

NELSON CITY COUNCIL

Nelson Resource Management Plan

Proposed Plan Change 16

Inner City Noise

**Planning Officers Report - Addressing Submissions
on the Plan Change prior to Hearing**

Date of hearing
2 May 2014

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Related Documents

Plan Change 16: Proposed Plan Amendments
Plan Change 16: Section 32 Report
Plan Change 16: Full copy of submissions
Plan Change 16: Summary of Decisions Requested
These documents are available online at: www.nelsoncitycouncil.co.nz or by contacting Council on 03 5460200

PART A

PROPOSED PLAN CHANGE 16 – Inner City Noise

1. INTRODUCTION

Reporting Officer

- 1.1. My name is Reuben Dale Peterson. I am employed by Nelson City Council in the role of Planning Adviser. I have been with the Council for 10 years, four as a Consents Planner and the remainder in my current role.
- 1.2. I have a Bachelor of Resource Studies (Hons) from Lincoln University.
- 1.3. Through developing the proposed Plan Change, Council has employed professional expertise from Malcolm Hunt (Malcolm Hunt Associates), and Gary Rae (Incite Resource and Environmental Management) in the early stages of the project, and Keith Ballagh (Marshall Day Acoustics) for the remainder of the project. Keith Ballagh has contributed to the Officers Report and will be in attendance at the hearing.
- 1.4. Also available at the hearing is Bob Askew, of Environmental Inspections Limited, Council's enforcement contractors responsible for noise enforcement and Matt Heale, Nelson City Council's Principal Planner.

Purpose of this Officer Report

- 1.5. This Officer's Report has been prepared under Section 42A of the Resource Management Act 1991 (RMA) to assist:
 - the Hearing Committee in making its decisions on the submissions and further submissions to Proposed Plan Change 16 – 'Inner City Noise' to the Nelson Resource Management Plan (the Plan), and
 - the submitters and further submitters who requested to be heard, by providing, prior to the hearing, a staff evaluation and recommendation of decisions requested in submissions.
- 1.6. The evaluations and recommendations presented in the report are based on the information available prior to the hearing, including that contained in the submissions and further submissions. In evaluating the submissions and further submissions, the matters considered include whether a decision requested:
 - falls within the functions of Nelson City Council under the RMA;
 - will enhance the ability of the Plan to achieve the purpose of the RMA;
 - will improve a policy, rule or other method so that it is more efficient and effective for achieving the relevant objectives;
 - will improve the Plan in relation to such matters as its lawfulness, clarity, accuracy, effectiveness, and coherence.
 - falls within the scope of the Proposed Plan Change.

Structure of Report

1.7. The report is divided into the following sections:

Part A

- Introduction
- Background and Consultation
- Overview of Proposed Plan Change
- Notification, Submissions and Further Submissions
- Structure of Assessment of Issues
- Synopsis of Responses to Common Submission Issues
- Statutory Consideration
- Conclusion

Part B

- Submitter Index
- Recommendations on submissions

Part C

- Recommended amendments to notified Plan Change.

2. BACKGROUND AND CONSULTATION

Background

- 2.1. The issues relating to noise in the inner city, particularly at night time, have been the subject of complaint through the years. The complaints have primarily been from occupiers of residential dwellings in both the surrounding Residential Zone and within the Inner City Zone. These complaints are made due to the impact of noise on the amenity levels that people expect to receive in their living (and particularly sleeping) environments.
- 2.2. In relation to this issue, monitoring of noise levels has been carried out at various locations in the city centre and surrounding areas in March and April 2009. Noise levels have also been measured periodically over a number of years and have regularly been carried out for the purposes of enforcement. These periods of monitoring and recording noise levels have shown that at times noise levels exceed those specified in the operative Nelson Resource Management Plan.
- 2.3. The noise issue also relates to enforcement of the current operative noise rules, with particular reference to rule ICr.42 'Noise'. This requires noise to be measured '*...at, or as close as practicable to, the boundary of any site...*' and for specified levels not to be exceeded. Experience shows that this is difficult to monitor and enforce due to contamination from adjacent noise sources and from the high ambient noise levels on the street. Ultimately Nelson City Council enforcement officers were relying on enforcing compliance with rule ICr.43 'Noise – At residential boundary'. This rule sets limits for the noise produced in the Inner City Zone but received at sites within the Residential Zone.

- 2.4. This approach was the subject of the Environment Court decision number C9/2006, Env C 70/05, 30 Jan 2006. The Court found that the Council should be enforcing the Plan rule at the boundary of the property emitting the noise (ICr.42) regardless of whether or not there was compliance at residentially zoned sites under rule ICr.43. As noted above rule ICr.42 is not able to be practicably enforced in many situations. This is a resource management issue due to the inability to use this method to achieve the objectives of the Plan and the purpose and principles of the RMA.
- 2.5. Ensuring the management of noise to maintain a range of activities which enhance the vitality and vibrancy of the City Centre is also part of the resource management issue. This goal is outlined in the vision statement for this Plan Change, the Objectives and Policies for the Inner City Zone and is also set out in Council Central City Strategy 'Heart of Nelson'. In addition, there is a desire of owners and operators of premises that produce noise to continue to do so as an integral part of their business.

Consultation

- 2.6. In addition to the ongoing availability of Council Officers to discuss the issue and proposed Plan Change, the consultation outlined in the table below has been carried out. The initial consultation has helped to inform the noise issue and develop the proposed Plan Change provisions to a point where wider public comment could be sought on specific draft Plan Change provisions. Comment was sought on these specific draft Plan Change provisions in late 2012 and a working group consisting of Councillors was formed to consider and respond to the feedback received. The working group also oversaw the development of the Plan Change to a point where they recommended it to full Council for the purpose of notification. As per the First Schedule of the Resource Management Act 1991 formal consultation on the proposed Plan Change has been carried out. No specific comment has been received from either the Ministry for the Environment or Iwi.

Date	Consultation method	Stakeholders	Impact on proposed Plan Change
8 November 2008	Live Nelson Article – Issue 239 (706282)	General Public	Stating work will be carried out on the Inner City Noise issue.
20 December 2008	Live Nelson Article – Issue 242 (718681)	General Public	Introducing the Inner City Noise Plan Change.
31 January 2009	Live Nelson Article – Issue 244 (726366)	General Public	Article further introduced the Inner City Noise Plan Change and invited people to attend a public meeting.
23 February 2009	Public Meeting	Attendees – interested parties	Opinions expressed helped to inform the development of the plan change scope and provisions.
14 February 2009	Live Nelson Article – Issue 245 (729615)	General Public	Reminder about the public meeting

14 March 2009	Live Nelson Article – Issue 247 (735766)	General Public	Update on public meeting
1 August 2009	Live Nelson Article – Issue 257 (807276)	General Public	Article outlining findings from the public meeting.
August 2009	Individual meetings with stakeholders	Individual Stakeholders	Specific discussion on options developed. This helped to refine proposal and gauge the opinion of different interest groups.
11 September 2010	Live Nelson Article – Issue 285 (1022899)	General Public	Advising of the status of plan change and how this fits with the planned resource consents for events in public parks
9 August 2012	Media Release	General Public	Advising that draft Plan Change has been accepted for purposes of consultation with the public. Also included in 18 August 2012 Live Nelson (1353614)
6 November 2012	Schedule 1, Clause 3 consultation (1402288)	Ministry of the Environment	Schedule 1, Clause 3 consultation under the Resource Management Act.
10 November 2012	Live Nelson Article – Issue 339 (1402865)	General Public	Pre-notification consultation on the draft plan change for purpose of informing final drafting.
Nov – 14 Dec 2012	Public consultation (1447701)	Stakeholders and general public	Pre-notification consultation on the draft plan change for purpose of informing final drafting.
8 December 2012	Live Nelson Article – Issue 341 (1419617)	General Public	Reminder of the closing of the pre-notification consultation.
7 June 2013	Schedule 1, Clause 3 consultation (1530285)	Iwi	Schedule 1, Clause 3 consultation under the Resource Management Act.
7 September 2013	Notification submissions -	Stakeholders and general public	Notification under Sch 1 of the RMA. Included mailed notification to inner city landowners and stakeholders.
26 October 2013	Further submissions	Submitters and relevant parties under the RMA	Further submissions notification under Sch 1 of the RMA

3. OVERVIEW OF PROPOSED PLAN CHANGE

Plan Change Vision

- 3.1. The working group of Councillors to the proposed Plan Change developed a 'vision' for the Plan Change as a guiding statement on what it was seeking to achieve. This statement was derived from the objectives and policies of the Inner City Zone of the Nelson Resource Management Plan. It also drew on the vision of Council's City Centre Strategy 'Heart of Nelson'. It was included in the notified Plan Change amendments and Section 32 document.
- 3.2. The Plan Change Vision: A vibrant night life and encouraging more people to live in our CBD both play an important part in keeping our young and young at heart living in and visiting our city. However some inner city attractions and activities can be noisy and some inner city dwellings were designed for quieter environments. People choosing to live in the CBD are much more likely to use the city and its restaurants, bars and clubs as their playground but they need to recognise that living in the CBD is likely to be noisier than living in the suburbs. There is much that the providers of inner city dwellings and the providers of entertainment can do to create a "liveable" inner city environment. If this is to happen we all need to take responsibility for managing noise; Council seeks to strike a balance between those who make the noise and those on the receiving end. We want to improve how noise is managed by supporting entertainment-makers, patrons and residents to make this city a great place to live, work and play.

Locality

- 3.3. This proposed Plan Change relates to noise produced in the Inner City Zone (City Centre and City Fringe) and measured both within the zone and at any site within the Residential Zone.

Resource Management Issues

- 3.4. The proposed Plan Change does not add to, or alter, any issues within the Plan. Instead it relies on existing operative issues. The issues which relate to this proposed Plan Change are outlined in Chapter 4 'Resource Management Issues' of the Plan and are repeated below. Issue RI15 being the most directly relevant to noise production and reception in and around the Inner City Zone:

RI14 Amenity Values

RI14.1.i Loss of the environmental pleasantness and coherency (in appearance or function) of an area or streetscape such as the coastal environment, City Centre or a residential neighbourhood, through aspects of development such as signage, design and appearance, and traffic, which are insensitive or inappropriate to its existing amenity.

RI14.1.ii Compromise of the use and enjoyment of individual properties as a consequence of the adverse effects of on site and neighbouring development.

RI15 Adverse environmental effects of activities

RI15.1.iii Loss of opportunities to use or enjoy resources and values as a result of adjacent land use or activities.

RI15.1.iv Risk to public health, safety, and amenity values associated with traffic, aircraft and vessel movement, noise, and other contaminant discharges.

Scope of the proposed Plan Change

- 3.5. The Plan Change does not propose any changes to the Issues, Objectives or Policies of the Plan in relation to noise but does propose changes to some of the explanations and reasons for those and includes a number of other changes to rules and explanatory statements.
- 3.6. Noise from moving vehicles and aircraft is controlled under other legislation and is not included in this proposed Plan Change.
- 3.7. The Plan Change also does not include specific provisions relating to:
- community events producing noise on a temporary basis (for example a festival on the street or in a park);
 - closing times;
 - creation of a specified 'entertainment precinct';
 - availability of liquor, or any aspect of liquor licensing;
 - specific control of bass frequencies.
- 3.8. The scope of the proposed Plan Change does involve provisions relating to:
- the production of noise within the Inner City Zone (excluding items noted above);
 - the reception of noise within both the Inner City and Residential Zones (where it emanates from the Inner City Zone).
 - methods of management and enforcement of noise production in the Inner City Zone.

Description

- 3.9. The proposed Plan Change contains the following amendments to the Nelson Resource Management Plan.
- 3.10. Amendment 1: Introduce permitted activity requirements for new bedrooms (as defined in the Nelson Resource Management Plan for residential units), or new rooms intended to be used for sleeping in short term living accommodation units (hotels, motels etc) in the Inner City Zone to be acoustically insulated to reduce noise levels inside these rooms. This new rule is based on a similar rule that is currently used for houses near the Port where an acoustic engineer designs the building to achieve a specified reduction in sound level inside the building. It also incorporates the option to use specified minimum construction standards to achieve this reduction.
- 3.11. Amendment 2: Introduce a new rule requiring new or extended 'Noise Generating Activities' to apply for a resource consent with the requirement for a noise management plan addressing location, noise production and management,

acoustic insulation and any mitigation measures proposed. This change includes a definition of 'Noise Generating Activities' which includes the assembly of people inside or outside for a commercial activity at night time and where amplified sound is being played. The definition allows activities to operate later on Friday and Saturday nights than during the week, and allows a low level of amplified sound to be played without the need for a resource consent.

- 3.12. Amendment 3: Plan provision retaining control over the maximum noise level (L_{AFmax}) at night time. This provision is part of the current rule ICr.42 dealing with noise in the Inner City which is proposed to be removed under this Plan Change (see Amendment 5 below). The L_{AFmax} control at night time provides an upper limit to single noise events which provides a level of certainty around the limits to a single 'spike' of sound. Note this does not act as a limit that a more continuous source of noise (such as music or an air conditioner unit) can generally operate to and be deemed to be reasonable and not excessive.
- 3.13. Amendment 4: Retain rule ICr.43 'Noise – at residential boundary' (with minor amendments). This Inner City Zone rule provides specific noise levels which cannot be exceeded when received within any site in the Residential Zone. The change involves minor amendments to the existing rule to better reflect the construction noise standard and to allow a change from NZS6801:1991 and NZS6802:1991 to the 2008 versions of the same standards. In addition specific assessment criteria and explanations are added where these previously did not exist. The amendments also allow a broader set of construction activities to utilise the construction noise standard than is currently the case, but otherwise result in no change to the permitted noise levels heard in the Residential Zone.
- 3.14. Amendment 5: Utilise noise provisions of the Resource Management Act 1991 for management and enforcement of noise in the inner City Zone, specifically Section 16 'Duty to avoid unreasonable noise' and Section 327 'Issue and effect of excessive noise direction'. This involves the removal of rule ICr.42 'Noise' which currently relies on the measurement of specific noise levels produced by an individual activity. The current rule resulted in enforcement difficulties and an Environment Court decision. See Section 2 for further details.
- 3.15. Amendment 6: As a non-regulatory method ensure that Council officers continue to proactively engage with existing owners and operators to encourage noise management plans and other ways to actively reduce noise. Also provide access to guidance and information around noise production, management and reception in and around the Inner City.
- 3.16. The proposed Plan Change relates to existing operative policies of the Nelson Resource Management Plan. Changes are proposed to some of the explanations, reasons and methods of these policies to reflect the Plan Change direction.
- 3.17. Externally referenced documents: Within the proposed Plan Change text relating to the amendments above Plan Change 16 also externally references three Standards New Zealand Standards:
- NZS 6801:2008 Acoustics – Measurement of environmental sound
 - NZS 6802:2008 Acoustics – Environmental noise
 - NZS 6803:1999 Acoustics – Construction noise

4. NOTIFICATION, SUBMISSIONS AND FURTHER SUBMISSIONS

Notification

- 4.1. The Plan Change was publicly notified on 7 September 2013, with submissions closing on 4 October 2013, 15 submissions were received, one of these being a late submission.
- 4.2. A summary of the decisions requested was notified on 26 October 2013 and closed on 11 November 2013, 2 further submissions were received.
- 4.3. One submission (Submitter 15, C Sharp Family trust) was received after the closing date for submissions. This has been considered by the Chair of the Hearing Panel, Independent Commissioner Mr David McMahon and a waiver of the time limit for close of submissions was granted on 28 February 2014 under Sec 37 1 b) of the RMA. This submission will carry the same 'weight' as any other submission to this proposed Plan Change.
- 4.4. The proposed Plan Change includes externally referenced documents which have been incorporated through the requirements of the First Schedule of the RMA. No submissions were received on their inclusion. The documents concerned are three Standards New Zealand standards relating to Acoustics. Also no submissions were received on the Section 32 report notified in conjunction with the proposed Plan Change.

Submissions Overview

- 4.5. The table below provides list of the submissions and further submissions received:

Submission Number	Submission Name	Further Submission Number	Further Submission Name
1	Kent Inglis	X1	Dan McGuire
2	Dan McGuire	X2	Greypower
3	Peter Mayes		
4	James Purves		
5	Port Nelson Liaison Committee		
6	Charles and Rosemary Shaw		
7	Port Nelson Ltd		
8	Graeme Downing and Stephanie Trevena		
9	Michelle McLean		
10	McDonalds Restaurant (NZ) Ltd		

11	Nelson-Marlborough District Health Board		
12	Hospitality NZ		
13	Gaile Noonan		
14	Barbara Riddell		
15	C Sharp Family Trust (Late Submission)		

4.6. The general breakdown of submissions is:

- Support (approve the Plan Change as is): 5 submitters
- Conditional support (approve with modifications): 3 submitters
- Opposition (reject the Plan Change): 2 submitters
- Oppose in part: 3 submitters
- Neither support or oppose: 2 submitter.

4.7. The main submission themes in support are:

- Easier to enforce noise
- Changes to Port Effects Control Overlay ventilation requirements
- Improved living environment close to city centre
- Retention of ICr.43 'Noise received at sites in the Residential Zone'
- Policy wording changes
- Acoustic insulation of bed rooms and sleeping areas
- Use of unreasonable and excessive noise provisions of the RMA
- Ongoing non-regulatory methods

4.8. The main submission themes in opposition are:

- Measuring noise from the façade of buildings
- Lack of protection of residential amenity
- High cost for little benefit – discourage investment in Inner City
- Should deal with polluter at source
- Over regulation

- Deletion of rule ICr42 Noise
- Addition of AP13.2 Assessment of unreasonable and excessive noise
- Addition of ICr.42B General Noise Emission
- General wording and technical changes sought
- Have bass frequency controls
- Unlicensed restaurant inclusion in Noise Generating Activity definition
- Requiring resource consents for Noise Generating Activities.

5. STRUCTURE OF ASSESSMENT OF ISSUES (PART B)

- 5.1. In Part B to this report I address each of the submission points raised. Submission points are ordered in accordance with the order of the notified proposed plan amendments 1 – 6. These are identified as Topics 1 – 6; Topics 7 and 8 relate to changes to policy explanation and reasons and general submissions respectively. Within these topics each point made by individual submitters is included along with relevant further submissions. I then discuss the submission points made and make a recommendation on each item. Recommendations for amendments, additions or deletion to text have been made. These are generally shown with the proposed text shown as it appeared at notification, ie. text to be removed ~~struck through~~, and text to be added underlined. The recommended amendments as a result of submissions are shown as text to be removed ~~struck through~~, and text to be added underlined.
- 5.2. In some cases a submission point or the recommendation covers multiple topics. In these cases I provide cross references and notes to explain where further, or otherwise relevant, discussion occurs. If in doubt the full submission or further submission shall prevail.
- 5.3. For ease of reference an index of submission and further submission points is provided at the start of Part B.

6. SYNOPSIS OF RESPONSES TO COMMON SUBMISSION ISSUES

- 6.1. This section briefly outlines the main issues raised in submissions received. Full responses to individual submission points are contained in Part B of this report.
- 6.2. **Acoustic Insulation of Residential Units and Short Term Living Accommodation Units**
- 6.3. Submitters have opposed the acoustic insulation requirements for both Residential Units and Short Term Living Accommodation Units within the Inner City Zone. This is due to the additional regulation and cost being applied to developers and discouraging investment in the Inner City. Generally it is stated that noise should be dealt with at the source. Submissions were also received in support of this proposal.
- 6.4. The requirement to acoustically insulate these units has been proposed in line with policy direction in the Plan and as a response to noise issues experienced. The policy direction states there will be a diversity of activities in the Inner City which enhance vitality and vibrancy of the City, and that a reasonable standard of

residential amenity be provided for sites used for residential purposes within the Inner City. This is qualified in the policy by stating that it is recognised that the fundamental character of the area is non-residential. To achieve this, the proposed Plan Change has sought to establish a balance of requirements between those that produce the noise and those that receive the noise. This balance recognises that both play a central role in creating a vibrant and vital Inner City.

- 6.5. Acoustic insulation of receivers is part of the balance, and equally there are proposed requirements on those that produce the noise. The cost of the requirement on receivers has been minimised primarily by applying the requirement to bedrooms only. An indication of additional cost of this has been confirmed through the use of a quantity surveyor at between 4 and 5.4% of the build cost of two sample residential units. In response to the submitters concerns I have reconsidered how the acoustic insulation requirement applies to the commercial use of Short Term Living Accommodation Units. By definition in the operative Plan there is an important difference between Residential Units and Short Term Living Accommodation. Simply one is defined as a residential activity whilst the other is a commercial activity. The policy direction of the Plan sets out that a reasonable standard of residential amenity is to be provided to sites used for residential purposes. One of the ways the proposed Plan Change seeks to achieve this is by requiring the acoustic insulation of bedrooms in Residential Units. A commercial activity does not have this policy direction and is more applicable to the policy of providing for a vital and vibrant Inner City. Acoustic insulation could be a disincentive for development of these commercial accommodation units. As the potential effects of noise on these units is not as significant as on a residential unit I recommend that acoustic insulation requirements are not applied to Short Term Living Accommodation.
- 6.6. **Noise Generating Activity definition and rule**
- 6.7. The proposed Plan Change includes a new definition of a Noise Generating Activity. This is intended to define a group of activities that have the potential to create noise issues after a certain time of the night and require them to apply for resource consent. The purpose of this to allow upfront consideration of the noise they are likely to produce and the methods of ensuring this is kept to a reasonable level. It is a proactive approach to noise management for newly established or extended activities that meet the definition.
- 6.8. Submitters have raised various points in relation to the proposed definition and application of the Noise Generating Activity. These include support for the provision but seeking amendments to hours and output power of the sound system and to associated technical definitions. There is also opposition based on the definition also potentially including unlicensed restaurants, and the Sale and Supply of Alcohol Act 2012 and the Resource Management Act 1991 already adequately controlling these activities.
- 6.9. The definition was developed with the intent to allow smaller scale operations that might not be open later into the night, or have low level background music to open without the need for resource consent. Making the hours earlier, or removing the output level for smaller scale sound systems, would mean more activities would require resource consent prior to opening. The proposed definition, as notified, does allow more activities to open without the need for a resource consent but it does not lessen the need for these operations to meet the noise control provisions of the RMA in relation to unreasonable and excessive noise.

- 6.10. In terms of unlicensed restaurants potentially being included in the definition this is intentional. The definition reflects Council's past experience that it is not just noise from bars and nightclubs that can cause a noise problem in the Inner City. There are instances in proposals for late night unlicensed premises where Council would seek the ability to consider what is proposed through a resource consent process. The type of activity and the customers that are attracted can vary dependant on the location, time of day or night and the service provided. There is often a very different set of behaviours and effects at 3pm compared to what you would find at 3am.
- 6.11. Use of the Sale and Supply of Alcohol Act 2012 and the Resource Management Act 1991 are relevant to this proposal. The proposed Plan Change method compliments these requirements to ensure a proactive approach is taken to the establishment (or extension) of Noise Generating Activities. This upfront approach ensures noise management is considered at the planning stage and provides a greater level of certainty for all parties concerned.
- 6.12. Aside from some more minor amendments to reflect specific items raised by submitters I recommend that this method set out in the proposed Plan Change is retained.
- 6.13. **Removal of objective noise rule and use of RMA for enforcement**
- 6.14. The proposed Plan Change includes the use of provisions of the RMA 1991 to manage noise produced in the Inner City. This is opposed to the current rules in the Plan which has a set noise standard to be measured at the boundary of the property producing the noise in the Inner City. Submitters have both supported and opposed this approach. Points of concern raised by submitters relate to the subjective nature of assessment creating uncertainty and enforcement difficulties. Submitters have also supported the concept but opposed the 'rule' provided to support the process as they state these are ultra vires, or simply not necessary.
- 6.15. This approach of using the provisions of the RMA is to improve Council's ability to manage and control noise in the Inner City. Experience has shown that the current rule is difficult to monitor and enforce due to contamination of noise readings from adjacent noise sources and from the high ambient noise levels on the street. The approach now proposed under the RMA has been used by Council over the last few years and is proving to be successful.
- 6.16. Council Enforcement Officers are trained and experienced at making these assessments and there is a internal process of checking assessments made to ensure that over time there is consistency. Appendix 13.2 is a method of the proposed Plan Change which is also intended increase certainty. This sets out factors that the Enforcement Officers may take into account when determining if noise is unreasonable or excessive. By including these in the Plan there is a wider understanding of how these assessment are carried out.
- 6.17. In terms of the ultra vires issues raised I agree with the submitters that the provisions noted are at least unnecessary as they add nothing regulatory to the Plan that is not already provided by the RMA. This reference is to proposed rule ICr.42B which was intended to simply be an advisory provision within the rule table to direct Plan readers to how enforcement of noise would be undertaken. As such it has no status as a rule and may have added confusion. I recommend that this proposed rule ICr.42B is removed but that the approach of using the RMA for noise

management and enforcement, including the removal of the current noise rule in the Inner City Zone, is retained.

6.18. Low Frequency (bass) noise control

6.19. Bass noise is raised as an issue and submitters seek that this is specifically controlled. Bass frequencies travel further than other frequencies and it is often the 'beat' from music that people lodge complaints about. Originally Council did seek to include a specific noise rule which would place a objective limit on bass frequencies. Advice was received that measurement of this was still potentially subject to contamination and it would be difficult to unambiguously determine the source to a standard required by a Court. For this reason the bass provision was not included in the notified Plan Change. Enforcement of bass frequencies will be carried out through an assessment by an Enforcement Officer to determine if the noise heard is excessive. This assessment includes bass frequencies. Noise (of all frequencies) is also limited by enforcement of objective noise levels under rule ICr.43 for the Residential Zone. The proposed requirement for Noise Generating Activities to apply for resource consent to ensure that noise emission is considered in a proactive way will enable measures to be taken to manage bass frequency emission should this be relevant to a proposal. I recommend that no specific bass control rule is added to the Plan Change.

6.20. Noise protection of Residential Units near to City Centre / City Fringe

6.21. Submitters have sought that properties within a certain distance of any proposed new development emitting noise on a regular basis should have their properties noise protected at the cost of the applicant and not the home owner. Particular reference is made to properties that are near the Inner City Zone – City Fringe Area. The proposed Plan Change has retained the noise limits for noise produced in the Inner City and received in the Residential Zone. The proposed Plan Change also adds a requirement to Noise Generating Activities that they apply for resource consent to consider noise emission upfront. This places responsibility for control of noise emission onto the producer in the Inner City with no cost to the home owner. Also there is a range of noise sources in the Inner City and placing the responsibility for acoustic insulation of surrounding properties onto one of those sources individually would not be reasonable. I recommend no general requirement to acoustically insulate surrounding properties is applied through this Plan Change.

7. STATUTORY CONSIDERATIONS

7.1. The relevant statutory considerations are set out below, with my assessment of the Plan Change.

Resource Management Act 1991, Section 74(1)

7.2. Section 74(1) of the RMA requires that a territorial authority prepare and change its district plan in accordance with:

- *It's functions under section 31,*
- *Provisions of Part 2, and*
- *A direction given under section 25A(2), and*
- *Its obligation to prepare and have particular regard to an evaluation report prepared in accordance with section 32, and*

- *any regulations.*

7.3. An assessment of the consistency of the Plan Change with each provision identified is carried out below in the order listed above.

Section 31

7.4. Nelson City Council is a Unitary Authority with both regional and territorial functions under the RMA. Control of the emission of noise is a function of a territorial authority. These functions are outlined in section 31 of the RMA and relate to giving effect to the RMA in the Nelson district. More specifically Section 31 states:

- (1) *Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*
 - (a) *the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:*
 - (b) *the control of any actual or potential effects of the use, development, or protection of land, including for the purposes of -*
 - i) *the avoidance or mitigation of natural hazards; and*
 - ii) *the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and*
 - iiia) *the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:*
 - iii) *the maintenance of indigenous biological diversity:*
 - (c) *Repealed*
 - (d) *the control of the emission of noise and the mitigation of the effects of noise:*
 - (e) *the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:*
 - (f) *any other functions specified in this Act.*
- (2) *The methods used to carry out any functions under subsection (1) may include the control of subdivision.*

7.5. I consider the proposed Plan Change is an appropriate response to Council's obligations under Section 31 of the Act. In particular it establishes Plan methods to control the emission of noise and the mitigation of the effects of noise (Sec 31, 1 d)). Specifically the proposed Plan Change seeks to manage the reception and emission of noise to help create efficient land use and amenity within the City Centre and surrounding residential areas.

Part 2

7.6. Part 2 of the RMA sets out the purpose and principles of the Act. Section 5 establishes the purpose of the RMA as follows:

- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
- (2) *In this Act, "sustainable management" means managing the use, development and protection of natural and physical resources in a way, or at a rate, which*

enables people and communities to provide for their social, economic and cultural wellbeing and for their health and safety while:

- a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- b) safeguarding the life supporting capacity of air, water, soil, and ecosystems; and*
- c) avoiding, remedying or mitigating any adverse effects of activities on the environment.*

7.7. Section 7 sets out other matters that all persons exercising powers under the Act shall have particular regard to. Of particular relevance to this proposed Plan Change are:

- b) the efficient use and development of natural and physical resources,*
- c) the maintenance and enhancement of amenity values,*
- f) maintenance and enhancement of the quality of the environment,*

7.8. The proposed Plan Change seeks to manage adverse effects of noise on efficient land use, amenity and quality of the environment within the City Centre and adjacent residential areas. This is reflected in the existing operative Regional Policy Statement and Plan Issues, Objectives and Policies which the proposed Plan Change gives effect to. The proposed Plan Change does not seek to change the operative Issues, Objectives and Policies and follows the direction they set in achieving the purpose of the Act. Relevant district wide issues identified relate to amenity values, and adverse environmental effects of activities. More directly to this proposed Plan Change the Residential and Inner City Zone's Objectives and Policies set out that:

- there is a range of activities to enhance the vitality and vibrancy in the Inner City;
- these activities do not detract from the character being sought for the City Centre and City Fringe areas;
- sites within the Inner City used for residential activity should have a reasonable standard of residential amenity but recognising that the fundamental character of the area is non-residential;
- activities in the Inner City Zone do not have adverse effects which significantly diminish the amenity of neighbouring areas; and,
- there is a special regard to preventing the deterioration of the amenity of the Residential Zone as a result of adverse effects across the zone boundary.

7.9. The proposed Plan Change provisions achieve the purpose of the Act through giving effect to the existing operative Objectives and Policies of the Regional Policy Statement and the Plan which I consider set out sustainable management of the resource of the Inner City Centre and the surrounding Residential Zone.

Section 25A(2)

- 7.10. Section 25A(2) provides for a Minister to direct a regional council or territorial authority to prepare a Plan, a Plan Change or a variation. No direction has been given by a Minister and therefore this provision is not relevant to this proposed Plan Change.

Section 32

- 7.11. Before adopting for public notification any objective, policy, rule or other method promoted through this proposed Plan Change, Section 32 of the RMA imposes upon the Council a duty to consider alternatives, and assess their benefits and costs.
- 7.12. A Section 32 assessment was prepared and made available as part of the public notification process of this proposed Plan Change. This assessment is carried out through considering the benefits, costs, effectiveness and efficiency, and risk of acting or not acting if there is uncertainty or insufficient information, for each aspect of the proposed Plan Change. A range of options were considered from status quo, to raising noise levels, to limiting opening hours of licensed premises, and the Plan Change as is proposed.
- 7.13. The Section 32 report concludes with *'As assessed in this section 32 report the proposed Plan Change is the most appropriate way of achieving the objectives of the Plan in regard to Inner City noise.'*
- 7.14. The Section 32 report was written in accordance with Section 32 of the Resource Management Act 1991 prior to the Resource Management Amendment Act 2013. No submissions have been received on the Section 32 report.

Section 74(2), (2A) and (3)

- 7.15. Section 74(2), (2A) and (3) sets out the matters that a territorial authority shall have regard to when changing its Plan. The relevant matters for this hearing are:
- Extent of consistency with plans or proposed plans of adjacent territorial authorities.
 - Nga Taonga Tuku Iho Ki Whakatu Management Plan, June 2004, being the planning document recognised by an Iwi authority and lodged with Council. This is discussed further in Section 7.21 – 7.22.
 - Council has not had any regard to trade competition or the effects of trade competition when developing this proposed Plan Change.

Section 75

- 7.16. Section 75 specifies the contents of a district plan, and sections 75(3) and 75(4) set out the following mandatory obligations:

(3) A district plan must "give effect to":

- *any national policy statement;*
- *any New Zealand coastal policy statement; and*
- *any regional policy statement*

(4) A district plan must not be inconsistent with:

- a water conservation order, or
- a regional plan for any matter specified in section 30(1).

7.17. The New Zealand Coastal Policy Statement, nor any National Policy Statements are relevant to this proposed Plan Change. For discussion on the Regional Policy Statement see the following sections of this report.

Regional Policy Statement

7.18. The Nelson RPS became operative in 1997. It contains a number of objectives and policies relevant to the Plan Change which are contained in:

- Chapter 7 Amenity Values; and
- Chapter 11 Discharges to Air

These provisions are outlined in greater detail in (i) to (ii) below.

(i) Chapter 7 Amenity Values

7.19. NA1.2 Objective NA1.2.1. *Preservation or enhancement of amenity and conservation values.* Policy NA1.3.3 *To avoid and as far as possible remedy or mitigate the conflicts between adjoining land uses including the provisions of services and/or facilities.*

7.20. Methods set out in the proposed Plan Change seek to recognise and resolve conflict between adjoining land use in the Inner City. In the case of this proposed Plan Change the two main land uses concerned are those that generate noise and those that receive it – most commonly, but not solely; these are bars and residential units. Planning to reduce these conflicts also helps to create a vibrant city centre.

(ii) Chapter 11 Discharges to Air

7.21. DA2.1 Noise, Objective DA2.2.1. *An environment in which unreasonable noise is avoided, remedied or mitigated.*

Policy DA2.3.1. To the extent that it is within Council's statutory power to do so, to protect existing and proposed residents and other noise sensitive land uses from the adverse effects of excessive and unreasonable noise from industrial, commercial, transportation (including land, sea and air), community or recreational activities.

Policy DA2.3.2. Where it is within Council's power to do so, to prevent adjacent activities within commercial and industrial areas from being adversely affected by excessive and unreasonable noise including that generated by transport.

7.22. The objective and policies are of direct relevance to the proposed Plan Change. It seeks to achieve the objective by adopting proven noise enforcement mechanisms under the RMA as the method for noise enforcement in the Inner City Zone. This is backed up by retaining the specific noise limits within properties in the Residential Zone. Acoustic insulation and design requirements also seek to protect residents and sensitive land uses from noise. I consider that the package of methods within the proposed Plan Change achieve this objective of the Regional Policy Statement.

Iwi Planning Documents

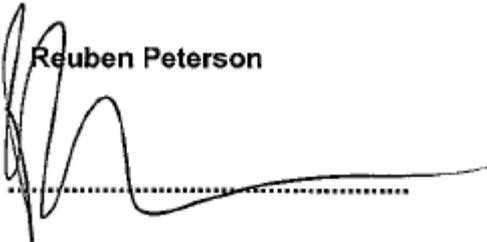
- 7.23. The Iwi Planning Document that has been registered with the Council is the Nga Taonga Tuku Iho Ki Whakatu Management Plan. This sets out the iwi perspective of five manawhenua iwi in Te Tau Ihu (top of the South Island). The plan is structured around the spiritual dimensions of wind and air (discharge of contaminants), the people, trees and birds, water and cultivated foods.
- 7.24. The provisions of the Iwi Management Plan are not directly relevant to this proposed Plan Change. Of note however is the desired outcome stated in section 5.3.1 that there is a good working relationship between tangata whenua and Nelson City Councillors and staff. As part of the legal requirements, but also with a desire to retain a good relationship and respect Iwi have been consulted on this Plan Change. No issues in relation to the Iwi Management Plan have been raised.

Any other relevant planning documents

- 7.25. Heart of Nelson – Central City Strategy, (Nelson City Council, August 2009) was adopted by Council at its meeting of 3 September 2009. The Heart of Nelson Strategy was developed to manage growth in a co-ordinated manner and to maintain and enhance the successfulness of the City Centre. It paints a ‘word picture’ of what the Central City aspires to be (the Vision) and sets out guiding Values, and Objectives, as well as more specific Visions for the precincts within the Central City. The strategy contains a number of actions to help achieve this Vision. The key aspect of the Vision is that *‘the Central City will be a vibrant, attractive place in which people can live, work and play, and in which businesses operate’*. The vision statement and direction for the proposed Plan Change draws on the Heart of Nelson vision and is designed to help achieve this.
- 7.26. The proposed Plan Change has also been developed with the Heart of Nelson actions relating to increasing residential use in and around the CBD in mind. In particular this is:
- D24: *Encourage quality intensification in peripheral CBD areas, and in other areas with sufficient amenities and facilities to allow increased intensity in conjunction with a review of existing NRMP rules to control outcomes.* The proposed Plan Change focuses on control of noise at both the source and the receptor, thereby both playing a role in noise management in the city. These requirements help create sufficient quality of living environment to encourage increased residential intensification. This has been balanced against the cost of these requirements.
- 7.27. Nelson 2060 is Council’s sustainability strategy; it comes from the community and focuses on developing a healthy, prosperous and happy Nelson over the next 50 years. It was adopted by Council on 4 June 2013. One of the key themes is *‘A sustainable city of beauty and connectivity’*. *‘Nelson in 2060 has purposefully implemented sustainable development principles and technologies to create a beautiful city that is designed to provide social equity, liveability, ecological health and economic prosperity...’* This is to be achieved where *‘people-centred urban development is thoughtfully managed to realise a compact, mixed use city that has strong local centres...’*. The proposed Plan Change was developed around the same time as Nelson 2060 was being developed and the philosophy of creating a vibrant, attractive place in which people live, work and play was central to both documents. In this sense I believe the proposed Plan Change assists in achieving the goals of Nelson 2060.

8. CONCLUSION

- 8.1. This report provides a statutory and effects based assessment of proposed Plan Change 16 'Inner City Noise'. I have described the general approach and the background and consultation leading the development of this proposed Plan Change. I have also assessed it against the statutory requirements under the RMA and have concluded that it meets all the relevant matters.
- 8.2. I acknowledged the various concerns, and suggestions for improvement, outlined in the submissions and further submissions, and have commented on those and made specific recommendations in Part B of this Report. After considering any additional material that submitters may provide during pre-circulation of evidence and the present at the hearing I am open to revising my recommendation accordingly.
- 8.3. With those amendments I am of the opinion that the package of measures embodied in proposed Plan Change 16 will provide a workable and realistic planning response to the identified and relevant resource management issues in Nelson.

Author: Reuben Peterson
Signed: 

Date: Monday 7th April 2014

Peer Reviewed: Matt Heale

Signed: 

Date: Monday 7th April 2014

PART B

SUBMITTER INDEX

Submitter 1: Kent Thomas Inglis				
Submission Point	Topic	Page #	Decision Sought	Recommendation
1.1	Acoustic Insulation	29	Delete acoustic insulation requirement	Reject

Submitter 2: Dan McGuire				
Submission Point	Topic	Page #	Decision Sought	Recommendation
2.1	General	64	Support Plan Change 16	Accept

Submitter 3: Peter Mayes				
Submission Point	Topic	Page #	Decision Sought	Recommendation
3.1	General	64	Seeks specific noise control device to be used	Reject

Submitter 4: James Mackay Purves				
Submission Point	Topic	Page #	Decision Sought	Recommendation
4.1	Acoustic Insulation	30	Delete acoustic insulation requirement	Accept in part

Submitter 5: Port Nelson Noise Liaison Committee				
Submission Point	Topic	Page #	Decision Sought	Recommendation
5.1	Acoustic Insulation	32	Support amended ventilation requirements – Port Effects Control Overlay	Accept

Submitter 6: Charles and Rosemary Shaw				
Submission Point	Topic	Page #	Decision Sought	Recommendation
6.1	General	64	Support Plan Change 16	Accept

Submitter 7: Port Nelson Limited				
Submission Point	Topic	Page #	Decision Sought	Recommendation
7.1	Acoustic Insulation	32	Support amended ventilation requirements – Port Effects Control Overlay	Accept

Submitter 8: Graeme Downing and Stephanie Trevena				
Submission Point	Topic	Page #	Decision Sought	Recommendation
8.1	Acoustic Insulation	33	Support acoustic insulation requirement	Accept
8.2	Noise Generating Activities	38	Support in part 'Noise Generating Activity' definition with amendment sought	Accept in part
8.3	Noise Generating Activities	38	Support in part 'Noise Generating Activity' definition with amendment sought	Accept in part
8.4	Noise Generating Activities	38	Support in part definition of extension ICr.42A with amendment sought	Accept in part
8.5	Noise Generating Activities	38	Support in part AP13.1 'Noise Generating Activities' with amendments sought	Accept in part
8.6	Noise Generating Activities	55	Oppose the addition of AP13.2 Assessment of unreasonable and excessive noise	Reject
8.7	Enforce Noise using the provisions of the RMA	55	Oppose deletion of ICr.42 Noise. Which required measurement of noise from the property boundary in the Inner City.	Reject
8.8	Enforce Noise using the provisions of the RMA	55	Opposed new proposed rule ICr.42B General Noise Emission	Accept
8.9	ICr.43 Noise received at sites in the Residential Zone	51	Support in part rule ICr.43 with amendment sought to add bass frequency control.	Accept in part
8.10	Changes to Policy, Explanation and Reasons	61	Support policy amendments IC5.1	Accept

Submitter 9: Michelle McLean				
Submission Point	Topic	Page #	Decision Sought	Recommendation
9.1	General	65	Prevent Inner City Noise entering Residential Zone after 9pm.	Reject

Submitter 10: McDonalds Restaurant (NZ) Ltd				
Submission Point	Topic	Page #	Decision Sought	Recommendation
10.1	Noise Generating Activities	41	Oppose. Seeks internal (unlicensed) restaurants to be excluded from the definition of Noise Generating Activity.	Reject

Submitter 11: Nelson Marlborough District Health Board				
Submission Point	Topic	Page #	Decision Sought	Recommendation
11.1	Acoustic Insulation	33	Support acoustic insulation requirements with amendments sought	Accept
11.2	Acoustic Insulation	33	Support acoustic insulation requirements with amendments sought	Accept
11.3	Acoustic Insulation	34	Support acoustic insulation requirements with amendments sought	Accept
11.4	Acoustic Insulation	34	Support in part AP19.2 with amendments sought	Accept
11.5	Acoustic Insulation	34	Support in part AP19.3.i with amendments sought	Accept
11.6	Acoustic Insulation	34	Support in part AP19.3.ii with amendments sought	Accept
11.7	Acoustic Insulation	34	Support in part AP19.3.iv with amendments sought	Accept
11.8	Noise Generating Activities	42	Support in part definition for noise generating activity with amendments sought	Accept in part
11.9	Noise Generating Activities	42	Support ICr42A assessment criteria and explanation	Accept
11.10	Noise Generating Activities	42	Support AP13 overview	Accept
11.11	Noise Generating Activities	42	Support in part AP13.1 with amendments sought	Accept
11.12	Noise Generating Activities	42	Support AP13.2 minimum monitoring and reporting requirements	Accept
11.13	Noise Generating Activities	43	Support in part AP13.1.3 measurement of noise with amendments sought	Accept
11.14	Noise Generating Activities	43	Support in part AP13.2 Assessment of unreasonable and excessive noise and AP13.2.1 with amendments sought	Accept in part
11.15	Noise Generating Activities	43	Support in part AP13.2.1.ii with amendments sought	Accept
11.16	Noise Generating Activities	43	Support AP13.2.2 Construction Noise	Accept
11.17	Maximum Noise Level (LAFmax)	48	Support in part new rule ICr.42.1 with amendments sought	Accept in part
11.18	Maximum Noise Level (LAFmax)	48	Support new assessment criteria and explanation ICr.42.4 and ICr42.5	Accept
11.19	Maximum Noise Level (LAFmax)	48	Support in part ICr42 rule name with amendments sought	Accept

11.20	ICr.43 Noise received at sites in the Residential Zone	52	Support in part ICr43 with amendments sought	Accept in part
11.21	ICr.43 Noise received at sites in the Residential Zone	52	Support in part ICr.43 with amendments sought	Accept
11.22	Enforce noise using provisions of the RMA	58	Oppose new rule ICr.42B General Noise Emission	Accept
11.23	Changes to Policy, Explanation and Reasons	61	Support policy amendments IC4.2, IC4.2.ii and IC4.2.iv	Accept
11.24	Changes to Policy, Explanation and Reasons	61	Support in part policy amendments IC4.2.v with amendments sought	Reject
11.25	Changes to Policy, Explanation and Reasons	61	Support in part amendments IC4.2, IC4.3, IC4.3.i and IC4.3.iv with amendments sought	Accept
11.26	Changes to Policy, Explanation and Reasons	61	Support in part IC4.2, IC5.1 and IC5.1.ii with amendments sought	Accept
11.27	General	66	General support for proposed Plan Change	Accept

Submitter 12: Hospitality NZ

Submission Point	Topic	Page #	Decision Sought	Recommendation
12.1	Acoustic Insulation	37	Support Acoustic Insulation	Accept
12.2	Noise Generating Activities	46	Oppose resource consent requirements for noise generating activities	Reject
12.3	ICr.43 Noise received at sites in the Residential Zone	52	Support rule ICr43	Accept
12.4	Enforce noise using provisions of the RMA	59	Support in part but need to ensure there are guidelines for subjective officer assessment of noise	Accept
12.5	Ongoing education	60	Support ongoing education	Accept

12.6	General	66	Broad support for plan change	Accept
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Submitter 13: Gaile Noonan

Submission Point	Topic	Page #	Decision Sought	Recommendation
13.1	ICr.43 Noise received at sites in the Residential Zone	53	Oppose. Properties within 150m of any proposed new development should be noise insulated at applicants cost; corner sites / outdoor areas should be considered; the Plan Change needs more work where Inner City Centre and Fringe meets residential.	Reject

Submitter 14: Barbara Riddell

Submission Point	Topic	Page #	Decision Sought	Recommendation
14.1	Noise Generating Activities	47	Support in part noise generating activity requirements. Seeks no increased, or decreased levels	Accept in part
14.2	Maximum Noise Level (LAFmax)	50	Oppose provision, enforce limits for drums (bass frequency)	Reject

Submitter 15: C Sharp Family Trust – Late Submission

Submission Point	Topic	Page #	Decision Sought	Recommendation
15.1	General	66	Support Plan Change	Accept

Further Submissions

Submitter X1: Dan McGuire				
Further Submission Point	Submission Point	Page #	Support?	Recommendation
X1.1	8.2	38	Support	Accept in part
X1.2	8.3	38	Support	Accept in part
X1.3	8.4	38	Support	Accept in part
X1.4	8.5	38	Support	Accept in part
X1.5	8.6	55	Support	Reject
X1.6	8.7	55	Support	Reject
X1.7	8.8	55	Support	Accept
X1.8	8.9	51	Support	Accept in part
X1.9	8.10	61	Support	Accept
X1.10	13.1	53	Support	Reject

Submitter X2: Nelson Grey Power				
Further Submission Point	Submission Point	Page #	Support?	Recommendation
X2.1	13.1	53	Support	Reject

RECOMMENDATIONS ON SUBMISSIONS

As stated in section 5.1 of Part A of this report recommendations for amendments, additions or deletion to the notified text have been made in relation to some of the submission points. These are generally shown in the following sections with the proposed text as it appeared at notification, ie. text to be removed ~~struck through~~, and text to be added underlined. My recommended amendments as a result of submissions are shown as text to be removed ~~struck through~~, and text to be added underlined.

Plan Change 16: Topic 1 – Acoustic Insulation

Submitter 1: Kent Thomas Inglis
Submission Point #1.1: Oppose requiring acoustic insulation of inner city residential units.
Noise is a fluid medium, difficult to measure and regulate. Influenced by other factors. This is over regulation for a minor and infrequent issue. It will discourage investment in inner city residential units.
Decision Sought: Delete

Planning Officer Comment #1 Kent Thomas Inglis Submission Point #1.1
<p>The submitter opposes the requirement for acoustic insulation of residential units in particular. This is based around the additional cost discouraging investment in the Inner City which is to the detriment of the vibrancy of the city. The submitter also considers that noise is difficult to regulate, influenced by other factors, and is a very minor and infrequent issue.</p> <p>The proposed Plan Change provisions have been developed with particular reference to the NRMP operative objective IC4 for the Inner City which states '<i>Activities and adverse effects</i>' <i>A diversity of activities which do not adversely affect the environment sought for the City Centre and City Fringe</i>'. Supporting operative policies to this objective, IC4.1 – 4.3, seek to encourage activities which: enhance the vitality and vibrancy of the City Centre; do not give rise to levels of noise which detract from the environment being sought for the City Centre and City Fringe; and that sites used for residential activity should provide a reasonable standard of residential amenity, but recognise that the fundamental character of the area is non-residential.</p> <p>Nelson City Council, with the community, has developed a Central City Strategy 'Heart of Nelson', which was adopted in September 2009. This was also a guiding document for the development of the proposed Plan Change. It seeks that Nelson City Centre is '<i>...a vibrant, attractive place in which people can live, work and play, and in which businesses operate</i>'.</p> <p>The proposed Plan Change encapsulates these guiding statements into a 'Plan Change Vision' which is included at the start of both the notified Plan Change amendments and Section 32 report. It is also repeated in Part A, Section 1.6 of this report.</p> <p>The proposed Plan Change has sought to achieve a balance between those that produce the noise and those that receive the noise. This recognises that both play a central role in creating a vibrant and vital Inner City. In doing this conscious decisions were made to ensure the additional costs to those seeking to build or extend was kept to a minimum whilst still achieving the acoustic insulation level desired. To do this the following actions were undertaken:</p> <ul style="list-style-type: none"> • Acoustic Engineer contracted to give accurate advice on acoustic insulation methods, materials and levels for the whole residential and short term living accommodation unit. • Plans of actual apartments in Nelson used as models for the acoustic insulation requirements • Quantity surveyor engaged to cost the acoustic insulation requirements above that required for standard construction • Initial additional costs found to be 12.8% more for a standard mid level two bedroom unit and 17.5% more for a larger two bedroom upper level apartment.

- Section 32 assessment found these additional costs to be above a reasonable level for the benefits obtained.
- To reduce additional costs acoustic insulation requirement was revised to only apply to new bedrooms of residential units and new rooms intended to be used for sleeping in short term living accommodation units rather than the whole units originally proposed.
- Revised acoustic insulation calculations and quantity surveyor costings carried out.
- Additional costs for the same units as above; 5.4% for smaller mid level apartment and 4% for larger upper level apartment.
- As a further method to reduce additional costs an applicant can either choose to acoustically insulate by following a set of specific building materials and requirements, or can engage an acoustic engineer to advise on how to achieve a set noise standard.
- Note that while a short term living accommodation unit has not been specifically modelled the floor plan, and importantly glazing of most are similar to, or smaller than the mid level apartment that has been modelled. Therefore I anticipate the costs to be similar or less than the smaller apartment. Also note this is not an issue raised by the submitter.

While I do acknowledge that these are additional costs, I consider this to be a fair representation of the 'share' of noise management which falls ultimately to the purchaser/developer of the residential unit or developer of the short term living accommodation unit. This approach allows for a reasonable residential amenity within the Inner City but also recognises that the Inner City environment will involve a higher level of noise and activity than would typically be acceptable in the Residential Zone.

In terms of the RMA 1991 I consider this approach represents sustainable management of a physical resource, being the Inner City. Economically the additional costs to development have been carefully considered; socially there is the ability to more comfortably live in the Inner City and to still undertake activities that add to City vitality and vibrancy; People's health is also considered in providing appropriate sleeping environments, and this use is a current and reasonably foreseeable need of future generations in the Inner City. This approach to acoustic insulation helps to mitigate actual and potential adverse effects of noise on people's sleeping environment and general residential amenity.

Note that in accordance with Planning Officer Comment #2, Submission Point #4.1 acoustic insulation of Short Term Living Accommodation units (as referred to in bullet points above) is recommended to be removed from the proposed Plan Change.

RECOMMENDATION

Submission Point #1.1: Reject

Amendment to Proposed Plan Change:

Nil

Submitter 4: James Mackay Purves

Submission Point #4.1: Oppose the Plan Change Section acoustic insulation of inner city residential units and short term living accommodation.

Deal with the polluter/pollutant at the source, not the results of the problem. This creates work and fees for Council. Let developers/accommodation providers decide what is appropriate in the inner city and if they get it wrong the market will punish them.

Decision Sought: Delete

Planning Officer Comment #2
James Mackay Purves
Submission Point #4.1

The submitter raises a similar concern to submitter 1 on this aspect of the proposed Plan Change. They do however specifically state that noise should be dealt with at the source and that developers should decide what is appropriate in the Inner City for both Residential Units and Short Term Living Accommodation.

The comments I have made in Planning Officer Comment #1 above relate to this submission as well. A specific aspect I would point out is that the acoustic insulation requirement applies to the bedrooms and sleeping areas only. This acts as a minimum requirement. The developer still has the ability to determine if the market demands a higher level of acoustic insulation over the whole of the Residential or Short Term Living Accommodation Unit.

Council has previously received noise complaints from residents of the Inner City in relation to noise produced within the City. Some of these residents have attempted to carry out retrospective acoustic insulation of their dwellings. Anecdotally this has achieved varying degrees of success. It is my understanding that it is generally easier and cheaper to acoustically insulate a building when it is being designed and constructed than it is to retrospectively undertake this in an existing building. This demonstrates that it is sensible to undertake proactive measures rather than reactive and this is reflected in the requirement under the rule.

The Inner City has many noise sources that have caused concern to residents making control solely at the noise source impracticable. Bars and restaurants are one contributor and through consultation in developing this proposed Plan Change Council was advised of other noise sources such as street sweeping, road works, leaf blowing, rubbish/recycling bin collection, vehicle noise and extract fans/air conditioning units. This highlights the diverse range of noise sources in the Inner City and demonstrates the appropriateness of acoustically insulating the sleeping areas specified as one method of managing this noise. Other methods do include provisions and management techniques which aim to reduce the noise produced by other sources in the Inner City. For example the leaf blower units are now quieter than those previously used, street sweeping hours have been adjusted and this proposed Plan Change includes acoustic requirements for new Noise Generating Activities.

The submitter opposes the acoustic insulation requirements being placed on both Residential Units and Short Term Living Accommodation Units. It is my recommendation that no change is made to the requirement for Residential Units but it is less clear that the requirement should be applied to Short Term Living Accommodation Units. By definition in the operative Plan there is an important difference between the two; Residential Units contain residential activities, whilst Short Term Living Accommodation Units contain commercial activities. As such a person in a residential unit stays there for a longer period of time, and has a greater investment in the unit, than those who stay in a short term living accommodation unit who can simply move on if the amenity provided is not to their satisfaction.

The operative Objectives and Policies of Plan seek a range or diversity of activities within the Inner City. Short Term Living Accommodation is one of those activities. The Objectives and Policies also seek that a reasonable standard of residential amenity is provided within the Inner City Zone. The proposed Plan Change, in providing for sustainable management under the Act, should retain the acoustic insulation requirement for Residential Units as part of meeting this policy direction of achieving a reasonable standard of residential amenity. However the commercial use of Short Term Living Accommodation Units helps achieve the operative policy direction seeking a diversity of activities that enhance the vitality and vibrancy of the City Centre. The additional cost of acoustic insulation (while kept at a minimum as discussed previously) could potentially be a disincentive for the commercial activity of Short Term Living Accommodation. In relation to Short Term Living Accommodation I am in agreement with the submitter that the developers/accommodation providers should decide what is an appropriate level of acoustic insulation in the Inner City.

Short Term Living Accommodation is still afforded a level of protection through the general noise control approach of this proposed Plan Change, but also specifically through retention of proposed Plan Change text which:

<ul style="list-style-type: none"> • Places a limit on maximum noise (L_{AFmax}) 1 metre from the façade of the unit (ICr.42) • Includes short term living accommodation in assessment criteria for ICr.42 Night time noise levels and ICr.43 Noise received in the Residential Zone • Includes consideration of short term living accommodation in the minimum requirements for noise generating activities (Appendix 13). <p>Other submitters (submitter #12.1, Planning Officer Comment #7) have made submissions in support of the acoustic insulation requirement on both Residential Units and Short Term Living Accommodation Units. This support is noted and accepted in terms of Residential Units however on balance my recommendation in relation to Short Term Living Accommodation remains as outlined in this Planning Officer Comment.</p> <p>For the reasons above, and those in Planning Officer Comment #1 I recommend no change in the notified Plan provision in terms of Residential Units but I do recommend that the requirement to acoustically insulate Short Term Living Accommodation is removed.</p>
Recommendation
Submission Point #4.1: Accept in part
Amendment to Proposed Plan Change:
Delete all requirements for Short Term Living Accommodation to be acoustically insulated from the proposed Plan Change text. Due to multiple deletions please see Part C of this report for deleted text under this submission point.

Submitter 5: Port Nelson Liaison Committee
Submission Point #5.1: Support Plan Change section AP19.2.iii
The Port Noise Liaison Committee (PNLC) initially recommended to the NCC that the ventilation requirements of the Port Effects Control Overlay be changed to allow for a more cost effective and practicable option to be used, whilst still achieving the acoustic standard required. The PNLC recommendation is reflected Plan Change 16 by the inclusion of clause AP19.2.iii of Appendix 19 of the Nelson Resource Management Plan.
Decision Sought: Retain

Planning Officer Comment #3 Port Nelson Liaison Committee Submission Point #5.1
The Port Nelson Liaison Committee is a committee established to oversee the implementation of the Port Noise mitigation Plan. It consists of Port Nelson staff and representatives of surrounding residents and has an independent chair. The committee has previously sought that Council changes the ventilation requirement provisions of the Port Effects Control Overlay (Ap19.2.iii) so that more cost effective and practicable options can be used. The proposed Plan Change has made this change and this is supported by the submitter. This support is accepted and the proposed amendments are recommended to be retained.
Recommendation
Submission Point #5.1: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 7: Port Nelson Limited
Submission Point #7.1: Support plan change section AP19.2.iii
Support the ventilation requirements of the Port Effects Control Overlay to be changed to allow for a more cost effective and practicable option, whilst still achieving the acoustic standard required. Port Nelson supports the inclusion of AP19.2.iii.
Decision Sought: Retain

Planning Officer Comment #4 Port Nelson Limited Submission Point #7.1
For the same reasons as the Port Nelson Liaison Committee, Port Nelson Limited is also supportive of the proposed changes to the Port Effect Control Overlay, Ap19.2.iii, to allow more cost effective and practicable options for ventilation to be carried out. This support is accepted and the proposed amendments are recommended to be retained.
Recommendation
Submission Point #7.1: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 8: Graeme Downing and Stephanie Trevena
Submission Point #8.1: Support rule ICr43A acoustic insulation of accommodation in inner city zone.
Decision Sought: Retain

Planning Officer Comment #5 Graeme Downing and Stephanie Trevena Submission Point #8.1
The submitter is supportive of the proposal to require acoustic insulation of Inner City accommodation. This support is accepted and the proposed amendments are recommended to be retained.
Recommendation
Submission Point #8.1: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 11: Nelson Marlborough District Health Board
Submission Point #11.1: Support new rule ICr43A.1 Permitted column with consequential addition
Noise limits and control of land use status are necessary in the Inner City Zone to avoid and mitigate unreasonable noise in adjoining noise - sensitive zones, and between premises used for short term accommodation within the Zone.
Decision Sought: Add to Chapter 2 Definitions, a definition for the acoustical descriptor "D2m,nT+Ctr" which is undefined in the Proposed Plan, or the Operative Plan or NZS6801:2008 or NZS6802:2008 and will otherwise be incomprehensible to readers of the Plan. Also see Topic 2, Submitter 11 Statement 8.

Submission Point #11.2: Support in part new rule ICr43A.4 Assessment Criteria with amendment
Criteria omit two factors which are important potential mitigation measures. Balconies can compromise standards. Barriers may in some cases be more cost effective than acoustical treatments of the building envelope. The term "duration of exposure" is incorrect and contrary to usage of terms in the measurement and assessment standards cited in the Proposed Plan Change.
Decision Sought: Allow provision in part and amend as follows- Add new items e) The effectiveness of any noise barriers" and d) Any balconies" and in b) delete the words "of exposure".

Submission Point #11.3: Support new rule ICr43A.4 Explanation
Explanation complements the assessment criteria.
Decision Sought: Retain

Submission #11.4: Support in part Appendix 19.2 clauses AP19.2.i and AP19.2.ii with amendment
Bullet points create uncertain reference. In 19.2.i last sentence the term "design noise level" is used and is undefined and potentially confusing and is inconsistent with the standards cited. In 19.2.ii b) last sentence the term "noise levels" is inconsistent with the terminology used in the standards cited.
Decision Sought: Replace bullet points with numeration. In six places delete the terms "dBA Leq (15min)" and substitute "dB LAeq(15min)". Replace "design noise level" with "design sound level". In 19.2.ii b) last sentence delete the word "levels".

Submission #11.5: Support in part AP19.3 Inner City Zone AP19.3.i with amendment
Certification to codified standard or specific design is a sustainable approach. "Acoustic Insulations of Buildings" is the wrong title. In 19.3.i last sentence the term "design noise level" is used and is undefined and inconsistent with the standards cited.
Decision Sought: In the second line replace "Insulations" with "Insulation". Replace "design noise level" with "design sound level".

Submission #11.6: Support in part AP19.3 Inner City Zone AP19.3.ii with amendment
Requirement for concurrent noise and ventilation compliance is essential to achieve plan objectives where indoor design sound level cannot be achieved with ventilating windows and openings open.
Decision Sought: In sub clauses a) and b) in two places delete the terms "dBA Leq(15min)" and substitute "dB LAeq (15min)". Replace "design noise level" with "design sound level". In 19.3.ii a) and in 19.3.ii b) in the last sentence of each sub clause, replace "noise levels" with "sound levels".

Submission #11.7: Support AP19.3.iv and table 3 and notes
Methods consistent with what has been shown to work and achieve sustainable management in other city centres.
Decision Sought: Retain

Planning Officer Comment #6 Nelson Marlborough District Health Board Submission Point #11.1 to #11.7
Submission Point #11.1. The submitter is supportive in part of the proposal for acoustic insulation of new bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units. The submitter does however seek that a definition of the acoustic term $D_{2m,nT}+C_{tr}$ is added to the proposed Plan Change. This would be located in Chapter 2 'Meanings of Words'.
A suggested definition is provided by the submitter and this has been reviewed by Council's consultant acoustic engineer to this project, Mr Keith Ballagh. This review has recommended an amended definition as being suitable. In general terms I support the introduction of definitions into the Plan to improve clarity. The terminology for noise measurements is often fairly incomprehensible to people unless they are in the industry, or regularly deal with acoustic matters. The definition proposed does help in some respect to clarify what $D_{2m,nT}+C_{tr}$ means, and it's inclusion is consistent with other noise related definitions being included in Chapter Two of the Plan.
I therefore recommend that the submission is accepted and a amended definition of $D_{2m,nT}+C_{tr}$ be added to the Plan in Chapter Two 'Meanings of Words'.
Recommendation
Submission Point #11.1: Accept with some further amendment as shown below.

Amendment to Proposed Plan Change:

Add to Chapter Two 'Meanings of Words'

$D_{2m,nT}+C_{tr}$ is a measure of facade sound insulation. It is the difference in decibels between the outdoor sound level measured 2 metres from the facade (including the effect of sound reflection from the facade) and the spatial average sound level inside the receiving room. See ISO140-5 (Acoustics – Measurement of sound insulation in buildings and of building elements – Part 5: Field measurements of airborne sound insulation of facade elements and facades; and ISO 717-1:2013 Acoustics – rating of sound insulation in buildings and building elements – Part 1: Airborne sound insulation.

Submission Point #11.2 is supportive in part of the assessment criteria for rule ICr.43A relating to Acoustic Insulation of Buildings. The submitter does however request the addition of two further assessment criteria and the modification of one currently proposed. The two additions relate to two factors that can be potential mitigation measures, these being the presence of noise barriers and the use of balconies on buildings. The term 'duration of exposure' is also seen to be incorrectly used.

These amendments and additions have been reviewed by Council's Consultant Acoustic Engineer Mr Ballagh who agrees with the suggestions as being practicable mitigation measures. I agree with Mr Ballagh and recommend that the changes requested are made with minor wording changes for consistency with Plan drafting.

Recommendation

Submission Point #11.2: Accept with some further amendment as shown below.

Amendment to Proposed Plan Change:

ICr.43A.4

b) The likely exposure to the noise, the type of noise (volume, tone and audio frequency), and the duration ~~of exposure~~.

e) The effectiveness of any noise barriers.

f) The presence of any balconies.

Submission Point #11.3 is supportive of the explanation to proposed rule ICr.43A and states that the explanation complements the assessment criteria. I recommend that the submission is accepted.

Recommendation

Submission Point #11.3: Accept

Amendment to Proposed Plan Change:

Nil

Submission Point #11.4 requests changes to Appendix 19, AP19.2 Port Effects Control Overlay clauses AP19.2.i and AP19.2.ii. These clauses are operative text which remains unchanged aside from a minor deletion unrelated to this submission point. These were included in the proposed Plan Change text as context for the reader so that the notified addition AP19.2.iii was understandable. It is stated in section 1.4 of the notified proposed Plan Amendments that operative text is unable to be submitted on. However these requested changes can be made as consequential amendments under Schedule 1, Clause 10 (2) (b) (ii) of the RMA. This creates consistency with the current proposed Plan Change the provisions. The provisions in which the requested changes sit relates to the Port Noise plan change which became operative on 19 November 2012. The submitters Port Nelson and the Port Noise Liaison Committee had the opportunity to make further submissions on this submission point and raised no concerns. For the purposes of consistency and accuracy I recommend these consequential amendments are made with a minor change to the final aspect of the request for consistency with the request under submission point #11.6. I recommend that this submission point is accepted.

Recommendation
Submission Point #11.4: Accept
Amendment to Proposed Plan Change:
<p>AP19.2.i Acoustic insulation requirements for the Port Effects Control Overlay area included in the rules for the respective zones. However, no minimum construction requirements for habitable spaces (MW71A) are specified for the Port Effects Control Overlay. Instead the rules require certification from an acoustic engineer that the building design will achieve the required design noise <u>sound</u> level for that zone and, certification on completion of the works.</p> <p>Final Bullet point of AP19.2.ii a) and b):</p> <p>creating no more than 40 dBA $L_{Aeq(15 \text{ min})}$ in the principal living room, no more than 30 dBA $L_{Aeq(15 \text{ min})}$ in the other habitable spaces, and no more than 50 dBA $L_{Aeq(15 \text{ min})}$ in any hallway, in each building. Noise <u>Sound</u> levels from the mechanical system(s) shall be measured at least one meter away from any diffuser.</p>
Submission Point #11.5 supports in part section AP19.3.i of the proposed Plan Change. This support is due to the approach of having a specific standard or specified design to follow. The submitter requests changes to the title of the rule which is referenced and to the use of the term 'design noise level'. The submitter has correctly identified a typographical error in the name of the rule referenced so I accept this request. The change from 'design noise level' to 'design sound level' has been considered by Council's Consultant Acoustic Engineer Mr Ballagh who is in agreement that this should be changed. As the submitter states this phrase is inconsistent with the standards cited.
Recommendation
Submission Point #11.5: Accept
Amendment to Proposed Plan Change:
Ap19.3.i ...in the rule ICr.43A 'Acoustic Insulation of Buildings'. ...the required design noise <u>sound</u> level.
Submission Point #11.6 supports in part section AP19.3.ii of the proposed Plan Change. Support is stated by the submitter as the <i>'requirement for concurrent noise and ventilation compliance is essential to achieve Plan Objectives where indoor design sound level cannot be achieved with ventilating windows and openings open'</i> .
The submitter does request some items to be amended relating to acoustic terminology and the use of terms 'noise level' instead of 'sound level'. These changes have been considered by Council's Acoustic Engineer Mr Ballagh who recommends that the changes are made for consistency with current practice and standards.
The submitter also seeks to change 'design noise level' to 'design sound level' as is sought and recommended to be agreed to in other submission points. I have not been able to find the term 'design noise level' in this section of the proposed Plan Change. This matter has been confirmed with the submitter (via email 14/3/14), the request was included in this submission point in error. No changes are sought in this regard.
Note the deletion of the Short Term Living Accommodation component relates to submission point #4.1, Planning Officers Comment #2.
Recommendation
Submission Point #11.6: Accept
Amendment to Proposed Plan Change:

Ap19.3.ii a) and b) final bullet points Creating no more than 30dBA L _{Aeq} (15min) in new bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units. Noise Sound levels from the mechanical system(s) shall be measured at least one metre away from any diffuser.
Submission Point #11.7 supports the proposed amendments to Ap19.3.iv, Table 3 and notes. These provisions relate to acoustic insulation requirements as one of two ways to achieve permitted activity status under rule ICr.43A. I recommend that this submission is accepted.
Recommendation
Submission Point #11.7: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 12: Hospitality NZ
Submission Point #12.1: Support acoustic insulation of inner city residential units and short term living accommodation.
This will provide residents with a better and more pleasant experience without any adverse effects on wider community activities. This amendment further recognises that there will be many contributors to noise in the CBD areas. We further consider that this measure should alleviate or reduce adverse noise impacts and enable the CBD to achieve the level of vibrancy appropriate for its diverse community.
Decision Sought: Retain

Planning Officer Comment #7 Hospitality NZ Submission Point #12.1
The submitter is supportive of the proposal for acoustic insulation of new bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units as a permitted activity. The reasons for this view are that residents of this accommodation will have a <i>'better and more pleasant experience without any adverse effects on wider community activities'</i> . They also make what I consider to be an important point that acoustic insulation of these areas recognises that there are many sources of noise in the Inner City. Bars and restaurants are one contributor and through consultation in developing this proposed Plan Change Council was advised of other noise sources such as street sweeping, road works, leaf blowing, rubbish bin collection, vehicle noise and extract fans/air conditioning units. This highlights the diverse range of noise sources in the Inner City and demonstrates the appropriateness of acoustically insulating bedrooms as one method of managing this noise. Note that Planning Officer Comment #2 to Submission Point #4.1 recommends that acoustic insulation of Short Term Living Accommodation is not required under this proposed Plan Change. I recommend the submission is accepted.
Recommendation
Submission point #12.1: Accept
Amendment to Proposed Plan Change:
Nil

Plan Change 16: Topic 2 – Noise Generating Activities

Submitter 8: Graeme Downing and Stephanie Trevena
Submission Point #8.2: Support in part - Noise Generating Activity definition
There should be no qualification as to what creates the noise. The qualification is as to output, as set out in the rule.
Decision Sought: First bullet point in Noise Generating Activity definition, delete the words "from a sound system with greater than 100w output".

Submission Point #8.3: Support in part - Noise Generating Activity definition
Suggest amendments to accord with the definition of night time under the noise rules in the Plan, which is from 10pm each night.
Decision Sought: First and second bullet points replace "11.00pm" and "1.00am" respectively with 10.00pm.

Submission Point #8.4: Support in part ICr42A.1 definition of "extension"
Decision Sought: Add new sub clause "or d) Results in any increase in the hours amplified music is played or any increase in the volume the amplified music is played at"

Submission Point #8.5: Support in part AP13.1 "Noise Generating Activities" but seek addition to AP13.1.2.
Decision Sought: Add new sub clause "and c) The provision of a Monitoring Report to the Council at least once a year."

Further Submitter X1: Dan McGuire	Statement X1.1 to X1.4
Supports Submission Point #8.2 to #8.5	
The submissions suggestions are highly relevant and important. Please incorporate the suggestions in the submission	

Planning Officer Comment #8
Graeme Downing and Stephanie Trevena
Submission Point #8.2 to #8.5
Submission Point #8.2 and #8.3. The submitter supports in part the definition of Noise Generating Activity but seeks that the qualification around sound system output ' <i>from a sound system with greater than 100w output</i> ' is deleted. Their point is that it is the noise that is important, not what produces the noise. Secondly the submitter seeks that the hours within the definition (currently specified as 11:00pm and 1:00am) should both be replaced with 10:00pm to align with the definition in the Plan of night time.
These points were both specifically discussed by the working group of Councillors who oversaw the final preparation of the proposed Plan Change. Both the hours proposed and the output wattage were put in place to allow smaller scale operations that might not be open later into the night or have low level background music to open without the need for a resource consent. This was based on two important factors. Firstly that any operation is still bound by Council's ability, through complaint and an enforcement officer under the RMA, to enforce unreasonable and excessive noise whenever it is produced; and secondly that a system with low output power, within the hours specified is less likely to cause a noise problem. Council's Consultant Acoustic Engineer Mr Keith Ballagh is of the opinion that ' <i>... a sound system of less than 100W total would be very unlikely to generate complaints</i> '. The effect of the requested amendments by the submitter would be to capture more activities in the resource consent process. This could potentially dissuade smaller operators with less likelihood of causing a noise issue from establishing in Nelson City. The proposed definition, as notified, does allow more activities to open without the need for a resource consent but it does not lessen the need for these operations to meet the noise control provisions of

the RMA in relation to unreasonable and excessive noise.

The submitter has also made the point that the hours should be the same as that set in the definition for night time in the Plan. The existing noise rules in the Plan do specify that 'night time' starts at 10pm. At first glance it does seem logical that all related Plan Provisions should be consistent and start at the same time but in my opinion this is not always the case. Some of the current provisions use the 10pm night time as a trigger for when permitted noise levels change. The 11pm and 1am proposal within this definition has been carefully considered for when an activity will trigger the need to apply for a resource consent and is not bound by when 'night time' falls. As stated in the paragraph above this is so that activities that may close before this time can operate without the need for a resource consent but they are still subject to all other controls over the noise they produce.

In terms of the Resource Management Act 1991 a balance has been made between activities with more likelihood of creating increased levels of noise later at night being triggered into needing a resource consent upfront; or those closing earlier or having a lower ability to cause a noise issue remaining as a permitted activity but still subject to other noise control mechanisms. I consider that this balance achieves sustainable management in terms of the RMA as socially it allows activities to establish which add to the vibrancy of the Inner City, while also recognising the need to manage noise production to allow residential activity to occur and add to the mix of uses. Economically it allows quieter activities, or those that close earlier to open without the upfront need for a resource consent (but still subject to all other controls over noise produced). In terms of health in particular this approach is intended to assist in creating a better managed noise environment and therefore amenity, in the Inner City.

For these reasons I recommend that amendments sought in submission points #8.2 and #8.3 are rejected, and the stated support in part is accepted.

Further Submission X1.1 – X1.2: The further submitter supports the submitter and seeks that the suggestions made are incorporated in the proposed Plan Change. Due to my recommendation to accept in part the submission points #8.2 - #8.3 the further submissions are also accepted in part.

Recommendation

Submission points #8.2 and # 8.3: Accept in part
Further Submission X1.1 – X1.2: Accept in part

Amendment to Proposed Plan Change:

Nil

Submission Point #8.4: The submitter supports in part the aspects of ICr.42A.1 which defines what an extension of a noise generating activity is. They also seek an addition to the definition stating '*d) results in an increase in the hours amplified music is played or any increase in the volume the amplified music is played at.*' The definition was developed with 'fixed' trigger points, things that would come through Council such as fire safety provisions of the Building Code for an increase in patron numbers, or liquor licensing for an increase in operating hours. Or visible and semi-permanent to permanent changes such as an outdoor area. The request by the submitter involves two parts, one is an increase in hours that music is played, and the second is an increase in the volume that it is played at. I can recommend accepting the first of the two relating to hours but not the second relating to volume. The hours component is an expansion of existing definition item b) '*any increase in operating hours*'. The trigger point is not as certain as would be seen for opening hours through liquor licensing but the two do go hand in hand and I can identify no problems created by expanding item b) to state '*any increase in operating hours or hours amplified music is played at.*'

By contrast the second aspect relating to any increase in volume the amplified music is played at is a very uncertain trigger point. Two scenarios seem relevant. One: the 'noise generating activity' already operates under a resource consent which is likely to contain conditions relating to volume of noise. In which case an increase in volume would be a breach of consent conditions and could result in enforcement action. Two: the 'noise generating activity' was in existence prior to the rule

potentially becoming operative so no resource consent exists and they increase the volume. Should this result in a level of noise which generates complaints and is deemed by the enforcement officer to be excessive then enforcement action can be undertaken. Either way an increase in volume is able to be managed by enforcement if required, and the uncertainty of a fluid trigger point is avoided. To provide recognition of the submitters request for volume to be a 'trigger point' I do recommend that a change is made to the assessment criteria for any application for resource consent under rule ICr.42A Noise Generating Activity. This does not directly provide the relief sought by the submitter but does help to introduce volume as a key component of consideration for a resource consent. The recommended amendment is ICr.42A.4 b) *expected hours of operation, volume and type of noise expected to be generated.*

I recommend accepting the hours component but rejecting the volume component as requested but with a related amendment to the assessment criteria.

Further Submission X1.3: The further submitter supports the submitter and seeks that the suggestion made is incorporated in the proposed Plan Change. Due to my recommendation to accept in part the submission point #8.4 the further submission is also accepted in part.

Recommendation

Submission Point #8.4: Accept in part
Further Submission X1.3: Accept in part

Amendment to Proposed Plan Change:

ICr.42A.1 b) any increase in operating hours or hours amplified music is played at
 ICr.42A.4 b) expected hours of operation, volume and type of noise expected to be generated.

Submission Point #8.5. The submitter supports the proposed appendix Ap13.1 Noise Generating Activities relating to Noise Management Plan provisions, monitoring, reporting and measurement of noise. They do however seek the addition to AP13.1.2 'Minimum Monitoring and Reporting Requirements' stating c) *The provision of a Monitoring Report to Council at least once a year.* I do not agree with this insertion as the requirement to undertake monitoring would be determined through the resource consent process based on each individual proposal. In some cases it might be warranted to require a monitoring report (for example a bar on the edge of the Inner City Fringe), whilst in others the activities circumstances and/or location mean that ongoing monitoring report may not add any value (for example the same bar in the Inner City Centre and distanced from noise sensitive activities). The provisions of Appendix 13 are minimums and any resource consent granted with conditions is able to include further monitoring and reporting as is deemed necessary.

I recommend that the amendment sought in the submission point is rejected but the stated support of the submitter is accepted.

Further Submission X1.4: The further submitter supports the submitter and seeks that the suggestion made is incorporated in the proposed Plan Change. Due to my recommendation to accept in part submission point #8.5 the further submission is also accepted in part.

Recommendation

Submission Point #8.5: Accept in part
Further Submission X1.4: Accept in part

Amendment to Proposed Plan Change:

Nil

Submitter 10: McDonalds Restaurant (NZ) Ltd

Submission Point #10.1: Oppose. Strictly speaking, the McDonalds activity falls within this category (noise generating activity) it is clear that the intention of the Plan Change is to manage activities, such as bars and nightclubs, rather than family restaurants like McDonalds.

Proposed plan change complicates current rules as well as adding additional information requirements (a noise management plan) that would otherwise not be needed. Inflexible approach to future development and maintenance.

Decision Sought: ICr42A insert the following exclusion "subpoint (a) above does not apply to internal (unlicensed) restaurant or dining space that would otherwise not fall to be considered a noise generating activity."

**Planning Officer Comment #9
McDonalds Restaurant (NZ) Ltd
Submission Point #10.1**

The central point to this submission is the potential for restaurants such as McDonald's to be included within the proposed definition of 'noise generating activity'. The submitter considers that the proposed Plan Change was seeking to manage activities such as bars and nightclubs, rather than family restaurants like McDonalds.

In terms of the scope of the proposed Plan Change the definition was intended to capture more than just 'bars and nightclubs'. In the past there have been noise complaints received from late night unlicensed food outlets although these are not as common as from licensed venues. This has included McDonald's (mainly patron noise and behaviour) and other food venues playing music. The definition reflects Council's past experience that it is not just noise from bars and nightclubs that can cause a noise problem in the Inner City. My recommendation is that Council retains the ability to consider noise production from a commercial activity that meets the current definition of a 'noise generating activity' in a proactive way.

The submitter has posed a scenario relating to what may happen should McDonald's seek to expand their current operation. I would like to add to this in saying that there are instances in which Council would seek the ability to consider what is proposed through a resource consent process. The type of activity and the customers that are attracted can vary dependant on the location, time of day or night and the service provided. There is often a very different set of behaviours and effects at 3pm compared to what you would find at 3am.

In their full submission the submitter notes the new provision appears to mirror the provisions set out in operative rule ICr.46 Closing times – services to the public. The relevant section of ICr.46 is replicated below. It is true there are similarities, and in some cases a particular proposal within 50m of the Residential Zone boundary (being a trigger point for application of ICr.46.1 a)) will need resource consent under both rules. However operative rule ICr.46.1 a) captures a much greater spread of activities and effects in its scope so it is more likely that a consent will be required under the operative rule than the proposed rule. In my view this does not create a problem as rule ICr.46.1 a) recognises the greater sensitivity of the Residential Zone to noise and other general disturbance than areas away from this zone boundary. In retrospect it may have been 'tidier' if proposed rule ICr.42A applied to the Inner City Zone beyond 50m from the Residential Zone, leaving ICr.46.1 a) within the 50m band. This however is not what the submitter has requested and in any case does not solve the issue they have with the proposed rule.

ICr.46.1

a) Any activity located within 50m of a Residential Zone Boundary, which is open to the public, or is a place of public assembly, may be open to the public only during the following hours:
Sunday to Thursday inclusive: 7am - 11pm
Friday, Saturday, Christmas Eve and New Year's Eve: 7am - 1am the following day, and

In conclusion I recommend rejecting the request of the submitter as some level of control over the activities defined as a 'noise generating activity' is desirable to ensure appropriate control over noise sources within the Inner City.
Recommendation
Submission Point #10.1: Reject
Amendment to Proposed Plan Change:
Nil

Submitter 11: Nelson Marlborough District Health Board
Submission Point #11.8: Support new definition for "noise generating activity" with consequential additional definitions
Specific meaning requires a definition. Definition is supported. Make necessary consequential amendments to Chapter 2 to give effect to other submissions by this submitter.
Decision Sought: Replace Chapter 2 definition for term "Lmax" with "Lmax includes LAFmax and is the maximum A frequency weighted, F-time-weighted sound pressure level during a time period as defined in NZS6801:2008." Add new definition - "D2m,nT+Ctr, is a standardised single number in decibel as a measure of facade performance. It is the difference between the outdoor sound level measured 2 metres from the facade (including the effects of reflection from the facade) and the spatial average sound level inside the receiving room. It includes a spectrum adaption term to take into account lower frequency sound. See ISO 140-5 (1998) Acoustics - Measurement of sound insulation in buildings and of building elements - Part 5: Field measurements of airborne sound insulation of facade elements and facades. The single number is evaluated according to the method given in ISO 717-1:2013 Acoustics - Rating of sound insulation in buildings and building elements - Part 1: Airborne sound insulation".

Submission Point #11.9: Support new rule ICr42A Noise Generating Activities assessment criteria and explanation
This is a practical method to address potential increase in noise from new activities, including use of management plans.
Decision Sought: Retain

Submission Point #11.10: Support new Appendix 13 overview
Reasonable and necessary provision
Decision Sought: Retain

Submission Point #11.11: Support in part new appendix 13, AP13.1 with amendment
Support the general tenor but with amendments necessary to correct terminology inconsistent with standards cited and usage elsewhere in Proposed Plan Change and add mitigation measures omitted which should be included. The term "maximum noise output" is potentially problematic.
Decision Sought: a) Replace "design noise level" with "design sound level". b) After "acoustic insulation" add, "or noise barrier" b) Replace "noise levels and meet the design noise level" with "noise and comply with the design sound level" g) Replace "govern the maximum noise output" with "limit sound emissions"

Submission Point #11.12: Support AP13.2 Minimum Monitoring and Reporting Requirements
Practical requirement demonstrating the operator's recognition of best practicable option obligations under s.16 of the Resource Management Act 1991.
Decision Sought: Retain

Submission Point #11.13: Support in part AP13.1.3 Measurement of Noise with amendment
NZS6802 deals with assessment, not measurement. Omission creates legal uncertainty.
Decision Sought: Amend title to "Measurement and assessment of Noise" After the word "and" insert "assessed in accordance with"

Submission Point #11.14: Support in part AP13.2 Assessment of unreasonable and excessive noise AP13.2.1 with amendment
Reference to s.327(1) is ultra vires the Act. Council as an entity has no power to form an opinion for that statutory purpose as the power is solely vested in a constable or enforcement officer. Further, if s.327 was included, the proposed provision seeks to extend or modify the specific meaning given to "excessive noise" in s.326 of the Act.
Decision Sought: Delete "or in forming an opinion under 327(1)" Delete the last two words in sub-clause AP13.2.1.ii e "or excessive"

Submission Point #11.15: Support in part AP13.2 Assessment of unreasonable and excessive noise AP13.2.1.ii with amendment
Terminology needs correction to conform with terminology used in the standards cited. Words "to determine actual noise level" are superfluous
Decision Sought: In b) Replace "noise level" with "sound level" and Replace b) "noise meter to determine actual noise level" with "sound level meter".

Submission Point #11.16: Support AP13.2.2 Construction Noise
Construction noise cannot be assessed using NZS6802:2008 and provides a sustainable way to manage transient construction noise activity whether of long or short duration.
Decision Sought: Retain

Planning Officer Comment #10 Nelson Marlborough District Health Board Submission Point #11.8 to #11.16
Submission point #11.8. This submission point requests the insertion of 2 definitions into the Plan. The definition for $D_{2m,nT}+C_{tr}$ has been discussed in Planning Officer Comment #6 in relation to submission point #11.1. This discussion is in relation to the request to include a definition for the term 'L _{max} '. The operative Plan currently includes a definition of L _{max} stating: <i>'means the maximum A-frequency-weighted sound level (dBA L_{max}) as described in NZS6801:1991, clause 2.1. The L_{max} units referred to in this Plan relate solely to night-time (10pm to 7 a Monday to Friday, and 10 pm to 9 am Saturdays, Sundays and public holidays).</i> The proposal is to use the definition: <i>L_{max} includes LAF_{max} and is the maximum A-frequency weighted, F-time-weighted sound pressure level during a time period as defined in NZS6801:2008.</i> Changing a definition within Chapter 2 Meanings of Words of the Plan results in a change which applies across the whole Plan including the noise rules in every other zone which still use NZS6801:1991 and the hours specified in the current definition. While this inconsistency is not ideal it is a reality of carrying out a 'rolling review' of the Plan as was the case when this proposed Plan Change was developed. In the case of the definition of $D_{2m,nT}+C_{tr}$ accepted previously this term only appears in provisions relating to this proposed Plan Change however L _{max} appears throughout the noise provisions of the Plan. Replacing the definition could put this out of step with other unaltered parts of the Plan. In addition the term L _{max} is defined in both NZS 6801:2008 and NZS 6802:2008 both of which are referenced within the provisions of this proposed Plan Change alone and have not been updated throughout other noise provisions of the Plan. The inclusion is also not supported by Council's Consultant Acoustic Engineer Mr Ballagh for similar reasons of unintended consequences in other parts of the Plan and the ability to use the definition within the referenced 2008 noise standards. It is my recommendation that the definition is not added to the Plan as it is unnecessary due to being defined in referenced documents, and possibly becoming out of step with other operative Plan provisions which use this term but have not been updated through this proposed Plan Change. The

stated general support of the submitter is however accepted.
Recommendation
Submission Point #11.8: Accept in part
Amendment to Proposed Plan Change:
Nil
Submission Point #11.9: The submitter supports the proposed new rule ICr.42A requiring resource consent for new or extended noise generating activities. They consider this is a practical method to address potential increase in noise from new activities, including the use of management plans. I recommend that this submission point is accepted.
Recommendation
Submission Point #11.9: Accept
Amendment to Proposed Plan Change:
Nil
Submission Point #11.10: The submitter supports the proposed AP13 Overview to Appendix 13. I recommend that this submission point is accepted but note that changes are recommended to be made to this provision through submission point #11.14 below and submission point #8.6 Planning Officer Comment #19.
Recommendation
Submission Point #11.10: Accept
Amendment to Proposed Plan Change:
Nil
Submission Point #11.11: The submitter supports in part the proposed AP13.1 relating to minimum noise management plan provisions. The submitter requests some wording amendments to the text to bring the terminology in line with the standards cited and elsewhere in the proposed Plan Change. These suggestions have been considered by Council's Consultant Acoustic Engineer Mr Ballagh who has recommended they be accepted, aside from the change to 'maximum noise output' as he states there appears to be no advantage to making the change. The text I recommend changing is shown below in the 'Amendment to Proposed Plan Change' section.
Recommendation
Submission Point #11.11: Accept in part
Amendment to Proposed Plan Change:
AP13.1.1.i a) <u>The intended outcomes of the Noise Management Plan, including the design noise sound level to be received outside of the building and site.</u> b) <u>A description of the premises including details of walls, roof, cladding, door openings and windows, ventilation, site layout, outdoor areas and any acoustic insulation or noise barriers that has have been, or will be, installed, and a description of how these assist to reduce noise levels and meet the design noise sound level specified above.</u>
Submission Point #11.12: The submitter supports Ap13.1.2 Minimum Monitoring and Reporting Requirements as a practical requirement demonstrating the operator's recognition of the best

practicable option obligations.
I recommend that this submission point is accepted.
Recommendation
Submission Point #11.12: Accept
Amendment to Proposed Plan Change:
Nil
Submission Point #11.13: The submitter supports AP13.1.3 Measure of Noise in part and requests that the title is amended to include 'assessment of noise' and a similar amendment to the text of the provision. This is because NZS6802 deals with assessment, not measurement, as is currently inferred by the provision. This has been reviewed by Council's Consultant Acoustic Engineer Mr Ballagh who is in agreement with the amendments proposed.
I recommend that this submission point is accepted.
Recommendation
Submission Point #11.13: Accept
Amendment to Proposed Plan Change:
<u>AP13.1.3 Measurement and Assessment of Noise</u> <u>AP13.1.3.i The measurement of noise is to be in accordance with NZS6801:2008 and assessed in accordance with NZS6802:2008.</u>
Submission Point #11.14: The submitter supports in part the provisions of AP13.2.1 but seeks amendments. They state that the current reference to s.327(1) is ultra vires and that the provision extends or modifies the meaning given to 'excessive noise' in s.326 of the Act. The ultra vires aspect has been reviewed by Nelson City Council's legal representative Mr Ironside who has suggested amendments to Appendix 13 (including AP13.2.1 to clarify its purpose.
Council's Acoustic Consultant Mr Ballagh has also reviewed the suggested deletion of the words ' <i>...or in forming an opinion under s.327 (1)</i> ' and ' <i>...or excessive</i> '. He does not support these deletions as he considers it useful to reference the primary factors that would be used to determine if noise were excessive.
The submitter's main point is that Council itself has no power to form an opinion under s.327 of the RMA. This is correct as it is Council Enforcement Officer that has these powers. I consider that a simple change can make this provision legally correct. I recommend that instead of just referring to Nelson City Council the provision starts with ' <i>Nelson City Council's <u>Enforcement Officer</u>, for the purposes ...</i> '
I recommend accepting the submission in part. The relevant changes are replicated below from the related discussion under submission #8.6 Planning Officer Comment #19.
Recommendation
Submission Point #11.14: Accept in part
Amendment to Proposed Plan Change:
<u>AP13.2.1.i Nelson City Council's <u>Enforcement Officers</u>, for the purposes of assessing compliance with permitted activity conditions, relevant resource consent conditions, and sections 16(1) (which requires consideration whether the best practicable option is being undertaken to ensure noise does not exceed a reasonable level), or in forming an opinion under section 327(1) of the Resource Management Act, <u>Excessive Noise Direction</u>, will generally take into account the following matters when determining whether or not noise is unreasonable or excessive:</u>

Submission Point #11.15: The submitter supports in part assessment matters outlined in AP13.2.1.ii. They request changes to reflect terminology used in the standards referenced. These requested changes have been reviewed by Council's Consultant Acoustic Engineer Mr Ballagh who is in agreement with them.
I recommend this submission is accepted.
Recommendation
Submission #11.15: Accept
Amendment to Proposed Plan Change:
AP13.2.1.ii b) Where possible and relevant, <u>noise sound level measurements from a calibrated noise sound level meter to determine actual noise level.</u>
Submission Point #11.16: The submitter supports proposed provision AP13.2.2 Construction noise, as they state this noise cannot be assessed using NZS6802:2008.
I recommend this submission is accepted.
Recommendation
Submission Point #11.16: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 12: Hospitality NZ
Submission Point #12.2: Oppose resource consent requirements for noise generating activities.
The new Sale and Supply of Alcohol Act together with noise control provisions of the Resource Management Act are a robust and sufficient way to address noise generating activities without the need to require noise generating activities to apply for a resource consent to allow for consideration of noise issues.
Decision Sought: Delete

Planning Officer Comment #11 Hospitality NZ Submission Point #12.2
The submitter opposes the requirement for 'noise generating activities' to obtain a resource consent. They state the Sale and Supply of Alcohol Act and the noise provisions of the RMA are a robust and sufficient way to address noise generating activities.
When considering issuing liquor licences the Sale and Supply of Alcohol Act 2012 includes as a criteria to have regard to under s.105(1) h) the amenity and good order of the locality. In considering this the District Licensing Committee must have regard to 'current, and possible future, noise levels' amongst other things.
The noise provisions of the RMA are also raised by the submitter. I am presuming they are referring to people's duty under s.16 to ' <i>...adopt the best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level</i> ', and Council's ability, through an enforcement officer, under s.327 1) to direct people to reduce noise to a reasonable level should it be deemed to be excessive and is subject to a complaint.
The proposed Plan Change provisions require resource consent for new or extended noise generating activities in the Inner City Zone. This is intended to compliment the provisions of the RMA and Sale and Supply of Liquor Act 2012 to ensure a proactive approach is taken to the

establishment (or extension) of these activities. By working out at the planning stage what measures (or best practicable options) should be undertaken to ensure noise emitted is at a reasonable level all parties are able to factor this into the proposal. This approach is part of the balance being sought by this proposed Plan Change where both those that produce noise, and those that receive it, play a role in its management. This is in keeping with the objectives of the Plan which seek that the city is a vibrant and vital place but where there is still a reasonable standard of residential amenity. To allow the establishment of activities which have a known potential to produce noise and then attempt to manage any issues that arise retrospectively is difficult for all concerned. Upfront proactive planning for a recognised issue increases certainty. Relying on the legislation suggested by the submitter would not, in my view, result in the level of 'upfront' management desirable for noise generating activities.

I recommend that this submission point is rejected.

Recommendation

Submission Point #12.2: Reject

Amendment to Proposed Plan Change:

Nil

Submitter 14: Barbara Riddell

Submission Point #14.1: Support in part

Noise too loud, throbbing from drums. As long as there is no increase to existing noise levels.

Decision Sought: Decrease noise levels

Planning Officer Comment #12

Barbara Riddell

Submission Point #14.1

The submitter states that they support in part this amendment. They say the noise from drums (throbbing) is too loud and request that there is no increase in existing levels. This is followed by a request to decrease the noise levels. The proposed Plan Change does not seek to increase the noise limits for noise heard within the Residential Zone when produced in the Inner City Zone. As I understand the submission this proposal of no change to the limits in the Residential Zone partly meets their request.

I recommend that this submission point is accepted in part.

Recommendation

Submission Point #14.1: Accept in part

Amendment to Proposed Plan Change:

Nil

Plan Change 16: Topic 3 – Maximum Noise Levels (LAFmax)

Submitter 11: Marlborough District Health Board
Submission Point #11.17: Support in part new rule Assessment Criteria and Explanation to Inner City Zone ICr42 Maximum Night Time Noise and ICr42.1 with amendment
<p>Maximum sound level limits are designed for protection against sleep disturbance and are necessary to protect the health of people and communities. The definition in chapter 2 relies on the superseded standard NZS6801:1991 contrary to the obvious intent of this new rule which specified NZS6801:2008. The chapter 2 definition includes time qualifiers which are inconsistent with this proposed plan change time frames. These can be deleted from the definition with no loss of meaning.</p> <p>The word 'maximum' in this proposed new rule can be confusing when read with the rest of the plan. The numerical level of 75 dB is supported as consistent with the recommendations found in NZS6802:2008 however it should be noted the equivalent free field value would be 73 dB and if the intention was to set 75 dB as the numerical limit it should be 77 dB if it is to be assessed 1m from the facade or side of a building.</p> <p>The word "facade" has connotations of frontage as noted by the Environment Court and should not be used where "any side" of a building could be the assessment location.</p> <p>The term "noise measured" is problematic as it does not allow for assessment and would exclude consideration of extraneous noise source contamination of an LAFmax measure as required by NZS6802:2008.</p>
Decision Sought: Amend heading to "Night time noise limits". Replace "noise measured" with "The sound level assessed". Replace "facade" with "side". Replace "maximum noise levels" with "noise limit". Replace Chapter 2 definition for Lmax with "Lmax includes LAFmax and is the maximum A frequency weighted, F-time-weighted sound pressure level during a time period, and is defined in NZS6801:2008".
Submission Point #11.18: Support new rule assessment criteria and explanation to Inner City Zone ICr42.4 and ICr42.5 explanation
Assessment criteria and explanation are necessary criteria.
Decision Sought: Retain
Submission Point #11.19: Support in part new rule, assessment criteria and explanation to Inner City Zone ICr42.4 amendments to contents page and Inner City Zone rule tables.
The Heading is misleading
Decision Sought: Amend heading in contents page to "Night time noise limits"
Planning Officer Comment #13 Marlborough District Health Board Submission Point #11.17 to #11.19
<p>Submission Point #11.17: The submitter supports in part proposed rule ICr.42 'Maximum night time noise' and makes a number of requested changes relating to terminology and definitions. These have been reviewed by Nelson City Council's Acoustic Consultant, Mr Keith Ballagh, I will discuss each item within this submission point in turn as follows.</p> <p>The submitter correctly identifies that maximum sound level limits are designed for protection against sleep disturbance. They then identify that the definition of the term Lmax in chapter 2 of the Plan uses standard NZS6801:1991, rather than the 2008 version and different hours than that included in the proposed rule. They therefore seek that the definition is updated as part of this proposed Plan Change. This matter has been discussed in Planning Officer Comment #10 in response to submission point #11.8. For those reasons I recommend that this aspect of submission point #11.17 is rejected.</p> <p>The submitter requests removal of the term 'maximum' from the rule as they state it can be confusing. This is supported by both Nelson City Council's Acoustic Consultant, Mr Keith Ballagh and myself as it improves technical clarity. I recommend that this aspect of submission point #11.17</p>

is accepted. I also note that the submitter seeks clarity on the use of the numerical value of 75 dB. The free-field value is 73 dB when it is measured 1m from the facade of a building. Effectively the noise assessed 1m from a facade is 2 dB louder than if it was measured in the open due to reflection from the nearby facade. The 75 dB numerical value is intentional and while it may be slightly different than this when assessed in the location specified it is numerically consistent with that in the current operative rule. No change is sought by the submitter and I recommend that no change is made to this provision.

The submitter requests that the term 'facade' is replaced with 'side' as facade has connotations of being the frontage of the building. I agree with the submitter. The Oxford English Dictionary defines facade as '*The principal front of a building, that faces on to a street or open space*'. The intent of the rule was to have the sound level assessed from any side, front or rear of a relevant building. Council's Acoustic Consultant, Mr Keith Ballagh notes that the change to 'side' could be equally problematic and may exclude the front or rear of a building. Therefore I recommend a change to '*Noise measured 1 metre from any external wall of any Residential Unit or Short Term Living Accommodation Unit ...*'

The submitter requests a change to the term 'noise measured' as it does not allow for noise also being assessed. This change is supported and I recommend that this aspect of submission point #11.17 is accepted.

Recommendation

Submission Point #11.17: Accept in part

Amendment to Proposed Plan Change:

rule title ~~ICr.42 Maximum Night Time Noise~~ Night Time Noise Limits
 ICr.42.1

~~Noise measured~~ The sound level assessed 1 metre from ~~the facade of~~ any external wall of any Residential Unit or Short Term Living Accommodation Unit shall not exceed the following noise limit maximum noise levels during the hours 10:00pm to 7:00am:

75 dB L_{AFmax}

All measurements and assessment shall be in accordance with NZS6801:2008 and NZS6802:2008

Submission Point #11.18: The submitter supports the assessment criteria and explanation to proposed rule ICr.42.

I recommend that this submission point is accepted.

Recommendation

Submission Point #11.18: Accept

Amendment to Proposed Plan Change:

Nil

Submission Point #11.19: The submitter supports in part the rule name for proposed rule ICr.42. This has been discussed above in submission point #11.17 and for the same reasons I recommend that this submission point is accepted. This change simply reflects the proposed rule within the rule table of the Inner City Zone chapter contents page.

Recommendation

Submission Point #11.19: Accept

Amendment to Proposed Plan Change:

Amend contents page of Inner City Zone rule table:

~~ICr.42 Maximum Night Time Noise~~ Night Time Noise Limits

Submitter 14: Barbara Riddell
Submission Point #14.2: Oppose
Levels too high, even for Inner City. Drums are over the limit all the time.
Decision Sought: Enforce drum limits. Music, singing are fine. Throbbing from drums is over the top.

Planning Officer Comment #14 Barbara Riddell Submission Point #14.2
<p>The submitter states that the limits are too high and requests that enforcement is carried out in terms of the noise from drums. I have spoken to Mrs Riddell to clarify her submission and she confirms the main issue for her is the noise of drums (bass frequency) from music, mostly produced along Bridge Street. This is an ongoing issue which has been dealt with by Nelson City Council's Enforcement Contractors in the past. In terms of this proposed Plan Change and management of bass frequencies this will be carried out through an assessment by an enforcement officer to determine if the noise heard (including bass frequencies) is excessive. In which case, when accompanied by a complaint, they can take appropriate action to ensure it is reduced to a reasonable level. In addition the requirements for new or extended 'noise generating activities' to gain a resource consent prior to establishing would enable measures to be taken to manage bass frequency emission should this be relevant to a proposal.</p> <p>I recommend this submission point is rejected in terms of this proposed Plan Change, but note that the submitters concerns are a matter for Nelson City Council's Enforcement Contractors, who I understand have responded to this issue.</p>
Recommendation
Submission Point #14.2: Reject
Amendment to Proposed Plan Change:
Nil

Plan Change 16: Topic 4 – ICr.43 Noise received at sites in the Residential Zone

Submitter 8: Graeme Downing and Stephanie Trevena
Submission Point #8.9: Support in part rule ICr43 with amendment
Low frequency night time noise from amplified music from the central city affecting adjacent residential zoned sites is a noise nuisance. Low frequency sounds penetrate through structures more easily than broadband sounds.
Decision Sought: Add a night time low frequency noise limit

Further Submitter X1: Dan McGuire	Statement X1.8
Supports Submission Point #8.9	
The submission suggestions are highly relevant and important. Please incorporate the suggestions in the submission.	

Planning Officer Comment #15 Graeme Downing and Stephanie Trevena Submission Point #8.9
<p>The submitter supports the retention of rule ICr.43 Noise received at sites in the Residential Zone and the associated amendments to bring this in line with 2008 noise standards. They do however request the addition of a night time low frequency limit.</p> <p>The submitter correctly points out that low frequencies have been identified as causing a noise nuisance in the Residential Zone. Council did originally include a bass frequency control in early rule drafts of the proposed Plan Change to resolve this. However later advice from Council's Acoustic Consultant, Mr Keith Ballagh identified that bass frequency sound level measurements were still potentially subject to contamination and it would be difficult to unambiguously determine the source to a standard required by a Court. This is one of the reasons that specific sound level measurements are proposed to be removed from the Plan. The proposal to retain rule ICr.43 for noise received within the Residential Zone is to retain certainty and consistency for the Residents of this zone. The sound levels specified cover all frequencies audible to the human ear, including low frequencies so this is still specifically controlled in this circumstance.</p> <p>Mr Ballagh has also identified that an accurate measurement of low frequencies is more technically difficult than other noise measurements and requires specialised equipment and training that would not be reasonably expected of a local authority.</p> <p>In terms of this proposed Plan Change and management of bass frequencies this will be carried out through an assessment by an enforcement officer to determine if the noise heard (including bass frequencies) is excessive under s.327 of the RMA.. In which case, when accompanied by a complaint, they can take appropriate action to ensure it is reduced to an appropriate level. Also sound level measurements (of all frequencies audible to the human ear) can be taken under rule ICr.43 in the Residential Zone. In addition the requirements for new or extended 'noise generating activities' to gain a resource consent prior to establishing would enable measures to be taken to manage bass frequency emission should this be relevant to a proposal.</p> <p>For the reasons given above I recommend that the support of this submission point is accepted, but the request to include a low frequency control is rejected.</p> <p>Further Submission X1.8: The further submitter supports the submitter and seeks that the suggestions made are incorporated in the proposed Plan Change. Due to my recommendation to accept in part the submission points #8.9 the further submission is also accepted in part.</p>
Recommendation

Submission Point #8.9: Accept in part
Further Submission Point X1.8: Accept in part
Amendment to Proposed Plan Change:
Nil

Submitter 11: Nelson Marlborough District Health Board
Submission Point #11.20: Support in part rule ICr43 Noise at residential boundary and associated assessment criteria and explanation in the Inner City Zone with amendment
Being mindful of the need to be "on" the Proposed Plan Change, support the general tenor and numerical limits and the 2008 editions of NZS6801 and NZS6802 but with necessary amendments to terminology used in provision for consistency with standards cited an usage elsewhere in this Proposed Plan Change.
Decision Sought: Replace two occurrences of LAeq with LAeq(15min)

Submission Point #11.21: Support in part ICr43 Noise at residential boundary and associated assessment criteria and explanation in the Inner City Zone. ICr43.4 and 5 Assessment Criteria and explanation with amendment
Consistency with terminology with standards "ambient noise levels". Ambient sound has important implications for assessment methods and is a defined term in NZS6802:2008/ "Ambient noise level is" an undefined term and its use may create legal uncertainty.
Decision Sought: Replace "ambient noise levels" with "ambient sound level".

Planning Officer Comment #16 Marlborough District Health Board Submission Point #11.20 and #11.21
Submission Points #11.20 and #11.21: The submitter supports in part proposed rule ICr.43 Noise at residential boundary but requests that the terminology is changed in two areas. These technical changes have been reviewed by Nelson City Council's Acoustic Consultant Mr Keith Ballagh who supports the change from 'ambient noise level' to 'ambient sound level' (submission point #11.21) he does not however support the change from LAeq with LAeq(15min) (submission point #11.20). This is due to having the 15min specification requiring measurement to be undertaken for at least that period of time. In the situations where noise measurements are to be taken in the Inner City it is quite frequent that a shorter measurement period can be achieved before some interference occurs. Leaving the time period open allows for shorter periods of time, provided they were long enough to demonstrate the noise levels, to be used as evidence of non-compliance. As Mr Ballagh states ' <i>It is preferable to have the flexibility to measure according to the circumstances</i> '. I recommend accepting the views of Mr Ballagh
I recommend accepting in part submission point #11.20 and accepting #11.21.
Recommendation
Submission point #11.20: Accept in part Submission point #11.21: Accept
Amendment to Proposed Plan Change:
ICr.43.5: ...the generally lower ambient noise <u>sound level</u> ...

Submitter 12: Hospitality NZ
Submission Point #12.3: Support
Decision Sought: Retain
Planning Officer Comment #17 Hospitality NZ

Submission Point #12.3
The submitter supports the retention of rule ICr.43 controlling noise at sites within the Residential Zone.
I recommend accepting this submission point.
Recommendation
Submission Point #12.3: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 13: Gaile Noonan
Submission Point #13.1: Oppose
This Plan change needs more work where inner city fringe and inner city zones meet residential. In general if noise is being emitted from the city and/or bar, cafe, restaurant etc in a zone affecting either residential or high density zones then more care is required as the number of people affected is much greater. If the Nelson City Council wishes to grow the high density zones then they need to be better about creating very high degree of balance in the area of noise. This new plan change does not seem to take into account existing residential. I don't believe measuring noise from the facade of any residential unit is appropriate as corner sites and outdoor living areas need to be considered. I am not satisfied that this plan change adequately protects residential amenity in residential areas.
Decision Sought: Properties within say 150 metres of any proposed new development emitting noise on a regular basis should have their properties noise protected ie double glazing etc, at the cost of the applicant not the home owner.

Further Submitter X1: Dan McGuire	Statement X1.10
Support Submission Point #13.1	
Any new development emitting noise on a regular basis should have their properties noise protected at the cost of the applicant, not the homeowner. This is standard practice overseas.	

Further Submitter X2: Nelson Grey Power	Statement X2.1
Support Submission Point #13.1	
Members live within or adjacent to the inner city zones, concerned at the escalating noise problems arising from increased commercial activity at all hours of the day and night. We see it is Council's responsibility to introduce and manage better mechanisms to ensure noise is strictly controlled.	

Planning Officer Comment #18
Gaile Noonan
Submission Point #13.1
This submission point is included in Topic 4 'Noise Received at Sites in the Residential Zone' but it should be recognised that the comments also have a general component which spans the proposed Plan Change provisions.
The submitter raises concerns that the proposed Plan Change needs more work particularly in terms of noise from the city (in particular the Inner City fringe area) affecting people in the residential areas. The submitter states they are not satisfied the proposed Plan Change adequately protects residential amenity in residential areas. Specifically the submitter requests that properties in proximity to a proposed new development emitting noise on a regular basis should have their properties noise protected at the cost of the applicant. They also note that measuring from the facade of a residential unit is not appropriate as corner sites and outdoor areas need to be taken

into account.

The development of this proposed Plan Change has taken into account both the balance required to help achieve a vital and vibrant inner city centre and the need to provide for appropriate residential amenity in the neighbouring Residential Zones. In terms of the Residential Zone amenity, the permitted sound levels for sound travelling from the Inner City Zone to the Residential Zone are no different to that which is permitted in the Residential Zone generally. (The only proviso here is that the Inner City Zone rule is proposed to be revised for the 2008 New Zealand Standards and includes an allowance for construction noise). The approach suggested by the submitter of the noise producer paying for the insulation of potential affected parties is used in the case of Port Nelson. This is based on the fact Port Nelson is the major noise emitter in the area and the noise affecting these properties can be attributed to them. In the case of the Inner City noise is often received from a number of sources at varying times making it unreasonable to target any one emitter for this type of approach. In terms of what the proposed Plan Change does do, it requires new or extended 'noise generating activities' to apply for a resource consent prior to establishing to ensure proactive steps are taken to reduce the noise emitted from their property to a reasonable level. This places control at the source of the noise (for new noise generating activities) and the cost onto any new operators and not the home owner in the Residential Zone.

In terms of the Resource Management Act 1991 I consider that this approach represents sustainable management of the physical resource of the Inner City and surround Residential Zone. This is done in a way that enables people and the communities to meet their social, economic, and cultural wellbeing and for their health and safety. Socially there is the ability to live in and near to the city centre with similar noise protection measures as apply to the Residential Zone generally. Additionally the choice to live near the Inner City allows residents to more easily participate in the activities that add to City vitality and vibrancy. Economically the additional costs to development have been carefully considered and are applied to new and extending noise generating activities; People's health is also considered in providing appropriate sleeping environments, and this use is a current and reasonably foreseeable need of future generations in the Inner City. This overall approach of the proposed Plan Change helps to mitigate actual and potential adverse effects of noise on people's sleeping environment.

In terms of the submitters statement relating to measuring noise from the facade of a residential unit this rule, ICr.42, is recommended to be revised in response to submission point #11.17. See Planning Officer Comment #13. This recommended change replaces the term 'facade' with 'any external wall'. While this does not cover outside areas it does clarify that all exterior walls of a building can be measurement points. Should measurements show non-compliance with this rule and a resource consent is sought then as a discretionary activity impact on outdoor areas would be considered through the discretionary activity status of the rule and the assessment criteria.

For the reasons given above I recommend this submission point is rejected.

Further Submission X1.10 and X2.1: The further submitters support the submitter and seeks that the suggestions made are incorporated in the proposed Plan Change. Further Submitter X2.1 also states it is Council's responsibility to introduce and manage better mechanisms to ensure noise is strictly controlled. This proposed Plan Change is intended to introduce these mechanisms to improve Council's control of noise. Due to my recommendation to reject submission point #13.1 the further submissions are also rejected.

Recommendation

Submission Point #13.1: Reject
Further Submissions X1.10 and X2.1: Reject

Amendment to Proposed Plan Change:

Nil

Plan Change 16: Topic 5 – Enforce Noise using the provisions of the RMA

Submitter 8: Graeme Downing and Stephanie Trevena
Submission Point #8.7: Oppose the deletion of ICr42
Low frequency night time noise from amplified music from the central city affecting adjacent residential zoned sites is a noise nuisance. Low frequency sounds penetrate through structures more easily than broadband sounds. If reliance is left solely to a noise rule at the receiving residential boundary, a problem arises with multiple noise sources causing the noise nuisance. Easier to identify noise polluter at source by measurements pursuant to an objective noise rule. Reverting to the default provisions of "unreasonable" noise or "excessive noise" would create uncertainty, making enforcement difficult, and result in litigation to determine what is unreasonable in each case. Retention of only an Lmax rule would send the wrong message to operators of licensed premises, i.e. that they could make continuous noise up to that Lmax level.
Decision Sought: Amend by updating the noise measures to equivalent 2008 NZS Standards as per the parallel proposed amendments to rule ICr43 and add to the noise levels in rule ICr42 to deal with bass frequencies at night time "63Hz Octave Band: 70dB L10"

Submission Point #8.6: Oppose the addition of AP13.2 Assessment of unreasonable and excessive noise
What is unreasonable or excessive noise is a matter for the Courts. It is difficult to see how an Appendix in this Plan could have any force or effect.
Decision Sought: Delete

Submission Point #8.8: Oppose new proposed rule ICr42B
Not necessary, the Council has the right under the RMA to use the "unreasonable noise" and "excessive noise" provisions under section 16 and section 327 RMA. Adds nothing to what is already legally required.
Decision Sought: Delete

Further Submitter X1: Dan McGuire	Statement X1.5 to X1.7
Supports Submission Points #8.6, #8.7 and #8.8	
The submissions suggestions are highly relevant and important. Please incorporate the suggestions in the submission	

Planning Officer Comment #19
Graeme Downing and Stephanie Trevena
Submission Point #8.6, #8.7 and #8.8
(Note see submission point #8.6 in association with #8.8 below). <u>Submission Point #8.7:</u> The submitter opposes the deletion of operative rule ICr.42 which has specific noise standards for measurement within the Inner City Zone. In retaining the rule the submitter also requests that it is updated to the 2008 standards and a low frequency control is inserted. I have discussed the low frequency matter in response to this submitters request under submission point #8.9 in Planning Officer Comment #15. While this current submission point relates to measurement within the Inner City the same argument applies. I therefore recommend rejecting this low frequency aspect of the submission point.
In terms of retaining this rule the central component of the proposed Plan Change is to improve Council's ability to manage and control noise in the Inner City. Experience has shown the current rule is difficult to monitor and enforce due to contamination of noise readings from adjacent noise sources and from the high ambient noise levels on the street. The result is that noise readings were difficult to obtain to a standard that would be expected in the Courts. Council's Acoustic Consultant Mr Keith Ballagh provided advice to Council in 2012 where he identified the most difficult situation in which to take measurements is where two bars are close to each other and the noise receiver is further away. At that time he also stated ' <i>...we consider there are no other reliable methods for</i>

resolving the contamination issues experienced from entertainment venues when attempting to use the current rules. The approach now proposed through this Plan Change, of using the provisions of the RMA, allows enforcement officers to successfully manage noise in the Inner City. Manager of Council's Enforcement Contractors Mr Stephen Lawrence confirms use of the RMA provisions for noise control has been the method of choice by the enforcement officers for the last few years and is proving to be successful in reducing complaints and is a quick and effective way to get immediate reduction in noise at the time of the problem.

This method has been determined through assessment in the s.32 report notified with the proposed Plan Change to be the most appropriate at achieving the purpose of the Act and the objectives of the Plan.

I recommend submission point #8.7 is rejected.

Recommendation

Submission Point #8.7: Reject
Further Submission Point X1.6: Reject

Amendment to Proposed Plan Change:

Nil

Submission Point #8.6 and #8.8: The submitter opposes the inclusion of AP13.2 'Assessment of unreasonable and excessive noise' in the proposed Plan Change. They state that this is a matter for the courts and is difficult to see how this could have any force or effect. I have sought the advice of Nelson City Council's legal adviser Mr Julian Ironside on this matter, and also the related matter under submission point #8.8 where the submitter requests the deletion of proposed rule ICr.42B General Noise Emission.

In terms of providing some background, rule ICr.42B, was not intended to be a rule as such but a reference to the provisions of the RMA and link to direct the Plan reader to AP13.2. The 'rule' is there as helpful guidance to Plan users to inform them how noise is managed within the Inner City. This management includes enforcement through noise provisions of the RMA. The appendix where this is set out is AP13.2 'Assessment of unreasonable and excessive noise' which, as Mr Ironside states, is '*...intended to provide explanation and guidance of unreasonable and excessive noise*'. In his opinion AP13.2 should be retained for this explanation and guidance function with some consequential amendments to clarify this purpose. The appendix is not an enforcement method in itself but sets out matters that will generally be taken into account to determine if noise is excessive or unreasonable. This does not limit Council Enforcement Officers abilities under the RMA but provides some guidance to how they will form their opinion. It also provides guidance and a level of certainty to both noise emitters and noise receivers

In terms of the related submission point #8.8 Mr Ironside has recommended agreement with the request to delete proposed rule ICr.42B General Noise Emission. He states that section 16 and 327 of the RMA are statutory provisions and do not rely on rule ICr.42B in order for enforcement action to be taken within the Inner City Zone. I agree with this statement. As stated above ICr.42B was intended to be used for guidance of Plan readers. It did not add anything to the enforcement abilities under the RMA. Therefore I recommend that this rule is deleted from the proposed Plan Change. The direction to AP13.2 can still be achieved by revising, as a consequential amendment under Schedule 1, Clause 10 (2) (b) (ii) of the RMA, the explanation to rule ICr.42. This currently includes a reference to ICr.42B which should be changed to a reference to AP13. Also within the scope of the consequential amendments related to the submitters requests are amendments to clarify the purpose of AP13.2. The amendments requested by the submitter which are recommended to be accepted and the consequential amendments are shown below.

I recommend that submission point #8.6 is rejected.
 I recommend that submission point #8.8 is accepted.

Recommendation

Submission Point #8.6: Reject

Further Submission Point X1.5: Reject
Submission Point #8.8: Accept
Further Submission Point X1.7: Accept

Amendment to Proposed Plan Change:

Consequential Amendment

AP 13 Overview

~~Relating to rule ICr.42B~~ This appendix also sets out aspects which may help form an opinion for assessment of unreasonable and excessive noise in terms of the Resource Management Act, as it relates to noise produced. This can be applicable to all zones but in particular this will be the approach undertaken within the Inner City Zone (City Centre and City Fringe, including the Intense Development Area).

Consequential Amendment

AP13.2.1.i Nelson City Council's Enforcement Officers, for the purposes of assessing compliance with permitted activity conditions, relevant resource consent conditions, and sections 16(1) (which requires consideration whether the best practicable option is being undertaken to ensure noise does not exceed a reasonable level), or in forming an opinion under section 327(1) of the Resource Management Act, Excessive Noise Direction, will generally take into account the following matters when determining whether or not noise is unreasonable or excessive:

Consequential Amendment

AP13.2.1.ii Assessment may also consider the following matters.

- a) Other noise complaints or events relating to emissions from the same location which have been found to be unreasonable or excessive, including what remedial action has previously been undertaken.
- b) Where possible and relevant, noise sound level measurements from a calibrated noise sound level meter to determine actual noise level.
- c) Information regarding the effectiveness of any noise management plan, or on site noise management.
- d) ~~Whether the best practicable option is being undertaken to ensure noise produced does not exceed a reasonable level.~~

Note: recommended changes to AP13.2.1.ii b) above arise from submission point #11.15, Planning Officer Comment #10.

Consequential Amendment

ICr.42.5

In addition to controls on maximum noise; noise will be controlled by Council officers under the relevant sections of the Resource Management Act for unreasonable and excessive noise. See rule ICr.42B (General Noise Emission) AP13 'Inner City Zone: Noise Management Plans and assessment of unreasonable and excessive noise' for information and guidance on this process. As a pro-active measure, Council officers will also offer information and advice to noise producers on ways in which they can reduce and control their emission of noise.

Delete proposed rule ICr.42B General Noise Emission

~~Item~~

~~Rule~~

<p>ICr.42B General Noise Emission</p>	<p>ICr.42B.4 Noise produced within the Inner City Zone (City Centre and City Fringe, including the Intense Development Area) must comply with the following general conditions: — a) not exceed a reasonable level under s16 of the RMA 1991 — b) not be determined to be 'excessive noise' under s327 (1) of the RMA 1991. In addition compliance with rules ICr.42 Maximum Night Time Noise and ICr.43 Noise received at sites in the Residential Zone is required.</p>
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Explanation

~~ICr.42B.5~~

~~These are provisions of the Resource Management Act 1991 which, unless otherwise stated, apply in all instances.~~

~~Any breach of the condition a) or b) will not result in requirements for resource consent but rather will be enforced via the Council's monitoring and enforcement mechanisms.~~

~~This approach allows Council Enforcement Officer's to determine if unreasonable or excessive noise is being produced utilising sections 16, 326 and 327 of the Resource Management Act 1991.~~

~~In making this assessment the matters in Appendix 13.2 Assessment of Unreasonable and Excessive Noise will generally be taken into account when determining whether or not noise is unreasonable or excessive.~~

Add

~~ICr.42B General Noise Emission~~

Consequential Amendment

IC4.2.v Use of sections 16, 326 and 327 of the Resource Management Act 1991, plus Plan guidance for enforcement of unreasonable and excessive noise (also see AP13 for further guidance).

Submitter 11: Nelson Marlborough District Health Board

Submission Point #11.22: Oppose new rule, ICr42B and ICr42B.5

This rule is ultra vires the Act, in both sections cited. Sub clause b) cannot be enforced on its own as a breach of a plan rule as s.327 makes express statutory provision for how it is to be enforced and this does not include any obligation except, when a noise direction is issued, those obligations under s.328 of the Act. The first sentence of the explanation is misleading. The second sentence of the explanation implies incorrectly that s.16 can be taken into account when forming an opinion for the purposes of s.327 of the Act about excessive noise. S.326 of the Act does include consideration of the same factors as s.16 for example the duty to adopt the "best practicable option." Nothing is lost from the Plan by complete removal of this rule.

Decision Sought: Delete

Planning Officer Comment #20

Nelson Marlborough District Health Board

Submission Point #11.22

The submitter requests the removal of proposed rule ICr.42B General Noise Emission. This is the same request as was made by submission point #8.8. I have discussed this in planning officer comment #19 above and agree with both submitters that the proposed rule ICr.42B is deleted.

I recommend accepting submission point #11.22.

Recommendation

Submission Point #11.22: Accept
Amendment to Proposed Plan Change:
See amendments in Planning Officer Comment #19.

Submitter 12: Hospitality NZ
Submission Point #12.4: Support in part
Only concern is the subjectivity of this process and that reasonableness of enforcement officers be applied.
Decision Sought: Council should develop and implement guidelines to control officers to help with anomalies.

Planning Officer Comment #21 Hospitality NZ Submission Point #12.4
<p>The submitter supports in part the enforcement of noise through the provisions of the RMA. Their concern is around this being a subjective process and that Council should have guidelines for enforcement officers to ‘...<i>help with anomalies.</i>’</p> <p>The proposed AP13.2 is intended to form part of the function that the submitter seeks. This is one of the main reasons it was included in the proposed Plan Change and recommended to be retained in Planning Officer Comment #19 above. The Manager of Nelson City Council’s Enforcement Contractors Mr Stephen Lawrence has advised me of the processes they have in place to ensure noise assessment and enforcement is carried out consistently. These are the training and experience of officers and their actions being reviewed on a regular basis to ensure as much consistency as possible.</p> <p>I recommend accepting submission point #12.4 and note that whilst the processes the submitter seeks are currently in place this will be an ongoing responsibility of Council and its Enforcement Officers.</p>
Recommendation
Submission Point #12.4: Accept
Amendment to Proposed Plan Change:
Nil

Plan Change 16: Topic 6 – Ongoing Education

Submitter 12: Hospitality NZ
Submission Point #12.5: Support
Support non regulatory approaches including ongoing education and the branch always supports engagement with Council and other stakeholders to discuss and find solutions where issues arise and as an alternative to regulatory approaches.
Decision Sought: Retain

Planning Officer Comment #22 Hospitality NZ Submission Point #12.5
The submitter supports the non-regulatory approaches of ongoing education, negotiation and mediation. Council and its enforcement officers have had a number of discussions with noise producers within the Inner City in recent years. This has resulted in a clearer understanding by all parties of what is a reasonable level of noise in the Inner City. Once a decision is released on this Plan Change Council intends to develop guidance (web site and pamphlets) to noise in the Inner City. This would cover what to expect if you are living in the Inner City and what is reasonable in terms of noise production.
I recommend that this submission point is accepted.
Recommendation
Submission Point #12.5: Accept
Amendment to Proposed Plan Change:
Nil

Plan Change 16: Topic 7 – Changes to Policy, Explanation and Reasons

Submitter 8: Graeme Downing and Stephanie Trevena
Submission Point #8.10: Support policy IC5.1
Decision Sought: Retain

Further Submitter X1: Dan McGuire	Statement X1.9
Supports Submission Point #8.10	
The submissions suggestions are highly relevant and important. Please incorporate the suggestions in the submission.	

Planning Officer Comment #23 Graeme Downing and Stephanie Trevena Submission Point #8.10
The submitter supports the proposed amendments to Policy IC5.1. The further submitter supports the submitter.
I recommend that this submission point and further submission point are accepted.
Recommendation
Submission Point #8.10: Accept Further Submission Point X1.9: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 11: Nelson Marlborough District Health Board
Submission Point #11.23: Support amendments and a new method to Inner City Zone Policy IC4.2, IC4.2.ii and IC4.2.iv
Amendment is important recognition of the nature of fringe areas and new noise makers must comply with rules.
Decision Sought: Retain

Submission Point #11.24: Support in part amendments and new method to IC4.2 and IC4.2.v with amendment
Part supported excluding reference to Plan Guidance in relation to excessive noise which is ultra vires both s.326 and 327 of the Act. Also s.16 is not an enforcement provision. Enforcement provisions are found in Part 12 of the Act.
Decision Sought: Amend as follows - IC4.2.v use of sections 316, 320 and 322 of the Resource Management Act 1991 for enforcement of unreasonable noise, and section 327 of the Act to control excessive noise.

Submission Point #11.25: Support in part amendments and new method IC4.2, IC4.3 , IC4.3.i and IC4.3.iv with amendment
Amendments and additions are reasonable and necessary for implementation of policy, consistent with objectives for zones. However the word "or" in IC4.3.v is problematic as management practices are not an alternative to compliance with rules for the pollutants listed.
Decision Sought: Amend IC4.3.v by replacing "or" with "and".

Submission Point #11.26: Support in part amendments and new method to IC4.2, IC5.1 and IC5.1.ii with amendments
The word "or" in IC5.1.ii is problematic as management practices are not an alternative to compliance with rules for the pollutants listed.
Decision Sought: Amend IC5.1.ii by replacing "or" with "and"

<p>Planning Officer Comment #24 Nelson Marlborough District Health Board Submission Point #11.23 to #11.26</p>
<p>Submission Point #11.23 support amendments and a new method to Inner City Zone Policy IC4.2, IC4.2.ii and IC4.2.iv.</p>
<p>I recommend that submission point #11.23 is accepted</p>
<p>Recommendation</p>
<p>Submission point #11.23: Accept</p>
<p>Amendment to Proposed Plan Change:</p>
<p>Nil</p>
<p>Submission Point #11.24 supports in part the new method to IC4.2.v <i>Use of sections 16, 326 and 327 of the Resource Management Act 1991, plus plan guidance, for enforcement of unreasonable and excessive noise.</i> They do however seek an amendment to the provisions of the Act which are specified to more accurately reflect the ability to carry out enforcement.</p> <p>The amended provision sought states: <i>IC4.2.v Use of sections 316, 320 and 322 of the Resource Management Act 1991, for enforcement of unreasonable noise and section 327 of the Act to control excessive noise.</i></p> <p>The requested change has been reviewed by Council's legal adviser Mr Ironside who has not supported the change sought by the submitter. He has however recommended changes to proposed IC4.2.v (being a method to a Plan policy) to clarify its purpose. These changes are outlined in Planning Officer Comment #19 as a consequential amendment and are replicated below.</p>
<p>Recommendation</p>
<p>Submission Point #11.24: Reject</p>
<p>Amendment to Proposed Plan Change:</p>
<p><u>IC4.2.v Use of sections 16, 326 and 327 of the Resource Management Act 1991, plus Plan guidance for enforcement of unreasonable and excessive noise (see AP13).</u></p>
<p>Submission Point #11.25 supports in part the proposed changes to policy IC4.3 Residential Amenity. They do however seek changes to a method to the policy, IC4.3.v, to replace the 'or' to 'and' as management practices are not an alternative to compliance in relation to the pollutants listed.</p> <p>I am in agreement with the direction sought by this change and in general terms recommend that the submission point is accepted. I do however recommend that this request can be modified to better achieve the outcome sought by the submitter. The recommended change is to split the 'rules setting performance standards' and 'use of management practices' into two separate methods to clearly demonstrate that these are two separate Plan methods to give effect to the policy.</p> <p>The same method also appears for policy IC4.2 so consequently the same change should be made to IC4.2.iii.</p>
<p>Recommendation</p>
<p>Submission Point #11.25: Accept</p>
<p>Amendment to Proposed Plan Change:</p>
<p>IC4.2.iii Rules setting performance standards, or the use of management practices, for emissions such as noise, smoke, dust and odour.</p> <p><u>IC4.2.iv Use of management practices for emissions such as noise, smoke, dust and odour.</u></p>

IC4.3.v Rules setting performance standards, ~~or the use of management practices~~, for emissions such as noise, smoke, dust and odour.

IC4.3.vi Use of management practices for emissions such as noise, smoke, dust and odour.

Submission Point #11.26 supports in part the proposed changes to IC5.1 Amenity of neighbouring areas. As for point #11.26 above they seek the change of 'or' to 'and'.

I am in agreement with this change and recommend that the submission point is accepted.

Recommendation

Submission Point #11.26: Accept

Amendment to Proposed Plan Change:

IC5.1.ii Rules setting performance standards, ~~or and~~ the use of management practices, for emission such as noise, smoke, dust and odour.

Plan Change 16: Topic 8 – General Submission Points

Submitter 2: Dan McGuire
Submission Point #2.1: Support Plan Change 16
The proposed changes will make it easier to enforce noise limits. I support the proposal and also accept the necessity of the new enforcement measures. If noise control staff continue to enforce the provisions of the RMA as they have been doing for the past two years, then I believe the Plan Change will resolve the issues we had in the past.
Decision Sought: Retain

Planning Officer Comment #25 Dan McGuire Submission Point #2.1
The submitter supports the proposed Plan Change and the enforcement practices of the last two years. I recommend that this submission point is accepted.
Recommendation
Submission Point #2.1: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 3: Peter Mayes
Submission Point #3.1
Decision Sought: Consider a device that is connected to the electricity supply to amplifiers, at a set noise level it trips the power and cannot be reset for a set time. This is mandatory for use in clubs, pubs in the UK.

Planning Officer Comment #26 Peter Mayes Submission Point #3.1
The submitter requests that a noise control device used in the United Kingdom is considered for use here. This is connected to the power supply for amplifiers and cuts the power if a certain decibel level is reached. This proposal has been considered by Nelson City Council's Acoustic Consultant Mr Keith Ballagh who does not support it. He states: <i>There are a number of practical problems such as calibration of the system (since it is an outside noise limit that would be the control point), security of the system (potentially open to interference), and crowd response in the event of a 'trip'. There are further difficulties because the permissible internal noise level will depend on whether windows or doors are open, and the location of the nearest residential unit (which may change from time to time).</i> I also note that the suggested device may well be suitable in some situations and this would form part of the consideration of a resource consent and noise management plan for a noise generating activity. For the reasons given above I recommend the submission point is rejected.
Recommendation
Submission Point #3.1: Reject
Amendment to Proposed Plan Change:
Nil
Submitter 6: Charles and Rosemary Shaw
Submission Point #6.1: Support

Advantages having residential accommodation in inner city, not only for residents but for visitors. These changes will go some way to improving the enjoyment of people who have chosen to live permanently close to the centre and those who are staying for a short time.

Decision Sought: Retain

Planning Officer Comment #27

Charles and Rosemary Shaw

Submission Point #6.1

The submitter is supportive of the proposed Plan Change, primarily due '*...to improving the enjoyment of people who have chosen to live permanently close to the centre and those who are staying for a short time.*'

I recommend that this submission point is accepted.

Recommendation

Submission Point #6.1: Accept

Amendment to Proposed Plan Change:

Nil

Submitter 9: Michelle McLean

Submission Point #9.1

Decision Sought: Would like inner city noise to be prevented from intruding into residential areas, after 9pm at the latest during the week.

Planning Officer Comment #28

Michelle McLean

Submission Point #9.1

The submitter states neither support nor opposition for the proposed Plan Change but does request that inner city noise be prevented from intruding into residential areas after 9pm at the latest during the week.

Noise is highly variable and difficult to 'stop' from intruding into the residential areas completely. To do so would result in very little noise being able to be produced within the Inner City Zone. This would not meet the Inner City Zone policy of the Plan seeking a range of activities which enhance the vitality and vibrancy of the City Centre.

However another policy of the Inner City Zone IC5.2 states that '*Special regard shall be had to preventing any deterioration of the amenity of the Residential Zone as a result of expansion of activities from the Inner City Zone, or as a result of adverse effects across the zone boundary.*'

This highlights the need to balance these policies of the Plan. This proposed Plan Change does this by retaining and updating the current rule controlling noise produced in the Inner City Zone and received in the Residential Zone. It also proposes additional controls over 'noise generating activities' albeit not from 9pm. It also utilises an enforcement regime through the Resource Management Act 1991 which allows for practical and effective enforcement to be carried out.

It is my opinion that these measures achieve a suitable balance for the Inner City and surround Residential Zones. This does not necessarily achieve the submitter's desired outcome. For this reason I recommend that the submitter point is rejected.

Recommendation

Submission Point #9.1: Reject

Amendment to Proposed Plan Change:

Nil

Submitter 11: Nelson Marlborough District Health Board
Submission Point #11.27: Supports the proposed plan change as a whole in general
It incorporates amendments to rules to avoid, mitigate and reduce adverse effects of noise on environmental health, and to promote the health of the people and communities in the District in a sustainable manner.
Decision Sought: Retain

Planning Officer Comment #29 Nelson Marlborough District Health Board Submission Point #11.27
The submitter outlines general support for the proposed Plan Change as a whole.
I recommend that this submission point is accepted.
Recommendation
Submission Point #11.27: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 12: Hospitality NZ
Submission Point #12.6: Broadly supportive of the proposed plan change
The District Plan with regards to noise control and management should reflect the principle of harmonious enjoyment of properties alongside the community, land users and their permitted activities. Hospitality NZ further considers that there are a range of initiatives to address noise issues and we are pleased that the Plan Change recognises this. Whilst noise is a very contentious issue for the hospitality industry all licensees and managers generally understand their responsibilities and further the new Sale and Supply of Alcohol Act places further controls on noise issues from licensed premises as well as provides that the management of noise is an important management activity.
Decision Sought: Retain

Planning Officer Comment #30 Hospitality NZ Submission Point #12.6
The submitter outlines general support for the proposed Plan Change as a whole.
I recommend that this submission point is accepted.
Recommendation
Submission Point #12.6: Accept
Amendment to Proposed Plan Change:
Nil

Submitter 15: C Sharp Family Trust – Late Submission
Submission Point #15.1: Support of proposed plan change
Excellent proposal to enhance inner city living. Higher density residential is essential if the city is to become a better place to live.
Decision Sought: Retain

Planning Officer Comment #31 C Sharp Family Trust Submission Point #15.1
<p>The submitter is supportive of the proposed Plan Change, primarily due being an '<i>excellent proposal to enhance to enhance inner city living.</i>'</p> <p>I recommend that this submission point is accepted.</p>
Recommendation
Submission Point #15.1: Accept
Amendment to Proposed Plan Change:
Nil

PART C

RECOMMENDED AMENDMENTS TO PROPOSED PLAN CHANGE

Format of the Plan Change provisions

For the ease of the reader the full text of provisions to be changed have been used in this document.

Within this section:

- 'Normal' text applies to operative provisions and text which are to remain unchanged.
- 'Underline' text applies to proposed new provisions at notification.
- '~~Strikethrough~~' text applies to operative provisions proposed to be deleted or amended as described at notification.
- Double underline is text recommended to be added through this Officers Report.
- ~~Double Strikethrough~~ is text recommended to be removed through this Officers Report.
- '*Italic*' text applies to instructions (therefore are non statutory).

Amendment 1 – Acoustic insulation for any new bedrooms ~~or rooms~~ intended to be used for sleeping in short term living accommodation units in the Inner City

Add a new rule, assessment criteria and explanation to Inner City Zone (City Centre and City Fringe areas) of the Nelson Resource Management Plan

<u>Item</u>	<u>Permitted</u>	<u>Controlled</u>	<u>Discretionary/Non-complying</u>
<p>ICr.43A Acoustic Insulation of Buildings</p>	<p><u>ICr.43A.1</u> Construction of new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units is permitted if:</p> <p>a) the new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units are acoustically insulated in accordance with Appendix 19 (AP19.3 Inner City Zone, Table 3), or</p> <p>b) the new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units are acoustically insulated to achieve a façade sound level difference of not less than 30dB $D_{2m,nT} + C_{tr}$, and has either ventilating windows open or minimum ventilation requirements as set down in Appendix 19 (AP19.3 Inner City Zone), and</p> <p>c) If option b) is used then prior to commencement of any construction or site works a certificate is obtained from a suitably qualified acoustic engineer to demonstrate that the building design complies with option b) above.</p>	<p><u>ICr.43A.2</u> Not applicable</p>	<p><u>ICr.43A.3</u> Activities that contravene a permitted condition are discretionary.</p>

Submission #4.1

<u>Assessment Criteria</u>	<u>Explanation</u>
<p><u>ICr.43A.4</u></p> <p>a) The location and orientation of the new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units in relation to noise sources.</p> <p>b) The likely exposure to the noise, the type of noise (volume, tone and audio frequency), and the duration of exposure.</p> <p>c) The time of day or night the noise is likely to be experienced.</p>	<p><u>ICr.43A.5</u></p> <p>This rule proactively ensures that the new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units in the Inner City Zone have acoustic insulation features designed into the building from the start to create reasonable sleeping environments. The rule operates in conjunction with other rules to manage noise in the city centre. It recognises that new</p>

Submission #4.1

<p>d) <u>The measures proposed to be undertaken to ensure an appropriate sleeping noise environment is achieved.</u></p> <p>e) <u>The effectiveness of any noise barriers.</u></p> <p>f) <u>The presence of any balconies.</u></p>	<p>Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units in the Inner City Zone, which is inherently a noisier environment than that generally experienced in the Residential Zone, should undertake some measures to protect against the adverse effects of noise.</p>
<p>Submission #11.2</p>	<p>Two methods of achieving compliance with the rule are possible; one allows a developer or owner to select from a list of specified materials, and construction methods to use, whilst the second allows any material or construction style to be used (subject to the Building Code) but it must be certified by a suitably qualified acoustic engineer to achieve a specified level of noise reduction.</p>

Amendments to contents page of Inner City Zone rule tables

Add

ICr.43A Acoustic Insulation of Buildings

Add to Chapter Two 'Meanings of Words'

Submission #11.1

$D_{2m,nT}+C_{tr}$ is a measure of facade sound insulation. It is the difference in decibels between the outdoor sound level measured 2 metres from the facade (including the effect of sound reflection from the facade) and the spatial average sound level inside the receiving room. See ISO140-5 (Acoustics – Measurement of sound insulation in buildings and of building elements – Part 5: Field measurements of airborne sound insulation of facade elements and facades; and ISO 717-1:2013 Acoustics – rating of sound insulation in buildings and building elements – Part 1: Airborne sound insulation.

Amendments to Appendix 19, AP19.2 Port Effects Control Overlay

AP19.2 Port Effects Control Overlay

AP19.2.i Acoustic insulation requirements for the Port Effects Control Overlay area included in the rules for the respective zones. However, no minimum construction requirements for habitable spaces (~~MW71A~~) are specified for the Port Effects Control Overlay. Instead the rules require certification from an acoustic engineer that the building design will achieve the required design ~~noise~~ sound level for that zone and, certification on completion of the works.

Submission #11.4

AP19.2.ii In addition, where the indoor design level cannot be achieved with ventilating windows open, the minimum ventilation requirements for habitable spaces require either:

- a) A mechanical system or mechanical ventilation system capable of:
 - providing at least 15 air changes of outdoor air per hour in the principal living room of each building and give 5 air changes of outdoor air per hour in the other

habitable spaces of each building, in each case with all external doors and windows of the building closed with the exception of such windows in non-habitable spaces that need to be ajar to provide air relief paths;

- enabling the rate of airflow to be controlled across the range, from the maximum airflow capacity down to 0.5 air changes (plus or minus .01) of outdoor air per hour in all habitable spaces;
- limiting internal air pressure to not more than 30 Pascals above ambient air pressure;
- being individually switched on and off by the building occupants, in the case of each system; and
- creating no more than 40 dBA $L_{Aeq(15 \text{ min})}$ in the principal living room, no more than 30 dBA $L_{Aeq(15 \text{ min})}$ in the other habitable spaces, and no more than 50 dBA $L_{Aeq(15 \text{ min})}$ in any hallway, in each building. ~~Noise~~ Sound levels from the mechanical system(s) shall be measured at least one meter away from any diffuser.

Submission #11.4

Note: This is the ventilation option provided for by the Port Noise Mitigation Plan. In the event that qualifying residents opt for the following (more expensive) air conditioning option (option b), those residents shall be required to pay the difference.

or:

b) Air conditioning plus mechanical outdoor air ventilation capable of:

- providing internal temperatures in habitable spaces not greater than 25 degrees Celsius at 5% ambient design conditions as published by the National Institute of Water & Atmosphere Research ("NIWA") (NIWA, Design Temperatures for Air Conditioning (degrees Celsius), Data Period 1991-2000), with all external doors and windows of the habitable spaces closed;
- providing 0.5 air changes (plus or minus 0.1) of outdoor air per hour in all habitable spaces;
- each of the air conditioning and mechanical ventilation systems shall be capable of being individually switched on and off by the building occupants; and
- creating no more than 40 dBA $L_{Aeq(15 \text{ min})}$ in the principal living room, no more than 30 dBA $L_{Aeq(15 \text{ min})}$ in the other habitable spaces, and no more than 40 dBA $L_{Aeq(15 \text{ min})}$ in any hallway, in each building. ~~Noise~~ Sound levels from the mechanical system(s) shall be measured at least one metre away from any diffuser.

and:

c) a mechanical kitchen extractor fan ducted directly to the outside to serve any cooking hob, if such an extractor fan is not already installed and in sound working order.

AP19.2.iii A single Residential Unit may contain a combination of the ventilation options a) and b) set out above to achieve the most practicable and cost effective approach. As an example it may be best for the principal living room to comply with option b) whilst the other habitable spaces may comply with option a).

AP19.3 Inner City Zone

AP19.3.i Acoustic insulation requirements for the Inner City Zone are included in the rule ICr.43A 'Acoustic Insulations of Buildings. Under this rule a choice can be made between minimum construction requirements or having the acoustic insulation specifically designed for the proposed development. When designing acoustic insulation the rule requires certification from an acoustic engineer that the building design will achieve the required design ~~noise~~ sound level.

Submission #11.5

AP19.3.ii This appendix sets out the minimum ventilation requirements for new ~~Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units~~ in the Inner City Zone where the indoor design level cannot be achieved with ventilating windows open. These require either:

Submission #4.1

- a) A mechanical system or mechanical ventilation system capable of:
- 5 air changes of outdoor air per hour in new bedrooms ~~or rooms intended to be used for sleeping in Short Term Living Accommodation Units~~. In each case with all external doors and windows of the building closed with the exception of such windows in non-habitable spaces that need to be ajar to provide air relief paths;
 - enabling the rate of airflow to be controlled across the range, from the maximum airflow capacity down to 0.5 air changes (plus or minus 0.1) of outdoor air per hour in all new bedrooms ~~or rooms intended to be used for sleeping in Short Term Living Accommodation Units~~;
 - limiting internal air pressure to not more than 30 Pascals above ambient air pressure;
 - being individually switched on and off by the building occupants, in the case of each system; and
 - creating no more than 30 dBA $L_{Aeq(15\ min)}$ in new bedrooms ~~or rooms intended to be used for sleeping in Short Term Living Accommodation Units~~. Noise Sound levels from the mechanical system(s) shall be measured at least one metre away from any diffuser.

Submission #4.1

Submission #11.6

or:

- b) Air conditioning plus mechanical outdoor air ventilation capable of:
- providing internal temperatures in new bedrooms ~~or rooms intended to be used for sleeping in Short Term Living Accommodation Units~~, not greater than 25 degrees Celsius at 5% ambient design conditions as published by the National Institute of Water & Atmosphere Research ("NIWA") (NIWA ,Design Temperatures for Air Conditioning (degrees Celsius), Data Period 1991-2000), with all external doors and windows of the new bedrooms ~~or rooms intended to be used for sleeping in Short Term Living Accommodation Units~~, closed;
 - providing 0.5 air changes (plus or minus 0.1) of outdoor air per hour in all new bedrooms ~~or rooms intended to be used for sleeping in Short Term Living Accommodation Units~~;
 - each of the air conditioning and mechanical ventilation systems shall be capable of being individually switched on and off by the building occupants; and
 - creating no more than 30 dBA $L_{Aeq(15\ min)}$ in new bedrooms ~~or rooms intended to be used for sleeping in Short Term Living Accommodation Units~~. Noise Sound levels from the mechanical system(s) shall be measured at least one metre away from any diffuser.

Submission #4.1

Submission #11.6

AP19.3.iii Individual rooms in a single Residential Unit ~~or Short Term Living Accommodation Unit~~ may contain a combination of the ventilation options a) and b) set out above to achieve the most practicable and cost effective approach.

AP19.3.iv The minimum measures identified in Table 3 below are one of two ways of demonstrating permitted activity status for acoustic insulation of new Bedrooms ~~and rooms intended to be used for sleeping in Short Term Living Accommodation Units~~ in the Inner City Zone. See rule ICr.43A 'Acoustic Insulation of Buildings'.

table 3: acoustic insulation of new Bedrooms ~~and rooms intended to be used for sleeping in Short Term Living Accommodation Units~~ in the Inner City Zone

<u>Building Element</u>	<u>Required Construction</u>	Submission #4.1
<u>Walls</u>	<p>Exterior: 20mm timber weatherboards or 2 x 6mm fibre cement or 1 x 9mm compressed fibre cement</p> <p>Frame: nominal 100mm with acoustic blanket</p> <p>Interior: 3 x 13mm high density gypsum plasterboard for top floor Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units 2 x 13mm high density gypsum plasterboard for mid-level Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units</p> <p>Or: 190 series concrete blocks (minimum every 4th core filled)</p> <p>Or: 100mm thick pre cast concrete slabs</p> <p>Or: Solid clay brick veneer (minimum 70mm thick) with standard internal framing and plasterboard lining.</p>	
<u>Windows</u>	<p>Minimum 17mm thick laminated glass for top floor Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units</p> <p>Minimum 13mm thick laminated glass for mid-level Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units</p> <p>Or: Double glazed unit with 10mm and 6mm panes, separated by a minimum 50mm air gap.</p>	
<u>Roof</u>	<p>Top floor only, not needed for mid-level Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units</p> <p>Cladding: 0.5mm profiled steel or tiles or 6mm corrugated fibre cement</p> <p>Frame: Timber truss with acoustic blanket</p> <p>Ceiling: 3 x 13mm high density gypsum plasterboard</p>	
<u>External Door</u>	Hinged solid core door of at least 40kg/m ² with airtight seals (or if glazed, as per window requirements). Sliding doors are not suitable.	
<u>Internal Door</u>	Internal doors to new bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units shall be hinged solid core of at least 16kg/m ² .	
<u>Ventilation</u>	The indoor design sound level shall be achieved with windows and doors shut. This requires the use of minimum ventilation requirements as set out in Appendix 19.3 Inner City Zone.	

Submission #4.1

Acoustic Blanket: 75mm of acoustically absorbent material with minimum area density of 580g/m², such as fibreglass, rockwool, polyester or wool. Thermal insulation such as R1.8 is also suitable.

High Density Plasterboard: Gypsum Plasterboard of minimum density 960kg/m³.

Amendment 2 – New Noise Generating Activities required to apply for resource consent including noise management requirements up front

Include a new definition in Chapter Two Meanings of Words to the Nelson Resource Management Plan

Noise Generating Activity

is an activity that takes place at a site or building located in the Inner City Zone, involving:

- the assembly of people within a building for a commercial activity involving the playing of amplified sound (from a sound system with greater than 100W output) between the hours of 11:00pm and 7:00am Sunday to Thursday nights, and for the nights of Friday, Saturday, Christmas Eve and New Year’s Eve 1:00am and 7:00am, or
- the assembly of people in an outdoor area (i.e. an area that is outside of the main part of the building such as garden bars, outdoor dining and smoking areas) associated with a commercial activity between the hours of 11:00pm and 7:00am Sunday to Thursday nights, and for the nights of Friday, Saturday, Christmas Eve and New Year’s Eve 1:00am and 7:00am, and
- temporary events occurring no more than once per year in any one site or building are excluded from this definition. Noise from these events is still required to take account of Section 16 and 327 of the RMA, and rule ICr.42B and Appendix 13 of this Plan.

Add a new rule, assessment criteria and explanation to Inner City Zone (City Centre and City Fringe areas) of the Nelson Resource Management Plan

<u>Item</u>	<u>Permitted</u>	<u>Controlled</u>	<u>Discretionary/Non-complying</u>
ICr.42A Noise Generating Activities	ICr.42A.1 The establishment or extension of a ‘noise generating activity’ is not a permitted activity. For the purposes of this rule ‘extension’ is defined as any alteration or change which: a) results in a 10% or greater increase in permitted patrons, or b) any increase in operating hours or hours amplified music is played at, or c) results in an outdoor area accessible to patrons which is new, has a different location, or is increased in size by 10% or more.	ICr.42A.2 Not applicable	ICr.42A.3 The establishment or extension of a ‘noise generating activity’ is a discretionary activity if a noise management plan is provided in accordance with the provisions of Appendix 13.1 Noise Generating Activities.

Submission #8.4

<u>Assessment Criteria</u>	<u>Explanation</u>
ICr.42A.4 a) the suitability of the site, the activity on the site and in any outdoor areas, having regard to its location, and the proximity of residential or other noise-sensitive activities. b) expected hours of operation, volume and	ICr.42A.5 Before a Noise Generating Activity establishes or extends in the Inner City Centre a resource consent is required to assess the suitability of the site and specific proposal in terms of management and reduction of noise at source.

Submission #8.4

<p><u>type of noise expected to be generated.</u></p> <p>c) <u>The adequacy of measures to manage or reduce noise at source, including the provisions of a Noise Management Plan in accordance with Appendix 13.</u></p>	<p><u>Conditions can be imposed as appropriate to maintain an acceptable level of noise generation for the Inner City (see policies IC4.2, IC4.3 and IC5.2 in particular). In addition to this rule, rules ICr.42, ICr.42B and the relevant sections of the Resource Management Act 1991 apply to the ongoing operation of the activity and to existing activities already established.</u></p> <p><u>The permitted activity standard includes a definition of extension based on there being a 10% or greater increase in permitted patrons. The number of permitted patrons in a building is determined through the Building Codes fire safety provisions (Clause 'C'). Any changes which will result in a 'change of use' must be advised to the Territorial Authority for consideration under the Building Code.</u></p>
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Amendments to contents page of Inner City Zone rule tables

Add

ICr.42A Noise Generating Activities

Add new paragraph to ICr.46.5 Explanation

Rule ICr.42A 'Noise Generating Activities' may also be applicable to activities considered under rule ICr.46. See definition of 'Noise Generating Activity' in Chapter Two 'Meanings of Words' and rule ICr.42A.

Add a new appendix to the Nelson Resource Management Plan

appendix 13
Inner City Zone: Noise Management Plans
and assessment of unreasonable and
excessive noise

AP13 Overview

Relating to rule ICr.42A this appendix prescribes the matters that shall be included in the Noise Management Plans for new and extended Noise Generating Activities. The overall intent of a Noise Management Plan is that the best practicable option is undertaken to ensure that the emission of noise from a site does not exceed a reasonable level.

~~Relating to rule ICr.42B~~ This appendix also sets out aspects which may help form an opinion for assessment of unreasonable and excessive noise in terms of the Resource Management Act 1991. as it relates to noise produced. This can be applicable to all zones but in particular this will be the approach undertaken within the Inner City Zone (City Centre and City Fringe, including the Intense Development Area).

Submission #8.8

AP13.1 Noise Generating Activities

AP13.1.1 Minimum Noise Management Plan Provisions

AP13.1.1.i The Noise Management Plan required under Rule ICr.42A shall be prepared by a professional acoustic engineer and shall, at a minimum, contain the following:

- a) The intended outcomes of the Noise Management Plan, including the design ~~noise~~ sound level to be received outside of the building and site.
- b) A description of the premises including details of walls, roof, cladding, door openings and windows, ventilation, site layout, outdoor areas and any acoustic insulation or noise barriers that ~~has~~ have been, or will be, installed, and a description of how these assist to reduce noise ~~levels~~ and meet the design ~~noise~~ sound level specified above.
- c) A description of the surrounding land uses and in particular residential or short term living accommodation units, including a description of the existing sound environment in the area.
- d) A description of all noise generating activities carried out in the premises or on the site.
- e) A floor plan of the premises, including outdoor areas, with the noise sources marked on it.
- f) The hours of operation of the noise generating activities.
- g) The specifications of the sound systems and any mechanisms to govern the maximum noise output.
- h) Details of any noise data that has been recorded, and any noise modelling; noise monitoring; auditing and reporting procedures, including methods used.
- i) Any methods proposed to manage noise produced by patrons, including either leaving the venue, or queuing for entry.
- j) The name and contact details of the manager responsible for noise generating activities in the premises.
- k) Complaint handling and recording procedures, and
- l) Procedures for achieving noise reduction through operational procedures and staff training.

Submission #11.11

AP13.1.2 Minimum Monitoring and Reporting Requirements

AP13.1.2.i The minimum monitoring and reporting requirements on any approved consent and associated Noise Management Plan are as follows:

- a) A inventory shall be kept of all noise sources at the premises, and
- b) Copies of the Noise Management Plan and the inventory required above are to be held at the premises and made available to Council staff as and when requested.

AP13.1.3 Measurement and Assessment of Noise

Submission #11.13

AP13.1.3.i The measurement of noise is to be in accordance with NZS 6801: 2008 and assessed in accordance with 6802: 2008

AP13.2 Assessment of unreasonable and excessive noise

AP13.2.1 Noise assessment criteria

Submission #11.14
and #8.8

AP13.2.1.i Nelson City Council's Enforcement Officers, for the purposes of assessing compliance with permitted activity conditions, relevant resource consent conditions, and sections 16(1) (which requires consideration whether the best practicable option is being undertaken to ensure noise does not exceed a reasonable level), or in forming an opinion under section 327(1) of the Resource Management Act, Excessive Noise Direction, will generally take into account the following matters when determining whether or not noise is unreasonable or excessive:

- i) the **frequency** (number of events) of noise emission, and
- ii) the **intensity** of the noise, as indicated by volume, tone, and audio frequency and the degree of disturbance, and
- iii) the **duration** of each noise event, and
- iv) the **nature** of the noise, and
- v) the **location and timing** of the noise, having regard to the time of day or night and the sensitivity (including reverse sensitivity) of the receiving environment.

AP13.2.1.ii Assessment may also consider the following matters.

- e) Other noise complaints or events relating to emissions from the same location which have been found to be unreasonable or excessive, including what remedial action has previously been undertaken.
- f) Where possible and relevant, ~~noise sound level measurements from a calibrated noise sound level meter. to determine actual noise level~~
- g) Information regarding the effectiveness of any noise management plan, or on site noise management.
- h) ~~Whether the best practicable option is being undertaken to ensure noise produced does not exceed a reasonable level.~~

Submission #11.15

Submission #8.8

AP13.2.2 Construction Noise

AP13.2.2.i Construction activity by necessity can produce higher levels of noise than would be expected, or be deemed reasonable, from other activities. In recognition of this Standards New Zealand have produced NZS 6803:1999 Acoustics – Construction Noise. In assessing construction noise produced in the Inner City Zone Nelson City Council will use this standard, in addition to the points outlined in AP13.2.1.i and AP13.2.1.ii, as a guide to the reasonableness of the construction noise produced.

AP13.2.2.ii Separately to this appendix rule ICr.43 provides that the provisions of NZS 6803:1999 Acoustics – Construction Noise apply to construction noise received in the Residential Zone.

Amendment 3 – Plan provision retaining control over maximum noise level (L_{AFmax}) at night time.

Add a new rule, assessment criteria and explanation to Inner City Zone (City Centre and City Fringe areas) of the Nelson Resource Management Plan

<u>Item</u>	<u>Permitted</u>	<u>Controlled</u>	<u>Discretionary/Non-complying</u>
<p>ICr.42 Maximum Night Time Noise <u>Night Time Noise Limits</u></p> <p>Submission #11.17</p>	<p>ICr.42.1 Noise measured <u>The sound level assessed 1 metre from the façade any external wall of any Residential Unit or Short Term Living Accommodation Unit shall not exceed the following noise limit maximum noise levels during the hours 10:00pm to 7:00am:</u></p> <p>75 dB L_{AFmax}</p> <p>All measurements and assessment shall be in accordance with NZS6801:2008 and NZS6802:2008.</p>	<p>ICr.42.2 <u>Not Applicable</u></p>	<p>ICr.42.3 <u>Activities that contravene a permitted condition are discretionary.</u></p>

<u>Assessment Criteria</u>	<u>Explanation</u>
<p>ICr.42.4</p> <p>a) <u>The length of time, number of times, or the level by which, the noise standards will be exceeded at night, and the likely disturbance that may cause.</u></p> <p>b) <u>The nature and location of nearby activities and the effects they may experience, particularly the night time effects on occupants of Residential Units and Short Term Living Accommodation within the Inner City and neighbouring zones.</u></p> <p>c) <u>Whether the noise is likely to detract from the amenity sought for the Inner City and Residential Zones.</u></p> <p>Submission #8.8</p>	<p>ICr.42.5</p> <p><u>L_{AFmax} control at night time provides an upper limit to single noise events which provides a level of certainty around the limits to a single ‘spike’ of sound. Note this does not act as a limit that a more continuous source of noise can generally operate to and be deemed to be reasonable and not excessive.</u></p> <p><u>In addition to controls on maximum noise: noise will be controlled by Council officers under the relevant sections of the Resource Management Act for unreasonable and excessive noise. See rule ICr.42B (General Noise Emission) AP13 ‘Inner City Zone: noise Management Plans and assessment of unreasonable and excessive noise’ for information and guidance on this process. As a pro-active measure, Council officers will also offer information and advice to noise producers on ways in which they can reduce and control their emission of noise.</u></p>

Amendments to contents page of Inner City Zone rule tables

Add

Submission #11.19

ICr.42 Maximum Night-time Noise Night Time Noise Limits

Amendment 4 – Retain and Amend Existing Rule ICr.43 Noise at Residential Boundary

Amend rule ICr.43 Noise at residential boundary and associated assessment criteria and explanation in the Inner City Zone (City Centre and City Fringe areas) as follows:

<u>Item</u>	<u>Permitted</u>	<u>Controlled</u>	<u>Discretionary/Non-complying</u>
<p>ICr.43 Noise received at sites in the Residential Zone At residential boundary</p>	<p>ICr.43.1</p> <p>a) Noise levels measured at any site within a Residential Zone must not exceed:</p> <p style="padding-left: 40px;">Daytime: L10:55dBA <u>53 dB L_{Aeq}</u></p> <p style="padding-left: 40px;">Other times: L10:45dBA Lmax: 75 dBA <u>43 dB L_{Aeq}</u> <u>75 dB L_{AFmax}</u></p> <p>(Daytime means 7am to 10pm Monday to Friday, and 9am to 10pm Saturdays, Sundays and Public Holidays).</p> <p>b) All measurements and assessment in accordance with NZS6801:1991 <u>2008</u> and NZS6802:1991 <u>2008</u>.</p> <p>c) Parts a) and b) of this rule do not apply to construction building and demolition activities, which, when assessed at, or within, any site within the Residential Zone, must comply with the provisions of NZS6803P:1984 'The measurement of Noise from Construction, Maintenance and Demolition' <u>NZS6803:1999 'Acoustics - Construction Noise'</u>.</p>	<p>ICr.43.2</p> <p>Not Applicable</p>	<p>ICr.43.3</p> <p>Activities that contravene a permitted condition are non-complying.</p>

<u>Assessment Criteria</u>	<u>Explanation</u>
<p>ICr.43.4</p> <p>As for ICr.42.4</p> <p>a) <u>The length of time, number of times, time of day or night, or the level by which, the noise standards will be exceeded, and the likely disturbance that may cause.</u></p> <p>b) <u>The nature and location of nearby activities and the effects they may experience, particularly the night time effects on occupants of residential units and Short Term Living Accommodation within the</u></p>	<p>ICr.43.5</p> <p>As for ICr.42.5</p> <p><u>The rule is to prevent unreasonable levels of noise affecting properties in the Residential Zone. When compared to the Inner City Zone it is expected there will be a higher standard of residential amenity, and particularly a night time environment conducive to sleeping.</u></p>

<p><u>Inner City and neighbouring zones.</u> c) <u>Whether the noise is likely to detract from the amenity sought for the Residential Zone.</u></p>	<p><u>This recognises the greater sensitivity of the Residential Zone, the generally lower ambient noise sound levels, and that noise has a major influence on residential amenity. For this reason any proposal for noise in excess of the permitted standard will be assessed as a non-complying activity where it affects the Residential Zone.</u></p>
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Submission #11.21

Amendments to contents page of Inner City Zone rule tables

Amend

ICr.43 Noise received at sites in the Residential Zone ~~at residential boundary~~

Amendment 5 - Remove Existing Noise Rule ICr.42 and Enforce Noise using provisions of the RMA

Delete existing rule ICr.42 Noise and associated, assessment criteria and explanation from Inner City Zone (City Centre and City Fringe areas) of the Nelson Resource Management Plan

<p>ICr.42 Noise</p>	<p>ICr.42.1 a) Noise levels measured at, or as close as practicable to, the boundary of any site must not exceed: Day Time (7am to 10pm) L10: 65 dBA Other Times L10: 55 dBA Lmax: 75 dBA b) All measurements and assessment in accordance with NZS6801:1991 and NZS6802:1991.</p>	<p>ICr.42.2 not applicable</p>	<p>ICr.42.3 Activities that contravene a permitted condition are discretionary.</p>
<p>ICr.42.4 a) the length of time, and the level by which, the noise standards will be exceeded, particularly at night, and the likely disturbance that may cause. b) the nature and location of nearby activities and the effects they may experience, particularly the night time effects on residential units within the Inner City, and neighbouring zones. c) whether the noise is likely to detract from the general environmental quality being proposed for the City Fringe or City Centre, or the amenity of the Residential Zone. d) the effectiveness of, and in particular the certainty provided by, any conditions or controls that might be imposed on the activity.</p>	<p>ICr.42.5 The rule is to prevent unreasonable levels of noise affecting neighbouring properties. Different levels are specified for noise received in the Inner City Zone, compared to a residential area. This recognises the greater sensitivity of areas containing dwellings and generally lower ambient levels. Noise has a major influence on the amenity of an area. For this reason any proposal for noise in excess of the permitted standard will be assessed as a non-complying activity where it affects a Residential Zone. NZS 6801:1991 is New Zealand Standard (Measurement of Sound). NZS 6802:1991 is New Zealand Standard (Assessment of Environmental Sound).</p>		

~~Add a new rule, assessment criteria and explanation to Inner City Zone (City Centre and City Fringe areas) of the Nelson Resource Management Plan~~

Submission #8.8

Item	Rule
ICr.42B General Noise Emission	ICr.42B.1 Noise produced within the Inner City Zone (City Centre and City Fringe, including the Intense Development Area) must comply with the following general conditions: a) not exceed a reasonable level under s16 of the RMA 1991 b) not be determined to be 'excessive noise' under s327 (1) of the RMA 1991. In addition compliance with rules ICr.42 Maximum Night Time Noise and ICr.43 Noise received at sites in the Residential Zone is required.

Explanation

~~ICr.42B.5
These are provisions of the Resource Management Act 1991 which, unless otherwise stated, apply in all instances.
 Any breach of the condition a) or b) will not result in requirements for resource consent but rather will be enforced via the Council's monitoring and enforcement mechanisms.
 This approach allows Council Enforcement Officer's to determine if unreasonable or excessive noise is being produced utilising sections 16, 326 and 327 of the Resource Management Act 1991. In making this assessment the matters in Appendix 13.2 Assessment of Unreasonable and Excessive Noise will generally be taken into account when determining whether or not noise is unreasonable or excessive.~~

Amendments to contents page of Inner City Zone rule tables

Delete

~~ICr.42 Noise~~

Add

~~ICr.42B General Noise Emission~~

Submission #8.8

Add a new appendix 13 to the Nelson Resource Management Plan (for content see Amendment 2 above).

Amendment 6 – Ongoing education, negotiation and mediation

No specific changes to the Nelson Resource Management Plan

Supporting changes to Policy, Explanation and Reasons

Amendments and a new method to Inner City Zone Policy IC4.2 Adverse effects
policy

IC4.2 adverse effects

Activities should not give rise to levels of noise, smell, dust, and smoke, or traffic, landscape, aesthetic or other adverse effects which will detract from the character being sought for the City Centre and City Fringe areas.

Explanation and Reasons

IC4.2.i The City Centre is primarily a people place. Because of this, the Plan aims to exclude activities from the City Centre which are excessively noisy or smelly, or which generate other effects which are inappropriate in a City Centre environment. If such adverse effects can be controlled to a level suitable to the people oriented nature of the City Centre, then the activity should be allowed to occur.

IC4.2.ii A lower level of amenity is expected in the City Fringe than in the City Centre. For example, vehicle movements and sizes will be greater. ~~More noise and other effects will be tolerated~~ It is however acknowledged that fringe areas are often adjacent to more sensitive residential areas and ~~Nevertheless the area~~ will still primarily serve people, in terms of them coming to the area for services or goods. The City Fringe is not an industrial area where there is little interaction with the general public, and where higher levels of effects might be permissible.

Methods

IC4.2.iii Rules setting performance standards, ~~or the use of management practices~~, for emissions such as noise, smoke, dust, and odour.

Submission #11.25

IC4.2.iv Use of management practices for emissions such as noise, smoke, dust and odour.

IC4.2.v Rules which require newly established producers of noise to take action to minimise noise emission.

IC4.2.vi Use of sections 16, 326 and 327 of the Resource Management Act 1991, plus Plan guidance, for enforcement of unreasonable and excessive noise (see AP13)

IC4.2.vii ~~iv~~ Rules with a limited listing of unacceptable activities.

Submission #8.8

Amendments and new methods to Inner City Zone Policy IC4.3 Residential Amenity

policy

IC4.3 residential amenity

The Inner City, and sites used for residential activity, should provide a reasonable standard of residential amenity, but recognising that the fundamental character of the area is non-residential.

Explanation and Reasons

IC4.3.i The Inner City is not the suburbs and a similar level of residential amenity cannot be expected. Higher levels of noise and glare, for example, must be expected in the Inner City, particularly given the presence of places of assembly, licensed bars and restaurants and other noise generating activities. Also the expectation of outdoor space must be lower than in suburban areas. Similarly, given the height of some buildings in the City Centre, expectation regarding privacy and sunlight must be lower. At the same time, the policy recognises a broad bottom line to provide a reasonable level of protect-residential amenity in the Inner City. This recognises residential activity is a valid activity, deserving of a degree of protection from more traditional Inner City activities.

Methods

IC4.3.ii Provision of information on opportunities for inner city living and the relevant Resource Management Plan provisions.

IC4.3.iii Rules setting performance standards for residential activity.

IC4.3.iv Rules requiring acoustic insulation in new Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units in the Inner City Zone.

Submission #4.1

IC4.3.v Rules setting performance standards, or the use of management practices, for emissions such as noise, smoke, dust, and odour.

Submission #11.25

IC4.3.vi Use of management practices for emissions such as noise, smoke, dust and odour.

Amendments and new methods to Inner City Zone Policy IC5.1 Amenity of Neighbouring Areas

policy

IC5.1 amenity of neighbouring areas

Activities within the Inner City should not have adverse effects which significantly diminish the amenity of neighbouring areas, having regard to the character of these areas and the cumulative effects of such activities.

Explanation and Reasons

IC5.1.i Any impacts that activities in the Inner City have on neighbouring areas need to take account of the nature of that area. Residential areas and activities will be more sensitive to certain effects such as noise and glare, than commercial areas. Also a single activity may have effects that are acceptable to a residential neighbourhood activities, but the addition of further similar activities may eventually lead to an unacceptable level of effect. The policy aims to address such cumulative effects.

Method

~~**IC5.1.ii** Rules setting performance standards for effects such as noise and odour.~~

IC5.1.ii Rules setting performance standards, or the use of management practices, for emissions such as noise, smoke, dust, and odour.

Submission #11.26