
- (2) the appeal is otherwise dismissed.

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



REASONS

Introduction

[1] This appeal concerns Western Bay of Plenty District Council's decisions on Proposed Plan Change 81 (Ōmokoroa Industrial Zone Review) to the Western Bay of Plenty District Plan (**Plan Change 81**). Plan Change 81 proposes amendments to the existing Industrial Zoned land situated on the right hand side of Ōmokoroa Road, just off State Highway 2.

[2] Michael and Sandra Smith have appealed the Council's decisions on Plan Change 81.

[3] The Appeal seeks amendments to ensure that appropriate access is provided for existing Future Urban zoned properties adjacent to the Industrial zone, and appropriate provisions to address roading, transportation and amenity considerations in order to address the potential effects of the Industrial zone on landowners in the existing Future Urban zone.

[4] The parties have agreed that the Appeal can be resolved in its entirety by making the following amendments to Plan Change 81:

- 4.1 Amending Section 4C.1.3.2(b) Noise limits to provide new (more restrictive) limits in relation to the Ōmokoroa Light Industrial Zone;
- 4.2 Amending Section 4C.5.3.2 to provide further clarification regarding screening within the Ōmokoroa Industrial zone, and provision for fencing, yards and planting for the private right of way boundary with the Industrial zone and where it crosses the Industrial zone;
- 4.3 Providing further clarification in relation to permitted activities and providing for a new non-complying activity (waste management) within the proposed new Ōmokoroa Light Industrial zone;
- 4.4 Amending Section 21.4.1(c) to provide for measures to address visual amenity for the Spine Road;



- 4.5 Amending the Section 21.4.1(a) height and daylighting requirements to provide a 9m height restriction for the Ōmokoroa Light Industry zone;
- 4.6 Amending the yard requirements in Section 21.4.1(b) to provide appropriate requirements for the Ōmokoroa Light Industry zone;
- 4.7 Restrict access off Ōmokoroa Road in Section 12.4.4.4 and alignment of lot boundaries with Zone boundaries in Section 12.4.11.6;
- 4.8 Amending Maps U65 and U66 to refer to “Landscape Strip” rather than “Buffer” to ensure consistency with the related performance standards; and
- 4.9 Amending Map U66 to provide for the rezoning of the “triangle” shaped piece of land which includes the private right of way (being part of Lot 3 DP526609) from Industrial to Future Urban zoning.

Other relevant matters

[5] Timothy Laing, Louise Laing and Janine Birch have given notice of an intention to become parties under s 274 of the Act and have signed the memorandum setting out the relief sought.

[6] In making this order the Court has read and considered the appeal and the joint memorandum of the parties dated 3 February 2021.

Orders

[7] 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 pursuant to section 297. The Court understands for present purposes that:

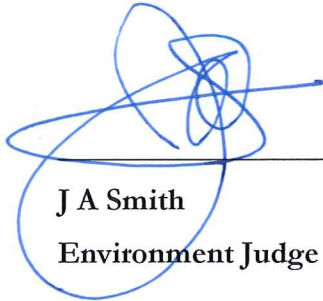
- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court’s endorsement fall within the Court’s jurisdiction, and conform to the

relevant requirements and objectives of the Act including, in particular, Part 2.

[8] Therefore, the Court orders, by consent, that Proposed Plan Change 81 (Ōmokoroa Industrial Zone Review) is amended as shown in **Appendix A** of this order.

[9] A clean version is included in **Appendix B**.

[10] There is no order for costs.



J A Smith
Environment Judge



APPENDIX A – tracking in underline and ~~strikethrough~~

1. **4C.1.3.2(b): Noise limits for activities in Industrial and Commercial Zones**

Insert a new table as follows:

Omokoroa Light Industrial Zone

Time Period		Sound Level Not to be Exceeded	
Day	Hours	Leq	Lmax
<u>Monday to Friday</u>	<u>7am to 8pm</u>	55dBA	N/A
<u>Saturday, Sunday and Public Holidays</u>	9am to 6pm	55dBA	N/A
At all other times		45dBA	<u>65dBA</u>

2. **4C.5.3.2: Screening in Industrial and Commercial Zones**

(d) Omokoroa Industrial Zone

(i) A 10m minimum width landscape strip shall be provided along the perimeter of the Industrial Zone or adjacent to Omokoroa, Hamurana and Francis Road as shown in the ~~Omokoroa Stage 2 Structure Plan maps and on District Plan Maps U65 and U66~~. The landscape strip is to be at least 10m wide and densely planted and maintained with evergreen plants, with a minimum height of 1.2m at the time of planting and 8m at maturity;

To avoid doubt:

- The 10m landscape strip on the Zone boundary is not included in the 50m measurement of the Omokoroa Light Industry Zone (see also Map U66).
- The landscape strip shall be occupied and used only for the purposes of landscaping and screening and shall not be occupied by or used for any building or structure, signage, infrastructure, public road, private way, vehicle parking or manoeuvring, nor by any type of storage whether temporary or permanent.

(ii):

~~"A 10m planted median within the road reserve of the road leading east off the Francis Road roundabout and vested in Council shall be provided in Lot 2 DPS 68390. Such planting shall be in evergreen~~

trees with an average height of at least 5m and a height at maturity of at least 10m and be sufficient to screen industrial development within Lots 2 DPS 68390 and Pt Lot 4 DPS 72370 from State Highway 2;”

“Lots adjoining the spine road leading east off the first intersection along Omokoroa Road from the State Highway shall provide landscaping in accordance with 4C.5.3.1(a)(ii) and (iii), and 4C.5.3.1(b).”

“(iii) Use or development of Lot 2 DP 483735 or Lots 1 and 2 DPS 68390 shall only occur after landscaping planting described in (i) above has been planted with respect to the lot being used or developed.”

- (iv) For the boundary with the ROW serving 467 B, C, D and E Omokoroa Road, the yard shall consist of
- a close boarded timber fence (minimum of 1.8m high and of consistent design for the length of the ROW) on the Industrial Zone side of the boundary, and to be maintained in good order.
 - A minimum 5m depth of planting on the Industrial Zone side of the fence, as measured from the boundary with the ROW. A landscape plan shall be submitted for Council’s consideration in accordance with 4C.5.3.1(a)(ii), and 4C.5.3.1(b).

Except that for where the ROW bisects the Industrial Zone, the parts of the ROW between the fence and the formed ROW shall be landscaped with amenity and screening planting that achieves 3 m in depth and 2m in height and shall be indicated in the landscape plan.

3. 21.3: Industrial Zone Activity Lists

21.3.1 Permitted Activities

- 6.3 Storage, warehousing, coolstores and packhouses (excluding warehousing, coolstores and packhouses, and storage and disposal of solid waste in the Omokoroa Light Industrial Zone).

...

(q) Green waste and waste recycling facilities where these occur within buildings (i.e. are enclosed) (except within the Omokoroa Light Industrial Zone)

21.3.12 Non-Complying Activities

...

(e) Waste Management Activities (transfer stations, compost sites, landfills, recycling operations, green waste, and waste recycling facilities, etc) within the Omokoroa Light Industry Zone.

4. **21.4.1(c): Visual amenity – Streetscene**

...

- The industrial road (Spine Road) on the right hand side off the first intersection along Omokoroa Road from the State highway (see Appendix 7, 4.8 Omokoroa Industrial Road Cross-section).

5. **21.4.1 (a): Height and daylighting**

(a) Height and daylighting Maximum height of all buildings/structures - 20m except in the following areas:

- Omokoroa Light Industry Zone – 9m

- Te Puna Business Park – 9m ...

6. **21.4.1(b): Yards**

All buildings/structures

Minimum 3m where a property adjoins a Residential, Rural Residential, Future Urban or Rural Zone or reserve ...

Except that

“ – Omokoroa Light Industry Zone specific provisions:

Minimum 5m reduced to 3m (as measured from the internal boundary of the landscape strip) with the provision of a solid fence at least 1.8m high.

For the boundary with the ROW serving 467 B, C, D and E Omokoroa Road, the yard shall be 5m (see also 4C.5.3.2(d)(4)).

The yard shall not be used for the storage of any material that is more than 3 m high.

7. **12.4 Activity Performance Standards
(Subdivision)**

(c) Access on to Omokoroa Road (Future Urban, industrial and Residential Zones), ...

12.4.4.4 Property Access

- (i) The number or potential number of *dwelling*s or other activities gaining direct access to these roads shall not be increased. On subdivision or *development*, Council may apply a segregation strip to the certificate of title to ensure that access is gained from elsewhere in the Zone;
- (ii) The number of new roads intersecting with these roads shall be minimised and the minimum separation distances from other intersections shall be 150m for both same side and alternative side spacing.
- (iii) Access to/from Lot 2 DP483735 (and all future lots derived from this parent title) shall only be via the proposed Spine road off Omokoroa Road as shown on the Structure Plan.

Provided that:

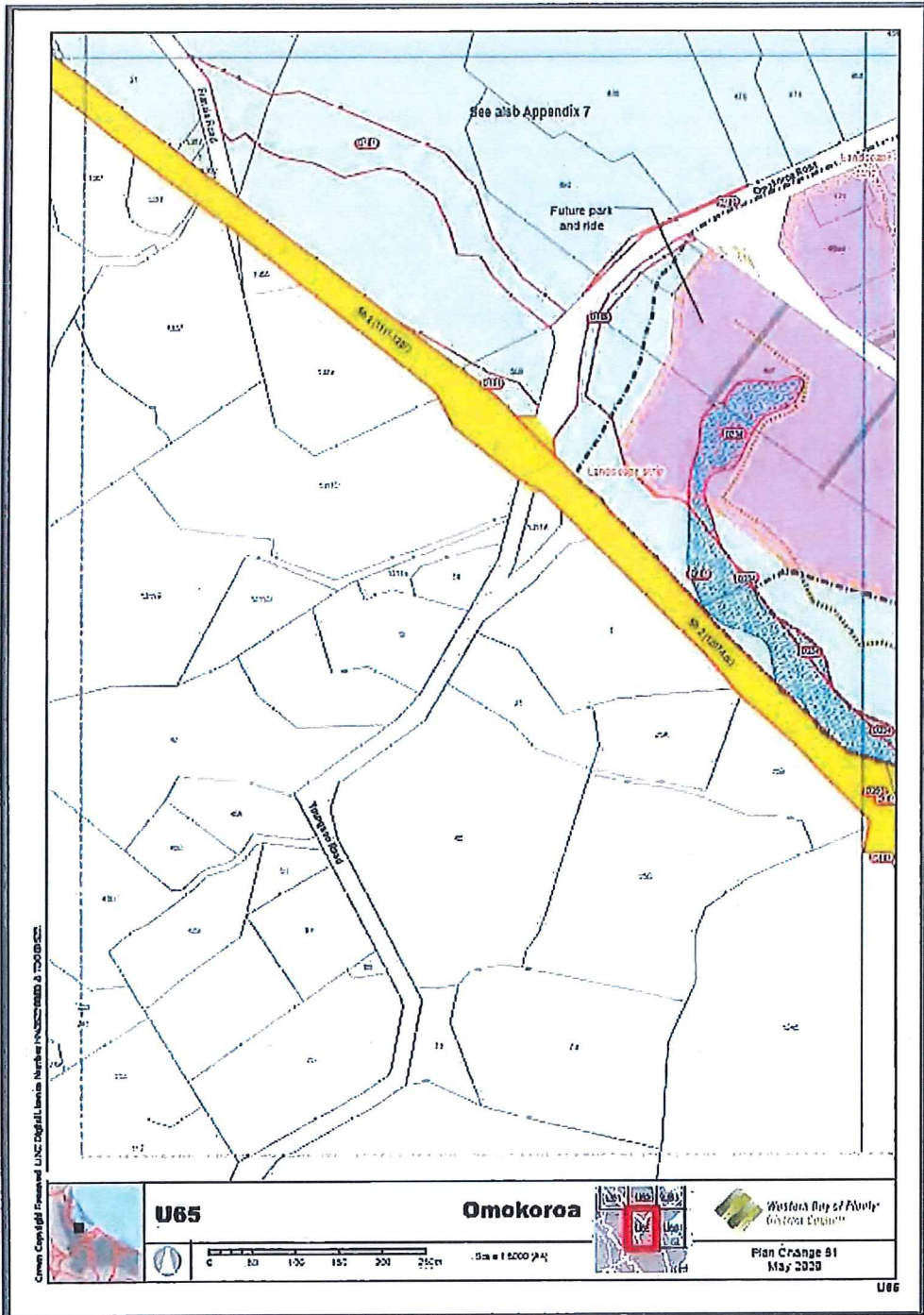
For Omokoroa Structure Plan Areas Stages 1 and 2, the number and location of new street intersections are shown on the *Structure Plans*.

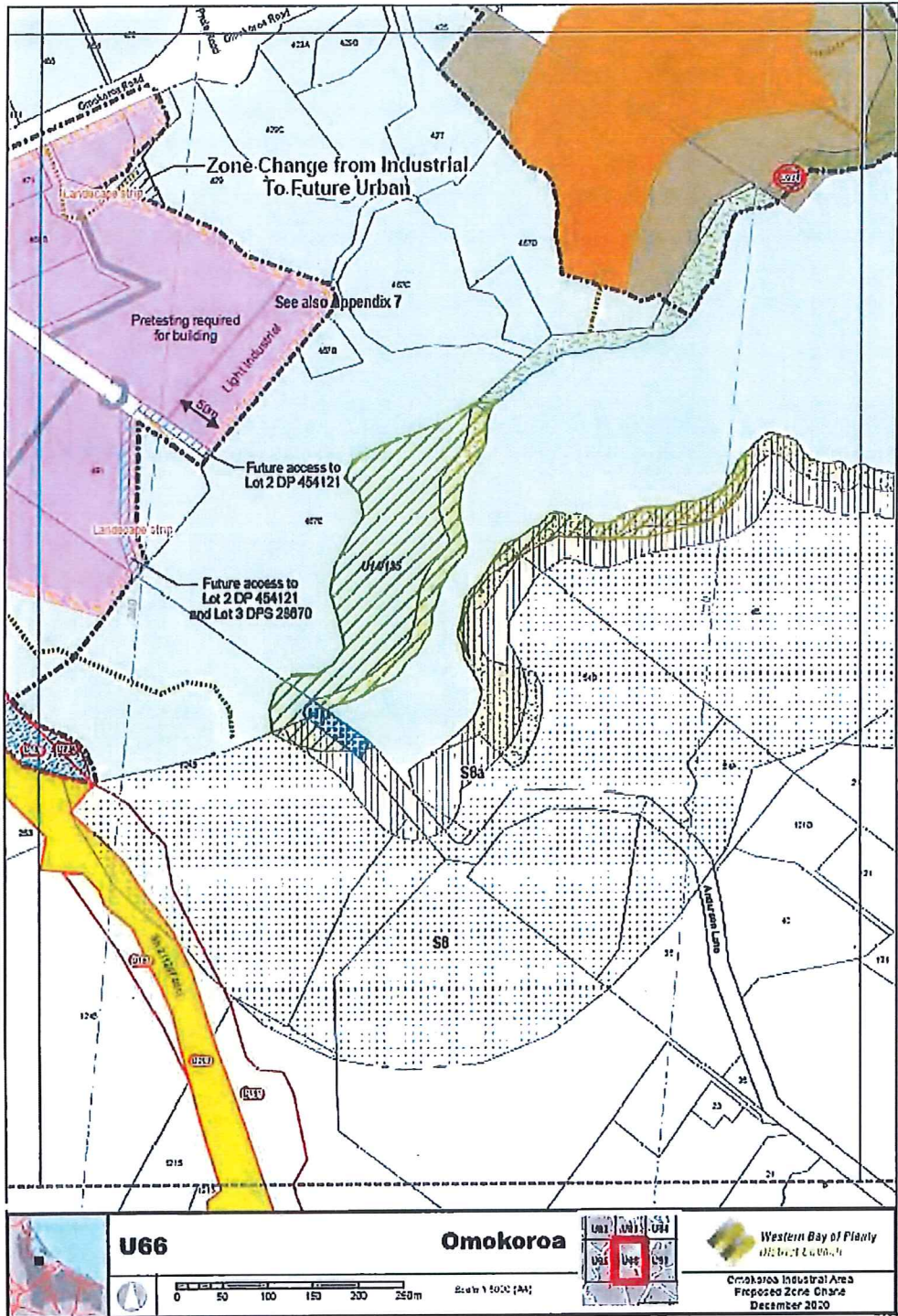
12.4.11.6 Omokoroa Light Industry Zone

Proposed lot boundaries shall align with the boundary between the Omokoroa Industry Zone and Omokoroa Light Industry Zone and not straddle it.

8. **District Plan Maps**

Replace the District Plan Maps U65 and U66 with the following maps (refer next page):





APPENDIX B – Clean Version

4C.1.3.2(b): Noise limits for activities in Industrial and Commercial Zones

...

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To avoid doubt:

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- *The landscape strip shall be occupied and used only for the purposes of landscaping and screening and shall not be occupied by or used for any building or structure, signage, infrastructure, public road, private way, vehicle parking or*

manoeuvring, nor by any type of storage whether temporary or permanent.

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District Plan Maps

