



*Western Bay of Plenty
District Council*

Change to the District Plan - First Review

Plan Change 88

Noise Standards Within Industrial Zones

Section 32 Report



1.0 Introduction

1.1. General Introduction and Background

The purpose of this report is to consider a plan change to include standards within the District Plan for noise generated and received within the Industrial Zone.

2.0 Resource Management Act 1991

2.1. Section 32 – Requirements for Preparing Evaluation Reports

Before a proposed plan change can be publicly notified the Council is required under section 32 ("s.32") of the Resource Management Act 1991 ('the Act' or 'RMA') to carry out an evaluation of alternatives, costs and benefits of the proposal. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- (1) An evaluation report required under this Act must—*
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) summarising the reasons for deciding on the provisions; and*
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*

- (2) An assessment under subsection (1)(b)(ii) must—*
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) economic growth that are anticipated to be provided or reduced; and*
 - (ii) employment that are anticipated to be provided or reduced; and*
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

- (3) If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—*
 - (a) the provisions and objectives of the amending proposal; and*
 - (b) the objectives of the existing proposal to the extent that those objectives—*
 - (i) are relevant to the objectives of the amending proposal; and*
 - (ii) would remain if the amending proposal were to take effect.*

(4) *If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.*

(4A) *If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must—*

- (a) *summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and*
- (b) *summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.*

2.2. Section 74 – Iwi Management Plans

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority that has been lodged with Council. None of the iwi/hapu management plans lodged with Council raise any issues of particular relevance to this Plan Change.

2.3. Clause 3 of Schedule 1 - Consultation

Clause 3(1) of Schedule 1 of the RMA requires the Council to consult the following during the preparation of a proposed plan:

- a. The Minister for the Environment;
- b. Other Ministers of the Crown who may be affected;
- c. Local authorities who may be affected;
- d. Tangata Whenua of the area who may be affected (through iwi authorities); and
- e. Any customary marine title group in the area.

Information was provided to the Minister for the Environment on a range of proposed plan changes and feedback was requested. No feedback has been received.

No other Ministers of the Crown or local authorities are considered affected by this proposed plan change. Nevertheless, the Bay of Plenty Regional Council has been consulted and they identified no issues with the proposed change. No marine title groups are considered affected.

Under Clause 3B of Schedule 1, with respect to Tangata Whenua, the Council is treated as having consulted iwi authorities if it:

- (a) *considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and*
- (b) *establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and*
- (c) *consults with those iwi authorities; and*
- (d) *enables those iwi authorities to identify resource management issues of concern to them; and*

(e) indicates how those issues have been or are to be addressed.

Tangata Whenua have been consulted through the Tauranga Moana and Te Arawa ki Tai Partnership Forum on 14 March 2019 and 25 June 2019. No feedback was provided in relation to this proposed plan change.

In addition, the Council engaged with the public to request input prior to the writing of this report. This was done through notices in local newspapers and the Council's 'Have Your Say' website.

Two people provided feedback on this topic, and both considered there should be standards within the District plan to limit noise between properties located within the Industrial Zone.

One person raised concern about bird scaring devices operating at orchards through the night, and the potential impact they have on shift workers who sleep throughout the day, children, and animals. Although these concerns are acknowledged, the issue of noise from bird scaring devices is not related to noise within the Industrial Zones. In addition, these devices are subject to specific rules within the District Plan, which the Council has provided direction to retain unchanged for the time being.

It is also noted, for completeness, that bird scaring devices are only permitted to operate from half an hour before sunrise to half an hour after sunset. Any operation outside of these hours is considered to be a non-compliance with the rules of the District Plan, which are able to be enforced by Council's compliance staff.

The second person raised concern about the expanding kiwifruit industry and the potential noise impacts on established urban centres.

Council also engaged with the following groups and stakeholders on a range of proposed plan changes:

- a. Representatives of the kiwifruit industry through NZKGI;
- b. New Zealand Transport Agency ('the Agency'); and
- c. Toi Te Ora Public Health.

No specific issues were raised by any of these stakeholders regarding this proposed plan change.

3.0 Issue 1 – Noise within Industrial Zones

3.1. Introduction

Under the current District Plan, noise rules for the Industrial Zone relate to the level of noise experienced in other adjoining land use zones that are potentially more sensitive to the effects of noise (e.g. Residential Zone and Rural Zone). However, there are no rules within the District Plan to limit the effects of noise within the Industrial Zone itself (i.e. from one industrial property to another). Noise emitted in the Industrial Zones has caused

some concern within the District, and there is potential for adverse effects on people and their health and safety if noise is not managed adequately.

3.2. Research & Analysis

A review of other District Plans from around New Zealand shows that there is a mixed approach to noise limits within the Industrial Zones. While some councils have rules limiting noise within their Industrial Zones, others do not. Those that do have rules restricting the amount of noise that can be produced within the Industrial Zone typically have an Leq noise limit (i.e. average sound level) of 65dBA Leq or 75dBA Leq. Some councils also include an Lmax noise limit (i.e. the highest level of noise) of 85dBA Lmax. In addition, some councils have lower noise levels for night time hours.

Worksafe also controls noise levels to protect the health and safety of people at work. Under health and safety laws, workers must not be exposed to noise levels equivalent to 85 dBA (averaged over an 8 hour period) or a peak noise level of 140 dBA.

Further to this, the New Zealand Standard for Acoustics – Environmental Noise (NZS 6802:2008) includes guidelines for the protection of health and amenity. For the protection of the amenity values within heavy industry zones the guideline suggests that a limit of 75dBA Leq may be appropriate as an intra-zone noise limit (i.e. between properties within the industrial zone). The guideline also states that it may be appropriate for there to be no noise limits within industrial areas where there are similar activities in an industrial zone, but that differing levels of activity may require different levels of protection (e.g. administrative offices associated with industrial activities).

Initial noise monitoring undertaken by Council staff suggests that a lower noise level would be more appropriate in the Western Bay of Plenty district than the 75dBA Leq suggested in NZS 6802:2008 for heavy industrial zones.

3.3. Option 1 – Status Quo – No noise limits within the Industrial Zone

This option is to retain the existing rules without change. Existing rules limit the amount of noise produced in an Industrial Zone that can be experienced in other zones (e.g. Residential Zone and Rural Zone). However, the existing rules do not restrict the level of noise that can be experienced within the Industrial Zone itself (i.e. from one industrial property to another).

Costs	<ul style="list-style-type: none"> ▪ May not adequately protect some people within the industrial zone from the adverse effects of noise in some cases. ▪ Without noise restrictions in place, the obligation for industrial operators to manage their noise is unclear. This causes issues in terms of the general duty under section 16 of the RMA that there is a need to adopt the best practicable option to avoid unreasonable noise. ▪ It also causes potential issues for complying with Worksafe requirements if neighbouring sites (and their workers) are
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	subject to noise levels exceeding the prescribed limits under health and safety legislation.
Benefits	<ul style="list-style-type: none"> ▪ Would benefit industrial operators that undertake particularly noisy activities and/or where noisy activities occur without noise attenuation. ▪ Industrial operators would continue to be allowed to operate without restrictions on noise produced within the Industrial Zone.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Not an effective or efficient in addressing the identified issue.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

3.4. Option 2 – Plan Change to include noise limits and associated provisions within the Industrial Zone

This option is to include rules in the District Plan to limit the amount of noise that can be produced and received within the Industrial Zone (i.e. from one industrial property to another). Changes are also proposed to the 'Significant Issues' in Section 4C.1.1 of the District Plan regarding noise, and consequential changes are proposed to the policies in Section 4C.1.2.2

Costs	<ul style="list-style-type: none"> ▪ May result in additional constraints for operators of industrial activities.
Benefits	<ul style="list-style-type: none"> ▪ Addresses the issue that noise produced and received within the Industrial Zone has the potential for adverse effects and that there is a need to manage activities to ensure unreasonable effects of noise are avoided. ▪ A noise limit would protect people within the Industrial Zone from the adverse effects of noise. ▪ Noise limits within the Industrial Zone would mean that industrial operators would need to design and operate their businesses to manage noise appropriately. This would also ensure the ability of neighbouring properties to meet Worksafe obligations is not compromised by third parties. ▪ A minor change to Policy 3 in Section 4C.1.2.2 highlights the need to consider other relevant legislation (such as the Health and Safety at Work Act) when setting noise limits and considering consent applications.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ The inclusion of noise standards within the Industrial Zone is considered to be an effective and efficient method for addressing the identified issue.
Risks of Acting/ Not Acting if there is uncertain or insufficient information	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

information about the subject matter	
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3.5. Preferred Option

The preferred option is Option 2:

(a) Amend the Significant Issues in Section 4C.1.1 to read as follows:

4C.1.1 Significant Issues

...
3. The potential for ~~Permitted Activities~~ activities within one zone to generate noise which detracts from the existing amenity of nearby zones.

...
5. The potential for noise emissions within the Industrial Zone to adversely affect the health and safety of people within and adjacent to that zone.

(b) Amend Policy 3 in Section 4C.1.2.2 to read:

3. Have regard to any relevant New Zealand legislation, standards, guidelines, ~~or and~~ codes of practice, in the assessment of applications for resource consents.

(c) Amend Rule 4C.1.3.2(b) – Noise limits for activities in Industrial and Commercial Zones to include new clause (ii) as follows:

(i) All activities located within Industrial Zones shall be so conducted as to ensure that noise from the site shall not exceed the following noise limits within the stated timeframes at any point within the boundary of any other property within an Industrial Zone:

Time Period	Sound Level Not to be Exceeded	
	<i>Leg</i>	<i>Lmax</i>
Day time 7am – 10pm	60dBA	N/A
Night time 10pm – 7am	45dBA	70dBA

3.6. Reasons

The preferred option is Option 2 as it addresses the identified issue and would ensure that effects on people’s health and safety as a result of noise are better managed. In addition, the inclusion of noise standards within the Industrial Zones makes it clear that industrial operators have a responsibility to ensure they do not generate unreasonable noise.