

**Nelson Resource Management Plan:
Proposed Variation 07/01 - Port Noise**

PLANNER'S REPORT

May 2008



NELSON CITY COUNCIL

PART A

PROPOSED VARIATION 07/01: PORT NOISE

Planner's report to the Hearing Commissioners on Proposed Variation 07/01

Date of hearing: 26th to 30th May 2008

1. INTRODUCTION

Reporting Officer

- 1.1 My name is Gary Rae. I am a planning consultant based in Nelson, and am a Director of Incite Resource and Environmental Consultants. I have a Bachelor of Science and a Diploma in Town Planning. I am a qualified Hearings Commissioner, and a full member of the NZ Planning Institute. I have over 24 years resource management and planning experience throughout New Zealand.
- 1.2 I have been engaged by Nelson City Council (the Council) to report on proposed Variation 07/01 relating to Port noise issues. I have been assisting the Council with the resolution of the Port noise issues since late 2001, and have been actively involved in the development and preparation of the proposed variation.
- 1.3 Council's acoustic consultant, Keith Ballagh, will also be in attendance at the hearing. Keith has assisted the Council in this matter also since 2001, and has been involved with port noise issues at other locations in New Zealand, including at Port Chalmers. He is a Partner in the Acoustical Consulting Practice of Marshall Day Acoustics, and has a Bachelor of Mechanical Engineering (1st Class honours). Keith is a Member of the NZ Acoustical Society and the American Society of Acoustics. While he has no written evidence, Keith will be available to assist the Commissioners with any more technical issues that may arise during the course of the hearing.

Overview of Proposal

- 1.4 The proposed variation addresses the management of port noise, and the mitigation of the adverse effects of noise associated with the operation of Port Nelson and from activities within the Port Industrial Area.
- 1.5 The approach taken by the proposed variation differs substantially from that taken in the Proposed Nelson Resource Management Plan (the 'NRMP') when it was notified in 1996. While it is proposed that there will be a continuing obligation on the port operator to minimise the amount of port noise at source, it will now be required to provide acoustic insulation, and in some cases offer to purchase, the most affected houses, in order to mitigate the effects of port noise during the night-time hours.

- 1.6 The proposed variation also places obligations on residential property owners to achieve a defined maximum noise standard within habitable buildings, when undertaking building work in the affected areas (as explained in more detail below).

Structure of Report

- 1.7 In my Report, to avoid repetition, I have made extensive references to the variation documents as notified, which I had a major part in preparing.
- 1.8 There are two documents, Volume 1 – the Plan amendments (July 2007), and Volume 2 – the Section 32 Evaluation (June 2007). There are also a number of Reference Documents that accompany the section 32 Report (in the folder Volume 3), a Port Noise Contour Map, and a Draft Noise Complaints Procedure diagram. I understand the Commissioners will have a copy of all of those documents.
- 1.9 My report is in two parts:

Part A

1. Introduction
2. Background and consultation
3. Overview of proposed changes
4. Notification and submissions
5. Statutory assessment
6. Conclusions

Part B

1. Recommendations on Submissions

- 1.10 As previously advised to the Commissioners, I will seek leave to be absent on Thursday 29th May, as I am committed to attending and presenting evidence at another hearing on that day.

2. BACKGROUND AND CONSULTATION

- 2.1 A full summary of the process up until notification of the Proposed Variation is set out in full in Chapter 3 of the Section 32 Report (pages 3 –10).
- 2.2 The main aspects are as follows:
- The process originates from two unresolved references to the Environment Court from Port Nelson Limited (PNL) and from P and M Win.
 - A number of other parties joined the proceedings by lodging notices under sections 271A or 274 of the Resource Management Act ('the RMA'), as set out on page 4 of the Section 32 Report.
 - The references relate to the decision issued by the Council on submissions to the Proposed NRMP in December 1998 to adopt the Draft New Zealand Port Noise Standards, which resulted in 'noise control lines' on the hillside adjacent to the Port.

- From 1999, Council staff and consultants met with the parties in an attempt to resolve the references, including several Environment Court assisted mediation meetings. However, a solution acceptable to all parties was not found.
- The Environment Court in December 2003 granted an adjournment to the proceedings to enable a Variation to be prepared (refer 'document 2' in folder Volume 3).
- PNL's consultants in 2004 embarked on a comprehensive program of consultation, including focus group meetings with stakeholders and affected parties to discuss an 'Issues and Options' Paper, distribution of information sheets and a telephone survey.
- The options identified in the Issues and Options Paper were:
 - Option 1. Retain the status quo
 - Option 2. Adopt the NZ Port Noise Standard
 - Option 3. The Port Chalmers (Otago) mitigation approach
 - Option 4. New residential zones in the affected areas
 - Option 5. Curfews at the Port
 - Option 6. Re-organise the Port operations.

Note: These options have been assessed in Chapter 4 (pages 11- 22) of the Section 32 document.

- The Council's Environment Committee on 14 February 2005 resolved that PNL should prepare a draft Variation based on the Port Chalmers approach as documented in Environment Court decision C150/2003.
- PNL in July 2005 presented to Council staff and consultants a draft Variation, and a public meeting was held on 3 August 2005 to discuss this.
- In September 2005 Council staff and consultants visited Port Chalmers in Dunedin to assess the practical implementation of their port noise management and mitigation approach.
- Council staff and consultants then requested that PNL supply further information considered necessary in the further development of a draft Variation.
- A public workshop on noise was held in November 2005 to assist residents and other interested parties involved in the process to better understand noise terminology and principles.
- In December 2005, PNL supplied further reports on a telephone survey, noise monitoring, container vessels at Main Wharf South, analysis of noise complaints, environmental noise mitigation projects, environmental mitigation at the port from 1993-2004, noise effects on outdoor living including relevant case law, research into insulation of dwellings and house designs to control port noise, process for noise complaints, and notes on the proposed Port Noise Liaison Committee.

- A further public workshop was held in June 2006, to provide an overview of the draft Variation prepared by PNL, to discuss possible areas for improvement, and to obtain feedback from the parties on remaining areas of concern.
- In July 2006 Council staff and consultants met with PNL representatives to discuss issues still requiring clarification, and further information was requested on the implications of possible curfews on night time Port operations, and costs associated with a re-organisation of the various terminals at the Port.
- During September 2006, Council staff and consultants prepared a document summarising the concerns of residents groups, and listing the responses and actions proposed with respect to those concerns, and this was sent to the parties for information.
- A project plan, prepared by Council staff and consultants for preparing a variation, was sent to the parties for information.
- Council staff then contacted all parties and in December 2006 met on two occasions with The Nelson Waterfront Protection Association (NWPA), and with PNL's representatives.
- In January 2007 the first of two workshops was held for Councillors on the Environment Committee, to re-familiarise them with the port noise issues in general.
- During March 2007, Council staff and consultants finalised their work on a draft Variation, to the stage where it was ready for notification (see Section 4 of this Report).
- The notification date was 14 July 2007, and the Variation has had effect since– that time (refer to Section 4 below)

2.3 Throughout this process, other parties were consulted as required by Clause 3 of Schedule 1 of the RMA, including the Minister of the Environment, the Minister of Transport, Minister of Conservation, Minister for Social Development and Employment, and the tangata whenua of the area. This consultation is outlined in the Section 32 Report, pages 8 and 9.

2.4 In addition, on a number of occasions I accompanied Council staff and other consultants to observe night-time loading operations at the Port, where noise levels were monitored at various key locations including residential properties at Queens Road and at the Latitude 41 apartments on Rocks Road.

2.5 I also took part in a visit to Port Chalmers in late September 2005 to assess the implementation of their port noise management and mitigation approach, and met with residents, representatives of the Port company and Council staff. Discussions were also held with Council staff involved in the Lyttelton case, and the experiences from these visits was shared with stakeholders in the Port Nelson noise issue, at various public meetings and workshops that were held as set out in the Section 32 Report.

2.6 From the above summary it can be seen that the issue of Port noise has involved extensive consultation with interested and affected parties, and considerable research work over the last 7 or so years.

3. THE PROPOSAL

Scope of Changes

- 3.1 The proposed changes to the NRMP are set out in full in Volume 1 of the Variation documents. These are quite extensive, involving changes to:
- Meaning of Words (Chapter 2),
 - Administration (Chapter 3),
 - District Wide Objectives and Policies (Chapter 5),
 - Residential Zone (Chapter 7),
 - Suburban Commercial Zone (Chapter 9),
 - Industrial Zone (Chapter 10),
 - Open Space and Recreation Zone (Chapter 11),
 - Coastal Marine Area (Chapter 13),
 - Appendices (Volume 3), and
 - Planning Maps (Volume 4).

General Approach

- 3.2 The approach being promoted in Variation 07/01 represents a substantial shift from the more traditional regulatory approach in the NRMP as notified in 1996.
- 3.3 Rule INr.40 for the Industrial Zone required that the rolling 5 day noise level generated from activities in Port Nelson does not exceed 65dBA L_{dn} at or beyond the Port Noise Limit Line as shown on the Planning Maps. In addition, short term (L_{eq} 15 minute) daytime noise levels of 70 dBA and night time levels of 65dBA (and 85dBA L_{max}) are not to be exceeded at the Port Noise Limit Line. These lines are often referred to as the enforcement lines, because on the occasions when noise exceeds these limits, a prosecution may ensue.
- 3.4 Those rules were opposed in submissions by both appellants, i.e. the residents and PNL. During the course of consultation on the issue, it was apparent there was little support from any party for the current rules. These rules are considered inflexible and not appropriate for the effective and efficient operation of a large shipping operation such as Port Nelson. The Port has difficulty meeting the noise controls. This was acknowledged by the Environment Court, when it considered the references in 2003. The Court said the existing noise line boundary is clearly not practical to retain in the face of existing and future operations at the port. In addition, the rules-based regime places no obligation on the Port operator to provide, or assist with, mitigation in the form of acoustic treatment of noise-affected properties. The experience at Port Chalmers and

at Port Lyttelton is that the Port operator is responsible for some mitigation of the most affected properties.

- 3.5 In essence, the proposed Variation changes the approach from one of regulation, to one of management and mitigation, of the effects of Port noise. It requires the Port Operator to be responsible for the appropriate management of activities giving rise to noise, as well as for the mitigation of the adverse effects of noise in the adjacent residential areas.
- 3.6 The management and mitigation approach being promoted in Variation 07/01 stems from the approach endorsed by the Environment Court in the Port Chalmers case (reference document 1). The recent Port Lyttelton case (*JN Frater and Lyttelton Port Company Limited C38/2007*), also includes elements of this mitigation and management approach, and this was also considered in the development of the proposed Variation for Nelson. Certain refinements from those cases have been made, to reflect the Nelson situation, and to take account of concerns raised by parties, and by the Council Environment Committee, as discussed in section 5 of the Section 32 Report.
- 3.7 Rather than specifying maximum levels of noise that may be emitted from the Port as per the NRMP notified in 1996, the proposed variation focuses on providing an acceptable sleeping environment for residents in noise-affected dwellings near the Port. The acceptable level of noise has been determined by the Environment Court as being 40 dBA L_{dn} within habitable spaces (in the Port Chalmers case).
- 3.8 A full description of the key aspects of the proposed Variation outlined above is provided in the Section 32 Report. A summary is provided below.

Meaning of Words

- 3.9 New and amended definitions have been included in the proposed variation in order to define new terms introduced as a result of the new mitigation approach.
- 3.10 These include:
- **‘Acoustic Certificate’** describes the certificate signed by a qualified acoustic engineer for the treatment required and the level of noise within a residential unit.
 - **‘Habitable space’** which describes the internal parts of a dwelling that are sensitive to noise exposure, and will therefore be considered for acoustic treatment.
 - **‘Noise-affected property’** – this describes the properties eligible for acoustic treatment, limited to existing residential properties in the Residential Zone.
 - **‘Port noise’**- this is to clarify that the rules relate to noise generated within the Port industrial area arising from the normal day-to-day operations of shipping and cargo handling, and it excludes noise from ships not at berth, and noise from construction works, emergency situations, and from vehicles on public roads.
 - **‘Port noise contour map’** – this describes the map that will be contained in the Port Noise Management Plan, which identifies noise-affected properties.

Administration

- 3.11 The main changes in this section are to explain the changes to the Port Effects Control Overlay proposed in Variation 07/01. The port noise contours (in dBA_{Ldn}) on which the overlay is based have been revised and updated from the time when the Plan was amended by decisions and also includes the effects of shading of buildings around the port on the noise environment. This is also reflected in the revised planning maps included in the proposed Variation.
- 3.12 The role of the Port Effects Control Overlay will change from being an area for regulation and enforcement of maximum noise limits, to one of mitigation. Properties have been identified in the Overlay depending upon their exposure to noise, and the mitigation that owners of those properties are entitled to receive.
- 3.13 Accordingly, Rule AD11.3.14 is to be amended by deleting the reference to the Port Noise Limit Line.

Objectives and Policies

- 3.14 The proposed amendments to the objectives and policies are in my view quite minor. Proposed Variation 07/01 retains the main ‘thrust’ of the objectives and policies in the NRMP, which emphasise the importance of the Port to the region, and the need for it to be able to operate efficiently and effectively, whilst mitigating any adverse effects on the adjacent residential areas.
- 3.15 The changes are essentially minor wording changes to reflect the overall change in approach from the regulatory and enforcement regime in the NRMP as notified in 1996, to the management of noise and mitigation of noise effects approach embodied in the proposed variation.
- 3.16 The specific changes are set out in section 5 of the Section 32 assessment. Of particular note is DO12.1.5, which changes the emphasis from purely one of reduction of noise effects, to also include the minimisation of noise effects on the adjacent Residential Zone. This is a reflection that it is often impractical in a modern Port situation to reduce noise levels, despite the best endeavours of Port operators.

Industrial Zone Rules

- 3.17 Rule INr.40.1 states that activities in the Port Industrial Area which emit noise are permitted if the Port Operator prepares, establishes and operates in accordance with:
- A Port Noise Management Plan
 - A Port Noise Mitigation Plan, and
 - A Port Noise Liaison Committee.

Port Noise Management Plan

- 3.18 The Port Noise Management Plan is a method designed to reduce at source, or at least prevent the general increase in emission of, noise from the Port. It is required to include the matters in Appendix 29.A, such as procedures for achieving noise reduction through operations and staff

and contractor training, noise modelling, monitoring, auditing and reporting procedures, and complaint handling procedures.

- 3.19 A draft Port Noise Management Plan has been prepared by PNL and is currently being refined following PNL's review of comments that I have made, and further comment by the Port Noise Liaison Committee (as described below). I understand it will be produced at the hearing by PNL's representatives.
- 3.20 The Port Noise Management Plan is required to contain a Port Noise Contour Map. This is based on a busy 5 day operating scenario (as per the NZ Port Noise Standard), and is modelled at 1dB intervals. It identifies noise-affected properties eligible for mitigation, and is required to be updated on an annual basis for the first five years and every two years thereafter. A Map, showing the current contours, has been prepared by PNL and I understand will be presented at the hearing.
- 3.21 The Port Operator is required to carry out continuous monitoring of noise for at least the first five years. This requires it to establish and maintain at its expense the sound level monitoring equipment. The results of the monitoring are to be provided to the Council and to the Port Noise Liaison Committee on a monthly basis, highlighting any significant noise emissions and situations where Port noise may be exceeding the levels shown on the Port Noise Contour Map at properties eligible for mitigation.

Port Noise Mitigation Plan

- 3.22 It is recognised that even with a fully operational Management Plan, there will still be noise emitted from the Port that could cause adverse effects. It is unavoidable that, due to the tidal nature of Port Nelson, there will be night time operations, and that with the close proximity of dwellings on the hills and adjacent areas, it may not always be practicable to manage noise so that there is no adverse effect.
- 3.23 Accordingly, a Port Noise Mitigation Plan is required to be prepared and this will require the Port operator to address the effects of noise emitted from the Port. It will provide for methods and processes for the acoustic treatment of existing dwellings in the Residential Zone, in accordance with the particular parts of the noise affected areas they are located in. To this end, noise contour areas have been developed based on modelling and field verification, as shown on a map included in the Port Noise Management Plan.
- 3.24 The mitigation required for dwellings in these areas is as follows:
- **Greater than 65dBA L_{dn}** – the Port operator is required to offer to purchase, or provide acoustic treatment for, all existing noise-affected properties shown on the current Port noise contour map as being in this area so that the indoor design sound level in living areas and bedrooms can be achieved (40dBA L_{dn}). If acoustic insulation is chosen, the Port operator is not required to spend on acoustic treatment more than 50% of the value of the property.
 - **Greater than 60 dBA L_{dn} and up to 64dBA L_{dn}** - the Port operator is required to offer to contribute up to 50% of the cost of acoustic treatment of all noise-affected properties. If the property owner does not decide to contribute the difference, the Port Operator is not obliged to provide the acoustic treatment.

- **Between 55 - 59dBA L_{dn}** – the Port Noise Liaison Committee (described below) will provide technical advice to the owners of properties within these areas on noise levels, possible noise reduction measures (e.g. acoustic insulation and ventilation). The Port operator may offer to contribute on the recommendation of the Port Noise Liaison Committee up to 50% of the costs of acoustic treatment.

- 3.25 In recent days it has become apparent there may be some confusion as to whether the mitigation package applies just to existing dwellings, or to new dwellings and extensions to dwellings. In my view the intent in the variation is clear that the Port Operator is only required to contribute towards the acoustic treatment of existing dwellings, and that an owner must be responsible for treatment of any new dwellings or extensions in the Port Effects Control Overlay (i.e. in accordance with Rule RE.r.65A). This matter was not raised specifically in submissions, but in case it becomes a matter that the Commissioners require clarification on, I can confirm that the Council’s solicitor is of the view the mitigation package relates only to existing dwellings. A copy of the Council solicitor’s written opinion on this will be circulated to the Commissioners and to the submitters prior to the hearing.
- 3.26 The Port Noise Mitigation Plan is required to include details on the staging of the program for purchase and mitigation of affected properties. I have seen and have commented on the Port operator’s draft Mitigation Plan, and this has since been refined I understand. PNL has commenced the mitigation program, and will be providing evidence at the hearing on its progress to date.
- 3.27 The mitigation package also applies to properties where the actual recorded noise levels exceed the contours described above on more than three occasions, referred to as the ‘three strikes’ provision (and as specified in AP29.B.1). This provides back-up protection for properties in any situations where actual noise events may not correspond to the noise contour lines as modelled.

Port Noise Liaison Committee

- 3.28 A Port Noise Liaison Committee has already been established in accordance with the proposed variation, and it has met several times. The Committee is comprised of representatives from PNL, the Council, residents from the Port Hills area, and Port Industrial Area users and cargo users. The role of the Committee is to consider all noise issues arising from the port operation and to carry out its functions listed in the Port Noise Management Plan and in Appendix 29.B of the proposed variation. The Committee will ensure that the community is involved and is in a position to advise the Port operator on Port noise issues.
- 3.29 I have attended and participated in two meetings of this Committee, and in that time one of its achievements has been to produce an information brochure to assist residents in the noise affected areas to understand the requirements in the proposed Variation relating to building alterations (as described below).

Residential Zone Rules

- 3.30 The other main way to achieve an acceptable sleeping environment for residents in noise-affected dwellings is by proposed new rules for construction or alteration of buildings in the Residential (and some other) zones.

- 3.31 The Port Effects Control Overlay is shown on the new Planning Maps 6 and 9 for the zones adjacent to the Port which are most affected by noise from the Port. Rule REr.65A.1 (for the Residential Zone) sets the acoustic insulation requirements for new residential buildings and alterations to existing residential buildings in the Residential Zone at an internal design sound level of 40dBA L_{dn} (as opposed to the 45dBA L_{dn} indoor design sound level required by the NRMP at present).
- 3.32 Rule REr.65A.1 also requires ventilation to be provided for habitable spaces as detailed in Appendix 19.2). This rule also requires that in the Port Effects Control Overlay an acoustic engineer must certify that the building design will achieve the required design noise level for the zone. Appendix 19.2 also requires that a mechanical system of ventilation, or air conditioning plus mechanical outdoor air ventilation, be installed to meet the requirements set out in that rule.
- 3.33 This is in recognition that in the warmer summer months it may be common practice for residents to leave windows open, thereby negating the effectiveness of standard acoustic insulation. Mechanical ventilation will be essential to maintain a comfortable air temperature at times when windows need to be closed for insulation from the effects of noise.
- 3.34 It is also proposed to amend the subdivision rule (REr.107) to impose a 600m² minimum site area within the Port Effects Control Overlay. This is to be consistent with the current density requirement for dwellings in the Port Effects Control Overlay in the Residential Zone (Rule REr.64a), which requires a minimum site area of 600m² for any dwelling to be erected on a site.

Other Zone Rules

- 3.35 The Port Effects Control Overlay also covers land zoned Suburban Commercial, Industrial, and Open Space and Recreation Zone.
- 3.36 In the Suburban Commercial and Industrial Zones, Rules SCr.69A and INr.71A require an indoor design sound level of 45dBA L_{dn} . This aligns with the Port Noise Standard recommendation, and is considered adequate to meet the expectations of these zones, as set out in the relevant objectives and policies. This is the standard that already exists in the NRMP for these zones, however the new rules also require ventilation in a similar manner to the proposed Residential Zone rules.
- 3.37 Chapter 11 (Open Space and Recreation Zone) does not contain any specific rules requiring acoustic insulation standards for properties within the Open Space and Recreation Zone. However, any resource consent applications for properties in this zone and within the Port Effects Control Overlay will be assessed in relation to effects from Port noise.

Appendices

- 3.38 Appendix 19 in the NRMP contains the Acoustic Insulation Requirements for the Airport Effects Control Overlay and for the Port Effects Control Overlay. The proposal is to amend Appendix 19 to provide specific requirements for the Port Effects Control Overlay.
- 3.39 The proposed changes relate to the certification process for any proposed building alterations in the Overlay area. An acoustic engineer is required to certify that the building design will achieve the design noise level (40 dBA in Residential Zones and 45dBA in the Suburban Commercial Zone). This process is considered preferable to, and is more effects based than, the rules in the Plan as notified in 1996 describing minimum construction materials and specifications, which

may not always achieve the design indoor noise levels. Appendix 19 also contains new provisions for ventilation in noise-affected properties to maximise the effectiveness of acoustic insulation. This may include air conditioning systems to maintain the desired noise level inside houses even during warm periods.

- 3.40 Appendix 29, is linked directly to Rule INr.40.1, and contains the matters that are to be included in the Port Noise Management Plan and the Port Noise Mitigation Plan. It also prescribes the matters relating to the Port Noise Liaison Committee.
- 3.41 These three matters are in my view the key aspects of the proposed variation. They represent a package of measures designed to complement each other and achieve the desired balance between the ability for the Port to operate efficiently and effectively, and for the affected residents to expect a reasonable level of amenity and an environment in which reasonable sleep can be achieved.

Planning Maps

- 3.42 New Planning Maps have been included in the variation to reflect the amendments in respect of the Port Effects Control Overlay, as previously explained in paragraph 3.32 of my report.
- 3.43 It is important to note that the Planning Maps form part of the NRMP, as opposed to the Port Noise Contour Map, which is contained in the Port Noise Management Plan. As stated in paragraph 3.21, the Port Noise Contour Map identifies the properties eligible for mitigation from the Port operator, and is subject to annual reviews as well as to the 'three-strikes' provision.

4. NOTIFICATION, SUBMISSIONS & FURTHER SUBMISSIONS

Notification

- 4.1 Proposed Variation 07/01 was first publicly notified on 16 June 2007, and due to some errors it was withdrawn on 23 June 2007, and re-notified on 14 July 2007.
- 4.2 The period for submissions closed on 7 September 2007, and further submissions closed on 14 December 2007.
- 4.3 The Proposed Variation generated 16 submissions and 10 further submissions, as summarised in the Summary of Submissions, which the Commissioners will have.

Submissions overview

- 4.4 The general breakdown of submissions is:
- Support (approve the Variation as is): 3
 - Conditional support (approve with modifications): 1
 - Opposition (reject the Variation): 1
 - Conditional opposition (if approved make changes): 11

4.5 Main issues in support are:

- Major users of the Port do not wish to see controls that will affect efficiency of the Port.
- Contributions towards cost of acoustic insulation to affected properties.
- A fair and reasonable way to address noise issues with neighbours.
- Exclusion of vehicle noise from definition of Port noise.

4.6 The main issues in opposition include:

- There are unnecessary restrictions on the Port, which may affect its efficient operation.
- Inadequate protection for Auckland Point School.
- Rules should only relate to sleeping areas in dwellings.
- Extension of the Port Industrial Area, and to include ships not at berth.
- Effectiveness of the Port Noise Liaison Committee – no obligation by Port operator to accept its recommendations, lack of balance in membership, and resourcing issues.
- Contour map wrongly based on ‘busy 5 day operating scenario’, which allows the Port operator to maximise noise.
- Variation will not reduce noise.
- Port operator should not be doing its own noise monitoring.
- No enforceable noise limits.
- Mitigation package is inadequate.
- Doesn’t adequately address noise effects on outdoor living.
- One-off impact noises not covered by Leq 15 minute measure.
- Continuous noise monitoring not necessary.
- Timeframes for providing acoustic treatment too short.
- Trigger levels for mitigation where levels exceeded on more than 3 occasions are inappropriate.
- Restrictions on dwellings inappropriate (i.e. density and subdivision controls)– the focus should be on noise within dwellings.
- Include further properties in Stanley Crescent, Beachville Crescent, and Maori Road in the Port Effects Overlay.
- Curfews are more appropriate.

Recommendations on Submissions

- 4.7 The main issues raised above are assessed in part 7 of the Section 32 assessment, which I wrote, and will adopt as part of this report.
- 4.8 I have addressed each of the submission points in Part B of this Report. Part B is the Summary of Submissions produced by the Council officers, but with my comments and recommendations provided underneath each submission. Due to the number of submissions and further submissions received, and the multiplicity of requests being sought by submitters, I consider this is the most practical and convenient way to present my assessment and recommendations.

5. STATUTORY CONSIDERATIONS

- 5.1 The relevant statutory considerations are set out below, with my assessment of the proposed Variation.

Section 74(1)

- 5.2 Section 74(1) of the RMA requires that a territorial authority shall prepare and change its district plan in accordance with:
- *Its functions under section 31,*
 - *Provisions of Part 2, and*
 - *Its duty under section 32, and any regulations.*

(a) Section 31

- 5.3 The Council's functions under section 31, to give effect to the RMA, include integrated management of the effects of land use, development, or protection of land and associated natural and physical resources of the district by establishing, implementing and reviewing objectives, policies and methods. They also include the control of any actual and potential effects from the use, development and protection of land.
- 5.4 Section 31(1)(d) is for the control of the emission of noise and the mitigation of the effects of noise.
- 5.5 In my opinion proposed Variation 07/01 is an appropriate response to the Council's obligations under Section 31. In particular it achieves Section 31(1)(d) by introducing a method that will much better manage the effects of noise and mitigates the effects of the noise. This is achieved principally through the implementation of the Port Noise Management Plan and the Port Noise Mitigation Plan, and also by the implementation of the Port Effects Control Overlay for development within the adjacent Residential Zone.

(b) Part 2

- 5.6 Part 2 of the RMA sets out the purpose and principles of the Act. Section 5(1) 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.*

5.7 As noted previously in this report, Variation 07/01 is a method designed to provide the appropriate balance between the ability of the Port (which in itself is a very substantial and significant resource in Nelson) to operate, and the needs of the adjacent residential community to enjoy a reasonable level of amenity and an acceptable sleeping environment.

5.8 The general method being promoted through this variation has been tested in the Environment Court cases as noted, and endorsed for Port Chalmers (reference document 1). In this particular case in Nelson, in the application for an adjournment (reference document 2), the Court said:

[29] The Port Chalmers references identify issues that have plagued the residents, the Port company and the Courts for years. They are not dissimilar to what is now occurring in Nelson.

[30] As identified by counsel for the PNL, the judgement contains considerable wisdom on how noise amenity issues may be resolved where there are few buffers existing between the residents and Port operations.

[31] The decision identifies noise mitigation measures as a management tool to be encouraged. The decision also looks at abolishing short term noise infringement measures, and envisages a more proactive management stance by the Port company and involvement in the issues such as a Noise Liaison Committee, a Noise Management Plan and a Mitigation Plan by all parties.

[32] Mr Allan for the PNL points out that as Nelson operates as a tidal port and can only be accessed at certain times, night-time adverse noise events are not going to disappear and such mitigation measures would be a much more realistic approach than controlling noise limits by way of enforcement.

[33] I suggest that all parties involved in the Nelson issues read the judgement because there are a number of measures which might be introduced promptly to ease the parties through the forthcoming months.

5.9 The Court’s decision in December 2003 established for me that we were heading in the right direction with the approach adopted in this variation. From that time a considerable amount of consultation and development work on the proposed variation has taken place, as outlined in summary form in part 2 of my Report.

- 5.10 I would draw particular attention to part 7 of the Section 32 Report, where the appropriateness of the proposed variation is assessed. This addresses the main concerns raised through the consultation process, including:
- Removal of enforcement and monitoring requirements
 - Commitment to reducing noise
 - Noise complaints
 - Costs and effectiveness of acoustic treatment, and
 - Exposure to outdoor noise.
- 5.11 Those matters were all addressed, and changes made as appropriate, in the notified version of the variation, as discussed further in the Section 32 Report. In my assessment this represents a refinement of the method adopted for Port Chalmers, and is consistent with the purpose of the RMA.
- 5.12 Part 2 of the RMA also establishes matters of national importance that must be recognised and provided for (section 6), other matters to which particular regard must be had (section 7), and Section 8 states that the principles of the Treaty of Waitangi shall be taken into account.
- 5.13 In my assessment there are no matters in Section 6 relevant to this variation. In relation to 6(e), and Section 8, there have been no issues of concern to Maori identified through the consultation process (refer to section 3.5 of the Section 32 Report).
- 5.14 The matters in section 7 that are relevant are (b) the efficient use and development of natural and physical resources, (c) the maintenance and enhancement of amenity values, and (f) the maintenance and enhancement of the quality of the environment.
- 5.15 In my assessment all of those matters have been appropriately addressed in the variation as notified. As noted previously the variation sets out to achieve the appropriate balance between enabling the Port to operate efficiently, whilst maintaining a reasonable level of amenity for the residential community.

(c) Section 32

- 5.16 Before adopting for public notification any objective, policy, rule or other method promoted through this proposed Variation, Section 32 of the Resource Management Act 1991 (RMA) imposes upon the Consent Authority a duty to consider alternatives, and assess their benefits and costs.
- 5.17 A Section 32 Assessment was prepared and made available as part of the public notification process, and has been referred to extensively in my Report.

Section 74(2)

- 5.18 Section 74(2) sets out the matters that a territorial authority shall have regard to when changing its plan. The relevant matters for this hearing are:
- *Proposed Regional Policy Statement*

- *Extent to which the district plan needs to be consistent with the plan for adjacent authorities*
- *Any relevant planning document by an iwi authority and lodged with the territorial authority*

Section 75

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

(3) *A district plan must “give effect to”:*

- *Any New Zealand coastal policy statement*
- *Any regional policy statement*

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

- *A regional plan*

(a) Regional Policy Statement

5.20 The Nelson RPS became operative in 1997, and is currently being reviewed. It contains a number of objectives and policies relevant to the proposed variation, contained in:

- Chapter 14 Infrastructure - IN3 Maritime Transport
- Chapter 11 Discharges to Air - DA2 Noise
- Chapter 8 The Coast - CO1 Management of the Coastal Environment

(i) Chapter 14, Infrastructure, IN3 Maritime Transport

5.21 Issue IN3.1 recognises the importance of Port Nelson to the regional economy, and anticipates that the Port will continue to develop. It also recognises a number of conflicts between the existing Port and adjacent uses, and that these conflicts may well be exacerbated by the continued growth of port activities. Noise is first on the list of these potential impacts.

5.22 Objective IN 3.2 states:

“The maritime transport needs of Nelson City and surrounding areas being met whilst avoiding, remedying or mitigating adverse effects on the environment and adjoining uses.”

5.22 Policies associated with this objective are IN3.3.1 - IN3.3.5.

5.23 The Anticipated Environmental Results are:

- IN3.7.1 - Impacts of existing port facilities on the natural environment being reduced, remedied or mitigated as far as possible and/or compensated for through restoration or enhancement of other areas of the coastal environment.

- IN3.7.2 - The impact of existing port facilities on residential amenity being kept to a minimum.
- IN3.7.3 - Any expanded port facilities having minimal environmental impact and maximum community benefit.

5.24 The policy framework makes it clear that the Port is an important regional resource where potential future expansion is contemplated. However, there is a strong emphasis on the reduction, remediation or mitigation of the adverse effects of the existing and expanded Port.

5.25 The approach in the proposed Variation is consistent with this policy framework, and in particular through the reduction and minimisation of noise emissions through a Port Noise Management Plan, and the mitigation of adverse noise effects through the Port Noise Mitigation Plan and operation of the Port Noise Liaison Committee. I note also that the above provisions anticipate compensation for the impacts of port activities, and the proposed Variation embodies this concept.

(ii) Chapter 11, Discharges to Air, DA2 Noise

5.26 Issue DA2.1 is that excessive noise may result in adverse effects on public health and general amenity. It recognises that noise is created by a number of sources and one source can affect large areas of the community. It states that the control of noise pollution is complicated, because each source may comply with the performance standards by achieving a specified level, but when the sources are combined an increase in the overall noise level occurs.

5.27 The relevant objective in relation to Port noise is objective DA2.2.1, which states:

“An environment in which unreasonable noise is avoided, remedied or mitigated.”

5.28 Policies DA2.3.1 - DA2.3.3 aim to protect existing and future residents from excessive and unreasonable noise from industrial, commercial, transportation (including land, sea and air) community or recreation activities, but also acknowledging that there are noise sensitive activities which may not be compatible with existing facilities which are sources of noise.

5.29 The methods to achieve these objectives and polices include:

- Performance standards related to noise discharges.
- Liaison with operators and local authorities and community to establish noise standards having regard to times, way of meeting the standards and operational requirements and ways of mitigating noise, particularly during hours of darkness.
- Investigate complaints related to unreasonable noise.
- Investigate methods such as buffer areas, segregation of noise sensitive activities, to reduce adverse effects.
- Encourage the implementation of the best practical option to reduce noise emissions to a reasonable level.

5.30 The noise issue at Port Nelson is an instance of where the control of noise pollution is ‘complicated’ as per the Issue above. It is complicated by the fact we have a large scale and busy tidal Port in very close proximity to residential areas, without adequate separation. This is a situation where ‘control’ of noise is not realistic, at least by the conventional regulatory means.

5.31 The proposed Variation in my assessment is an appropriate way to achieve the Objective, and has involved extensive use of the methods listed above. This has included:

- liaison with operators and the community over the last seven years to establish ways of mitigating noise,
- investigating other ways to reduce effects such as the mitigation package and developing acoustic treatment requirements, and
- the encouragement of noise reduction and minimisation techniques as required by a Port Noise Mitigation Plan.

(iii) Chapter 8, Management of the Coastal Environment, CO1

5.32 Chapter 8 of the RPS is perhaps less relevant than the previous two chapters I have described, as it is concerned principally with the maintenance of natural character of the coastal environment. The proposed Variation is focused entirely on addressing the emission and the effects of noise from a long established and large scale physical resource in this coastal environment, and the issue of noise does not really impact on the natural character of this coastal environment in my assessment.

5.33 However, the Coastal Environment chapter does acknowledge that this environment includes areas of high conservation, cultural, scenic, commercial, recreation and amenity value, as well as containing the major port in the northern South Island. It also acknowledges that given the high and diverse values associated with the coastal environment, the potential exists for significant conflict between uses and values.

5.34 Objective CO1.2.1 and its associated policies espouse the need to minimise conflict in resource use and management, and they recognise that uses and developments dependent on the coastal environment and important to the social, economic and cultural well being of the people and the community, should be provided for within the coastal environment provided that the quality of the environment is maintained.

5.35 The methods include:

- Working with port related interests to ensure that present and future operational needs are provided for whilst ensuring that adverse effects are avoided, remedied or mitigated, and
- Providing for the maintenance and enhancement of the safety, operation and efficiency of existing structures in the coastal environment where this does not result in significant adverse effects on that environment and where there is a demonstrable community benefit to be derived from permitting such structures in the environment.

5.36 The objectives and policies in this section clearly recognise the importance of the Port as an existing structure given its importance to the social, economic and cultural well being of the people and the community and that it should be provided for within the coastal environment.

This is further illustrated in the reasons for the adoption of these objectives, policies and methods, which include:

CO1.6.4 “The existence and future operation of port facilities is vital to the economy and future development of Nelson and Tasman Bay, especially given the lack of viable alternative transport and modes linking the region with other parts of the country and the world. It is important that Council recognises the importance of port facilities and makes adequate provision in its resource management documents”.

- 5.37 It is considered that the proposed Variation is consistent with the objectives policies and methods in the RPS for the Coastal Environment.
- 5.38 In overall terms the policy framework in the RPS emphasises the Port is an important regional resource, and that a balance must be struck between the needs of the wider community, and the adjacent residential community, and in terms of noise effects, there is a need to avoid, remedy or mitigate the adverse effects resulting from its location in close proximity to the residential areas. I consider that the proposed Variation is consistent with this approach in the RPS, and will achieve the desired outcome.

NZ Coastal Policy Statement

- 5.39 Port Nelson and the adjacent residential areas are in my view part of the coastal environment and therefore the New Zealand Coastal Policy Statement 1994 is relevant to consideration of this proposed Variation.
- 5.40 Chapter 1 addresses the preservation of the natural character of the coastal environment, including from inappropriate subdivision, use and development. In my assessment the policies in Chapter 1 are not relevant, as the proposed variation concerns the generation and effects of noise on adjacent residential properties, and therefore has no material effect on an existing coastal environment that is substantially developed. The variation has no effect on the remaining natural character of this part of the coastal environment.
- 5.41 Chapter 2 addresses the protection of those parts of the coastal environment of special value to the tangata whenua. As discussed in paragraph 5.13 above, I do not consider that this variation will give rise to any such effects.
- 5.42 Chapter 3 addresses activities involving the subdivision, use or development of areas of the coastal environment. The relevant policies are set out below.

Policy 3.1.1 is:

“Use of the coast by the public should not be allowed to have significant adverse effects on the coastal environment, amenity values, nor on the safety of the public nor on the enjoyment of the coast by the public”.

- 5.43 The amenity values of this part of the coastal environment are already substantially determined by the presence of a large and busy port. The focus of the variation is to address the effects of noise generated by the port and the adjacent Port Industrial Area, so that the existing level of residential amenity in adjacent areas is not adversely affected, and it does so by the management of noise generation and the mitigation of adversely affects on adjacent properties. This is consistent with the policy.

Policy 3.2.2 is:

“Adverse effects of subdivision, use or development in the coastal environment should as far as practicable be avoided. Where complete avoidance is not practicable, the adverse effects should be mitigated and provision made for remedying those effects, to the extent practicable”.

- 5.44 It is clear that with a busy port in operation close to residential activities, the situation at Nelson is such that adverse effects on residential amenity will not always be avoided. The management and mitigation approach focuses in the first instance on reducing and minimising noise effects, and then on mitigation where those effects cannot be avoided or reduced to acceptable levels. This is consistent with the policy in my view.

Policy 3.2.4 is:

“Provision should be made to ensure that the cumulative effects of activities, collectively, in the coastal environment are not adverse to a significant degree”.

- 5.45 The proposed variation essentially encompasses the cumulative effects of noise from the whole Port Industrial Area, and not just the Port Operational Area. The mitigation package is determined by the exposure of residential properties to noise from the whole area. The variation therefore gives effect to this policy in my view.
- 5.46 There are no other relevant policies in the NZ Coastal Policy Statement.

Resource Management Plans and Regional Plans

- 5.47 The NRMP is a combined regional and district plan. It is also the Regional Coastal Plan. Subsequent to the resolution of all outstanding references other than those relating to Port noise, the Council adopted the amended Regional Coastal provisions and approved the amended Regional and District provisions on 29 September 2005.
- 5.48 The proposed variation has been prepared having regard to its application across this combined Plan, in an integrated manner. Amendments and new provisions are proposed to various sections of the Plan from the Meaning of Words section through to the Planning Maps in Volume 3 as outlined in paragraph 3.1 of this report, and in part 5 (Objectives and Policies) and 6 (Rules) of the Section 32 Report.
- 5.49 The approach to noise management and mitigation being promoted here differs from the more regulatory controls in the balance of the NRMP for other industrial zones. The control of noise at Nelson Airport employs an Effects Control Overlay, but it does not go so far as requiring the Airport authority to mitigate the effects of noise as proposed in Variation 07/01. However, as explained earlier in my report, this new approach to managing Port noise has been adopted at other Ports and is also warranted in the Nelson situation given the location of the Port in relation to residential areas and the tidal nature of the Port. This in my view does not create an inconsistency in the provisions of the NRMP and care has been taken to distinguish the provisions that apply to the Port noise issue from other provisions.
- 5.50 I have also considered whether the NRMP, incorporating the proposed variation, will be inconsistent with the Plans of adjacent authorities (e.g. Tasman Resource Management Plan). The TRMP has controls on noise in the more traditional manner (i.e. noise levels at boundaries), however Tasman District does not have a regional facility of the scale of Port Nelson to contend with in terms of addressing noise and noise effects, and so I consider the proposed variation is

dealing with a special case, and the variation will not be inconsistent with noise provisions in the TRMP or other plans from adjacent authorities.

Iwi planning documents

- 5.51 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 5 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.
- 5.52 The Iwi Management Plan has objectives for urban planning and land management, including in the Marine and Coastal realm those relating to water quality, shipping, ballast water and boating, and development of estuary areas. From my assessment of these, they are either not relevant, or not affected by, the proposed variation. There are also some guidelines for consultation in the document, and in my opinion these have been followed in the consultation on the issue and in development of the proposed variation

6. CONCLUSION

- 6.1 This report provides a statutory and effects assessment of proposed variation 07/01. I have described the general approach and the background and consultation leading to the development of this variation. I have also assessed it against the statutory requirements in the RMA and have concluded that it meets all the relevant matters.
- 6.2 I acknowledge 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.
- 6.3 A number of recommended amendments to the variation (and hence the NRMP) are outlined in Part B.
- 6.4 With those amendments, and with any other changes that may be required following presentations by the submitters, I am of the opinion that the package of measures embodied in Variation 07/01 will provide a workable and realistic planning response to a difficult resource management issue in Nelson.

Gary Rae

15 May 20

PART B

RECOMMENDATIONS ON SUBMISSIONS

Sub#: 1 **Submitter:** Sinner, Jim

New definitions to support the mitigation approach

Statement# 1

Oppose

Details: I do not have any firm views on the overall approach, but the proposed rules provide no protection for students at Auckland Point School from Port Noise that could impact adversely on teaching and learning.

Remedy: [3] Amend MW.126A to insert the words "educational or" before the words "residential purposes".

Amendments to reflect proposed approach to noise management, including deletion on the Noise Limit Line

Statement# 2

Oppose

Details: The proposed rules provide no protection for students at Auckland Point School from Port Noise that could impact adversely on teaching and learning.

The wording of rule INr.40 needs to be amended to avoid making redundant the existing controls on noisy activities within the Port Industrial Area e.g. sand-blasting at the slipway.

I support the requirement that the Port Operator conduct continuous monitoring at a location in the Port Hills.

The mitigation plan should require the Port Operator to notify owners of all noise affected properties at least every three years of their eligibility for technical and financial assistance for mitigation works.

The Port Noise Liaison Committee should have an independent chair i.e. someone who is not an employee of the Port Operator.

- Remedy:**
- [1] Amend Rule INr.38 to replace the second to last sentence in the Permitted column with the following: "This rule does not apply to (a) noise generated by the Airport and received within the Airport Effects Control Lines, or to (b) noise generated within the Port Operation Area and received within the Port Effects Control Overlays".
 - [2] Amend Rule INr.40 to include the following words at the bottom of the Permitted column: "Noise from activities in the Port Industrial Area must also comply with the conditions of Rule INr.38, except within the Port Effects Control Overlays".
 - [4] Amend the definition of Port Effects Control Overlay at AD11.3.14 to state that the boundaries of the overlays will be adjusted when the Port Noise contours are updated as required by AP29.A.2.i(d), and explain the process by which this will happen.
 - [5] Amend Rule INr.40 to ensure that noisy activities within the Port Industrial Area are still subject to controls as necessary to protect workers and other activities within the Port Industrial Area.
 - [6] Retain the requirement for the Port Operator to carry out continuous monitoring as per AP29.A.2.
 - [7] Amend provision AP29.A.3.i(a)ii to clarify that Port Noise measurements shall not be adjusted to exclude noise from log handling activities.
 - [8] Amend AP29.A to specify that, for the purpose of determining whether Auckland Point School is exposed to noise that exceeds the thresholds for mitigation specified in the Plan, measurement shall be based on noise levels between 8:30am and 3:30pm.
 - [10] Amend AP29.B.4.1 by inserting after "iii) Stage 3" the following: 'Not more than three years after the notification of Variation 07/01, the Port Operator shall notify owners of all noise-affected properties receiving between 55dBA and 60dBA of their eligibility to request technical advice and financial assistance for mitigation works from the Port Noise Liaison Committee'.
 - [11] Amend AP29.B.4.1 by inserting a new paragraph at the end as follows: "iv) Ongoing works. Not less than every three years after notification of Variation 07/01, the Port Operator shall notify owners of all noise-affected properties of their eligibility to request technical advice and financial assistance for mitigation works from the Port Noise Liaison Committee".
 - [12] Amend AP29.C.1 by inserting the following at the end: 'AP29.C.1.ii The Port Noise Liaison Committee shall elect, for such term as the Committee may decide, a chairperson from among its own members or may elect a person not otherwise appointed to the Committee, except that in either case the person elected may not be an employee of the Port Operator. The chairperson shall have an ordinary vote in all matters before the Committee and in the case of a tie shall have a casting vote'.

Amended acoustic insulation requirements for new residential units and alterations to existing residential units

Statement# 3

Oppose

Details: Alterations to existing buildings (including houses) should only be required to comply with the 40dBA standard for new sleeping areas (Rule REr.65A).

Remedy: [9] Amend Rule REr.65A in the Permitted column by replacing the words "the building is" with the words "any new sleeping areas are".

Further Sub#: X1 Statement: 1 Further Submitter: Ward, David and Jocelyn

Oppose We oppose the submission of Mr Sinner, statement 3.
We oppose the suggested amendment of rule REr.65A (remedy no. [9]).

Further Sub#: X2 Statement: 1 Further Submitter: Nelson Waterfront Protection Association

Support in part Nelson Waterfront Protection Association (NWPA) agrees with remedy [7] that provision AP29.A.3i(a)ii should be amended to clarify that Port Noise measurements shall not be adjusted to exclude noise from log handling activities. NWPA agrees with remedy [12], that the proposed amendment to AP29.C.1.ii to provide that a chairperson should be elected to the Port Noise Liaison Committee, however such a person is not to be an employee of the Port Operator.

Further Sub#: X3 Statement: 1 Further Submitter: Residents' Representatives of the Port Nelson Liaison Committee

Support Agree that Auckland Point School should be included in the area that is eligible for assistance with acoustic insulation if required.

Further Sub#: X4 Statement: 1 Further Submitter: Port Nelson Limited

Support The Port supports remedy [1] as it provides clarification for the circumstances when this rule does not apply, however, the suggested wording omits reference to the Airport Effects Control Overlay (and "overlays" is unnecessarily plural).

Oppose The Port opposes remedy [2] as it misunderstands the relationship between the rules INr.40 and INr.38 and the proposed amendment would fail to give proper effect to the intent of the Variation.

Oppose The Port opposes remedy [4]. Flexibility in the Port Noise contours is to ensure that mitigation offered by the Port is always consistent with the current Port Noise environment; the Port noise management and mitigation plans, being located outside the proposed Plan, will not need a formal process to be updated. The Port Effects Control Overlay is located within the proposed Plan and will require a Variation/Plan change to update it, this formal process may not need to occur every time the Port Noise contours are updated, but will depend on the appropriateness of the acoustic insulation/ventilation requirements owners are required to comply with to ensure new dwellings or additions meet the specified design standard. See original further submission for examples.

Oppose The Port opposes remedy [5] because the Variation as proposed already provides adequately for this situation.

Oppose The Port opposes the provisions set out in remedy [6] requiring continuous monitoring and considers them unnecessary, inappropriate and unjustifiable in acoustic and resource management terms.

Oppose Remedy [7] misunderstands the purpose of the exclusion for log handling. The exclusion only relates to adjustments for special audible characteristics not noise from log handling per se.

COMMENT:

Statement 1:

[3]Educational facilities are not included in the variation as notified, the scope of which was intended to provide an acceptable standard of amenity for primarily residential activities. It is understood that the Auckland Point School is mainly affected by daytime traffic noise from traffic on Haven Road. It is also noted that the major part of Auckland Point School lies outside the proposed Port Effects Overlay, and therefore the school is effectively protected by Rule INr.38 (which requires activities in the Port Industrial Area to not exceed maximum noise levels at the residential zone (school boundary)).

I would not recommend changing the definition of 'noise affected property' to include educational facilities as requested by the submitter, as this is the only existing school I am aware of in the Port Effects Overlay, and any new schools or other non-residential activities would need to provide their own acoustic insulation if they gain approval through the resource consent process. However it is accepted that the noise contours may change in the future so that the school may potentially be affected to a greater degree by the Overlay (and as it has no 'habitable spaces' it would not be eligible for acoustic treatment contributions from the Port). This means it may potentially lose its current 'protection' under INr.38.

The most appropriate way to retain the Auckland Point School's current protection from noise effects is to amend rule INr.38.1 so that the rule will continue to apply to the school even if the contours and the Port Effects Overlay area changes in the future.

Statement 2:

[1] The suggested wording for INr.38 would clarify the circumstances where this rule does not apply, and is supported by PNL's further submission. However, the suggested wording needs modification to include reference to the Airport Effects Control Overlay.

[2] The suggested wording is not required, as Rules INr.38 and INr.40 are clear and discrete, and the amendment recommended in [1] above will provide sufficient clarity on how these rules work together. As noted above I do however support an amendment to INr.38 to provide continued protection to the school.

[4] The suggested changes to AD11.3.14 are not supported, as they do not represent the intent of the variation. The Port Effects Control Overlay can only be changed by way of Plan Change procedures, and is not changed every time the Port Noise Contour Map changes (as per AP29.A.2, where the contours are to be monitored and updated annually or when the 3 strikes provision applies). These two Maps serve different purposes and it is not considered necessary to regularly change the Port Effects Control Overlay.

[5] The control of noise emitted within the Port Industrial Area will be managed by the port operator, as the activities within that area are entirely under the direct control of the port operator. It would be against the philosophy of the variation to introduce a rules based approach for this part of the Port.

[6] The proposed variation has a requirement for the Port operator to carry out continuous monitoring, and this is supported, as it will provide comprehensive data, and demonstrate that the Port is operating in accordance with its management plan. It is noted that this is the situation at Port Chalmers.

[7] The submitter may have misunderstood that the rule does not exclude measurement of all noise from log handling operations, it simply provides that a short term impact noise adjustment will not be applied as for other activities such as dropping of containers during unloading. (This concept also stems from the Port Chalmers decision where the Court determined log handling need not have a 3dBA penalty as for other activities giving rise to 'one-off' impact noise). No change necessary.

[8] Refer to discussion in [3] above. The recommendation is to amend INr.38 to provide continued protection to the school, and so no changes to AP29.A are required.

[10] Agreed - the Port operator should be required to be proactive in advising affected residents of their eligibility for technical assistance (and possibly financial assistance). However some amendment to the suggested wording is required to reflect that financial assistance in this least -affected category is at the Port operator's discretion.

[11] It is not considered necessary for the Port operator to be required on a regular basis (after the initial contact is made as recommended above) to contact residents (in this least affected category), Residents in this area, and future owners, must assume some responsibility for being aware of the influence of Port noise and the effect of the rules in the NRMP in this area.

[12] It is reasonable that the Noise Committee should elect its own Chairperson, but it is not considered appropriate to pre-empt the potential appointment of a Port employee should the Committee determine that that person is the appropriate Chairperson.

Statement 3

[9] It is considered that the 40dBA standard should apply to all habitable parts of a residential building, not just the sleeping areas, in order to reflect the desired residential amenity in the zone.

RECOMMENDATION

Statement 1: *Accept*

Statement 2: *Accept in part*

Statement 3: *Reject*

Further Submission X1: *Accept*

Further Submission X2: *Reject*

Further Submission X3: Accept
Further Submission X4: Accept in part

AMENDMENTS TO PLAN

Amend INr.38, last paragraph in Permitted column as follows:

“This rule does not apply to (a) noise generated by the Airport and received within the Airport Effects Control Overlay, or to (b) noise generated within the Port Operational Area and received within the Port Effects Control Overlay, with the exception of noise received at Auckland Point School where it will continue to apply”.

Amend AP29.B.4.1 as follows:

iii) Stage 3

Insert additional words:

“Not more than three years after the notification of variation 07/01, the Port operator shall notify owners of all noise-affected properties receiving between 55dBA and 59dBA of their eligibility to request technical advice and to be considered for financial assistance for mitigation works”.

Amend AP29.C.1 as follows:

Insert the following words:

“The Committee shall elect its own Chairperson”.

Sub#: 2	Submitter: Gibbons Holdings Ltd
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Clarification of 'Port Industrial Area' and 'Port Operational Area'

Statement# 1

Oppose

Details:

Please refer to the full submission's preamble for general submission discussion and background.

Specific provisions of concern in the 07/01 Variation include:

- [a] MW.145 Port Industrial Area definition: the planning map should include the area within the Boulder Bank from the point of entry into the Harbour through the Cut within the Port Industrial Area.
- [b] MW.145Ai) Sources of noise should not be confined to ships "at berth" but also within the Port (hence the previous submission seeking the extension of the identification of "Port Industrial Area") - it is nonsense to try and limit the area under control when access to and from the terrestrial part of the Port is required over the width of the bay and noise should not be excluded from control there.

Remedy:

- [a] MW.145 Extend the defined area on the planning map and definition to include the area within the Boulder Bank from the point of entry into the Harbour through the Cut thereby extending the noise control provision over the whole of the area which is in truth "the Port Industrial Area" including the area for access to it.
- [b] MW.145Ai) Extend the defined area (both definition and planning maps) to include ships from the time they enter and until the time they leave the Harbour through the Cut.

Oppose

Details:

Please refer to the full submission's preamble for general submission discussion and background.

Specific provisions of concern in the 07/01 Variation include:

- [c] IN1.3 Port Industrial Area. The emphasis now given is not accepted. The focus of the proposed plan change is "noise". There should be no need (nor has the Section 32 Analysis addressed) restrictions on the types of activities that can be located in the area. For the purpose of the proposed variation the Port Industrial Area is simply a definition relevant to noise effects. The insertion of the words "or the Port" is not accepted for that same reason. There is no Section 32 Analysis sufficient to justify that provision.
- [d] INr.23. The submitter does not accept the inclusion of the words "Port Area and are essential ancillary activities" in the provision. The change is not relevant to "noise" which it is meant to be what Variation 07/01 is all about.
- [e] AP29.A.1.i.d) Minimum Port Noise Management Plan Provisions. The effectiveness of the Committee is compromised by the reliance on a Port Operator to accept the recommendations. There is no obligation on the Port Operator to accept the recommendation and thus the provisions effectively give the Port Operator power of veto over the Committee rendering the Committee nugatory.
- [f] AP29.A.2.a) Record of Recordings. The requirement to keep recording for a minimum of 7 days is inadequate. There is a good chance that they would have been destroyed before there is any possibility of follow up and hopefully resolution to the problem.
- [g] AP29.A.2.d) - Contour Map. It is not clear why the Contour Map should revolve around a "busy 5 day operating scenario". The map should have regard to tidal effects of the Port activities, in particular the extent to which ships arriving or leaving are directed by the tides.
- [h] AP29.A.2.j) - Public Access. Public access to information should not be confined to the Port Noise Management Plan but extended to include all reports, and minutes considered by the Committee. The public should have access to all deliberations of the Committee including reports, minutes and recommendations.
- [i] AP29.A.3.1.b) Procedure for measuring Port Noise. The measure and focus should not be "ship visits" as implied but rather "noise".
- [j] AP29.C.1 - Port Noise Liaison Committee. There is a lack of balance in membership of the Committee in favour of Port users/owners. In the normal course Council's involvement on the Committee would be entirely appropriate for it to fulfil its statutory role but it is compromised in so doing by its 50% ownership of Port Nelson, appointment of directors from the Council or at the Council's behest, and its monitoring enforcement procedures. There is a lack of clarity as to what constitutes "Port Hills residential area" and there is no clarity on how it is proposed that representatives by identified, elected and what are Committee Members ongoing qualifications to be on the Committee is. The submitter makes the same observation in respect of the selection of Port user representatives. There is a real risk of the Port Noise Liaison Committee and its existence and task being little more than lip service.
- [k] AP29.C.4.d) Port Noise Committee Resourcing. The Submitter does not agree that access to the deliberations of the Committee should be confined to owners of "noise affected properties". Such a suggestion presumes there is some definitive contour line that clearly sets the line of demarcation. Furthermore it ignores the interests of the "port users" who, it is proposed, would have representation on the Committee. In any event, the deliberations of the Committee should be open to the whole of the public i.e. TDC is there to serve the interest of the public, so is NCC, so equally are elected Councillors, and therefore transparency to the public is imperative.
- [l] The Variation 07/01 does not achieve the imperatives of the Resource Management Act 1991.

Remedy:

- [c] IN1.3 Port Industrial Area. Delete the clause in its entirety.
- [d] INr.23. Delete the words "Port area and are essential ancillary activities" from Variation 7.
- [e] AP29.A.1.i.d) Minimum Port Noise Management Plan Provisions. The Management Plan should impose a requirement on the Port Operator to respond in writing to the Committee within 30 days, unless the parties agree a different timeframe, on how it proposes to implement any recommendations including timeframes. This would add transparency to the Port Operators consideration to Committee requests.
- [f] AP29.A.2.a) Record of Recordings. Recordings to be kept for a period of not less than 6 months.
- [g] AP29.A.2.d) Contour Map. Amend the wording to read "a Port noise contour map based on a busy 14 day operating scenario".
- [h] AP29.A.2.j) - Public Access. Extend the provision to enable public access to all reports, minutes and recommendations considered or made by the Committee and requiring all dealings between the Committee and PNL to be the subject of written record.
- [i] AP29.A.3.1.b) Procedure for measuring Port Noise. Delete this subclause in its entirety.
- [j] AP29.C.1 - Port Noise Liaison Committee. The Port Noise Liaison Committee should consist of a mix of membership with a rating in favour of residents (potentially affected by the Noise) and be given "teeth" (see submission above) so that its recommendations are required to be implemented.
- [k] AP29.C.4.d) Port Noise Committee Resourcing. Delete the words "owners of noise affected properties" and insert the words "any persons having an interest created in the public at large."

Further Sub#: X2 Statement: 2 Further Submitter: Nelson Waterfront Protection Association

Support in part Nelson Waterfront Protection Association (NWPA) supports remedy [a]: an extension of the definition of the Port Industrial Area to cover ships as they enter the Cut.
 NWPA supports remedy [e]: that AP29.A.1.i.d) should be revised to give the Port Noise Liaison Committee (PNLC) "teeth" and require accountability on the part of the Port Operator so that it so that it must respond in writing to the PNLC on how and when it proposes to implement any of the PNLC's recommendations.

Further Sub#: X4 Statement: 2 Further Submitter: Port Nelson Limited

Oppose The Port considers remedies [a] and [b] would require a change to the definition of Port Noise as is opposed. This part of the proposed Variation has adopted the provisions of the Port Noise Standard NZ6809:1999 Acoustics – Port Noise Management and Land Use Planning which exclude ships at berth. In addition ships not at berth are not generally a source of noise complaints at Port Nelson.

Oppose Remedy [g] – AP29.A.2.a. The contour map has been developed using the accepted procedures of the Port Noise Standard NZ6809:1999 Acoustics – Port Noise Management and Land Use Planning.

COMMENT:

Statement 1

- (a) and (b) It has not been apparent from the consultation that ships are causing significant problems while not at berth. Ships not at berth are excluded from the Port Noise Standard NZ6809:1999 Acoustics – Port Noise Management and Land Use Planning. Extending the Map as suggested would have negligible beneficial effect, and potential jurisdictional difficulties for the Port operator in controlling noise from ships that have not actually arrived at berth or have left the Port.

Statement 2

- (c) and (d) The proposed amendments to IN1.3 will not significantly change the existing emphasis on activities needing to be related to activities in the Port area. The changes proposed will clarify the current intent of this provision. The changes are considered relevant to the proposed Variation in that we are considering the noise generated by activities at the Port, which is adjacent to noise sensitive activities, and it is therefore relevant to clarify the types of activity that are appropriately located at the Port.
- (e) It is acknowledged that the Committee may only make recommendations to the Port operator and these will not be binding on the Port. However, the recommendations of the Committee need to be weighed for their practicalities, economic viability, and safety, and it is unrealistic to require all recommendations to be accepted by the Port operator. Clearly a measure of good will is required, and from my attendances at two of the meetings of the Committee, I cannot agree that the Committee would be rendered nugatory, as claimed by the submitter. The effectiveness of the Committee can be monitored and reviewed after the variation has been in effect for some time if necessary. However I agree with the relief sought that, to add transparency, the Port operator should be required to respond in writing to the Port Noise Committee explaining its decision with respect to the Committee's recommendations and how it will implement those decisions.
- (f) Agreed, it is of benefit to keep the records from the monitoring for a longer period than 7 days. A 6 month period is appropriate.
- (g) The NZ Standard contains the busy 5 day operating scenario and this is considered appropriate to give a cycle of typical activity on which to base planning such as embodied in the contour mapping. This will include the effects of tides.
- (h) It is agreed that public should have access to this information from the meetings of the Port Noise Committee, and in my experience the Committee has already disseminated this information from its meetings.
- (i) The 5 day visit scenario is designed to reflect the typical noise pattern of a typical Port where noise is related to the presence of a ship that may be in Port for several days. In this way a single 'rogue' ship will count as a single 'strike' rather than 'three strikes' where mitigation is triggered. The concept of ship visits is therefore important and should be retained in this clause.
- (j) I consider the make-up of the Committee is balanced in terms of equal representation from all stakeholders, and my comments under (e) regarding the effectiveness of the Committee also apply to this submission.
- (k) It is agreed that the information should be publicly available.
- (l) Not accepted.

RECOMMENDATIONS

Statement 1: *Reject*

Statement 2: *Accept in part*

Further Submission X2: *Reject*

Further Submission X4: *Accept*

AMENDMENTS TO PLAN

Amend AP29.A.1.i.d) as follows:

Insert the following words:

“The Operator shall respond in writing to the Committee within 30 days, unless the parties agree a different timeframe, to explain its decision with respect to any recommendation of the Committee, and how it proposes to implement any recommendations including timeframes”.

Amend AP29.A.2.a) as follows:

“Recordings shall be kept for a minimum of *six months*”.

Amend AP29.A.2.j) as follows:

“Copies of the Port Noise Management Plan, and all reports, minutes, and recommendations considered or made by the Committee and the Port Operator, are to be held at the offices ...”

Sub#: 3 Submitter: Bateup, Suzanne Elizabeth

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 1

Oppose

Details: I live in Cleveland Terrace. We are often aware of Port Noise, our guests comment on it and it wakes us at night.

Reasons: Current noise levels are too high, particularly at night time. If noise disturbs people in Cleveland Terrace, it must be far worse for people living closer to the Port.

Remedy: I would like controls and monitoring amended so that noise levels are reduced below their current levels.

Further Sub#: X1 Statement: 2 Further Submitter: Ward, David and Jocelyn

Support We support the submission of Suzanne Bateup.
The Plan fails to prevent an increase in Port Noise from occurring.
The Plan fails to contribute 50% more for houses should the noise contour move so that they become subject to the 'over 65db' area.
A rule is required setting the current noise as the maximum i.e. present noise contour should not move further outward.

**Further Sub#: X5 Statement: 1 Further Submitter: Matthews, Arthur William and
Dorothy Catherine**

Support Disturbance at night is a problem on our hill when the Port is active [Cleveland Terrace], especially with periodic crashes when the cranes dump their loads.

Further Sub#: X6 Statement: 1 Further Submitter: Hunter, Burke

Support There is more Port noise that can be heard through the night. As the Port becomes busier the noise level increases, this should be carefully monitored.

Further Sub#: X7 Statement: 1 Further Submitter: Davies, Austin and Belinda

Support We too are conscious of noise from the Port, and at times are disturbed by it at night – particular in summer when windows need to be open. We're therefore concerned about any extension of Port activity and the affect this would have on residents living closer than we do.

Further Sub#: X8 Statement: 1 Further Submitter: Hawthorne, Susan Louise

Support Concern for increased noise levels, especially at night time.

Further Sub#: X9 Statement: 1 Further Submitter: Strickland, Belinda Rebecca

Support I would be very concerned about the increase in noise. Currently we are made aware of the Port Noise when they are working at night.

COMMENT

This submission and supporting further submissions request that measures are in place to reduce noise at the Port. Variation 07/01 is designed to manage noise generated at the Port, to reduce and minimise the adverse effects of noise, and to mitigate the adverse effects. It is acknowledged however that overall noise levels may not in practice reduce from present levels, but this is still an objective of the variation.

RECOMMENDATION

Statement 1: *Accept in part*

Further Submission X1: *Accept in part*

Further Submission X5: *Accept in part*

Further Submission X6: *Accept in part*

Further Submission X7: *Accept in part*

Further Submission X8: *Accept in part*

Further Submission X9: *Accept in part*

AMENDMENT TO PLAN

Nil

Sub#: 4 Submitter: Alliance Group Ltd - Nelson Plant

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 1

Oppose

Details: The 07/01 variation may put unnecessary conditions on the Port, which in turn may affect the Port's efficient operations.

- Reasons:**
- [1] Noise limits may affect the efficient running of the Port, e.g. working all night.
 - [2] Curfews could see shipping services deciding its all too difficult in Nelson and go elsewhere. This would be a loss to the Nelson economy and an increase in costs for exporters.
 - [3] The Port already has a responsibility to ensure noise does not exceed a reasonable level under the RMA 1991. They don't need any conditions over and above that.
 - [4] They have proven that they recognise they have a responsibility to cause as little interference with residents enjoyment of their residential properties whilst still maintaining an efficient and effective operation.
 - [5] The Port must continue to be left to work with the residents as they have been doing over the years and allowed to investigate their own alternatives for noise control as new, cost efficient technology becomes available.

Remedy: Delete the 07/01 Variation entirely.

Further Sub#: X1 Statement: 3 Further Submitter: Ward, David and Jocelyn

Oppose We oppose the submission of Alliance Group.
We disagree with the suggested remedy.

COMMENT

This submission is not supported because it opposes the philosophy behind the variation, and is essentially advocating the status quo, which is untenable as recognised by the Environment Court and as assessed in the Section 32 Report and in this Planner's report (refer to paragraph 3.5). In addition the Port operator (PNL) has supported the general philosophy of the variation, and was responsible for promoting this management and mitigation approach in the first instance.

RECOMMENDATION

Statement 1: *Reject*

Further Submission X1: *Accept*

AMENDMENT TO PLAN

Nil

Sub#: 5	Submitter: Newnham, Ross Andrew
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Section 32 Evaluation

Statement# 1

Support in part

Details: Plan supported if amended as below (re: ambiguity in Section 32 Report, paragraph 4.4: Port Chalmers Mitigation Approach).

Reasons: The bulleted paragraph headed "Greater than 65dBA Ldn" is ambiguous in two respects:

- [1] The first part of the paragraph should include the word "either" to make it clear an alternative choice is proposed. It should also state that it is the owner's choice.
- [2] The phrase "all existing dwellings not already able" is unclear as it is not a matter of being 'able' to meet the required levels but one of already meeting or not meeting those levels.

Remedy: Amend as follows [underlined indicates addition, ~~strike through~~ indicates deletion]:
"The Port operator is required to either offer to purchase, or provide insulation at the owners choice to, all existing dwellings that do not currently not already able to meet the indoor..."

Further Sub#: X1	Statement: 4	Further Submitter: Ward, David and Jocelyn
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Support We support the submission of Ross Newnham.
The suggested remedy removes ambiguity.

Further Sub#: X3	Statement: 3	Further Submitter: Residents' Representatives of the Port Nelson Liaison Committee
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Support Wording is currently confusing and ambiguous. The proposed wording clarifies the matter and removes all possible confusion.

COMMENT

This submission relates specifically to the Section 32 Report (and it is accepted that paragraph 4.4 of that Report would be improved by the submitter's amended wording). No changes have been requested to the proposed Variation, however I have recommended a minor change to the corresponding wording in AP29.B.1 in relation to a submission made by PNL, and this will correct any ambiguity.

RECOMMENDATION

Statement 1: *Reject*

Further Submission X1: *Reject*

Further Submission X2: *Reject*

AMENDMENT TO PLAN

Nil

Sub#: 6 **Submitter:** Auckland Point School

New definitions to support the mitigation Approach

Statement# 1

Oppose

Details: Auckland Point School is concerned the proposal does not include adequate protection for the School. Legal uncertainty is created by the wording regarding the Port operational area.

Remedy: [3] Amend MW.126A to insert the words "educational or" before the words "residential purposes".

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 2

Oppose

Details: Auckland Point School is concerned the proposal does not include adequate protection for the school; and that the Port Noise Liaison Committee should be chaired by someone other than an employee of the Port Operator.

Reasons: Please refer to full submission for general points in preamble, including interference with teaching and learning at Auckland Point School; and a potential conflict of interest regarding Port Noise Liaison Committee.

Remedy:

- [1] Amend rule INr.38 to replace the 2nd to last sentence at the bottom of the column marked "Permitted" with the following: "This rule does not apply to (a) noise generated by the Airport and received within the Airport Effects Control Lines, or to (b) noise generated within the Port operational area and received within the Port Effects Control Overlays".
- [2] Amend rule INr.40 to include the following words at the bottom of the column marked "Permitted": "Noise from activities in the Port industrial area must also comply with the conditions of Rule INr.38, except within the Port Effects Control Overlays".
- [4] Amend the definition of Port Effect Control Overlays and AD11.3.14 to state that the boundaries of the overlays will be adjusted when the Port Noise Contours are updated as required by AP29.A.2.i(d), and explain the process by which this will happen.
- [5] Amend rule INr.40 to ensure that noisy activities within the Port Industrial Area are still subject to controls as necessary to protect workers and other activities within the Port Industrial Area.
- [6] Retain the requirement for the Port Operator to carry out continuous monitoring as per AP29.A.2.
- [7] Amend provision AP29.A.3.i(a)ii to clarify that Port Noise measurements shall not be adjusted to exclude noise from log handling activities.
- [8] Amend AP29.A to specify that, for the purposes of determining whether Auckland Point School is exposed to noise that exceeds the thresholds for mitigation specified in the plan, measurement shall be based on noise levels between 8.30am and 3.30pm.
- [9] Amend appendix 29 by inserting, at the end of AP29.C.1, the following: AP29.C.1.ii. The Port Noise Liaison Committee shall elect, for such term as the Committee may decide, a chairperson from among its own members or may elect a person not otherwise appointed to the committee, except that in either case the person elected may not be an employee of the Port Operator. The chairperson shall have an ordinary vote in all matters before the Committee and in the case of a tie shall have a casting vote.

Further Sub#: X2 Statement: 1 Further Submitter: Nelson Waterfront Protection Association

Support in part Nelson Waterfront Protection Association (NWPA) agrees with remedy [7] that provision AP29.A.3i(a)ii should be amended to clarify that Port Noise measurements shall not be adjusted to exclude noise from log handling activities. NWPA agrees with remedy [9], the proposed amendment to AP29.C.1.ii to provide that a chairperson should be elected to the Port Noise Liaison Committee, however such a person is not to be an employee of the Port Operator.

Further Sub#: X3 Statement: 2 Further Submitter: Residents' Representatives of the Port Nelson Liaison Committee

Support Agree that Auckland Point School should be included in the area that is eligible for assistance with acoustic insulation if required. Support the proposal for an independent chair of the Port Nelson Liaison Committee.

Further Sub#: X4 Statement: 3 Further Submitter: Port Nelson Limited

Support The Port supports remedy [1] as it provides clarification for the circumstances when this rule does not apply, however, the suggested wording omits reference to the Airport Affects Control Overlay (and "overlays" is unnecessarily plural).

Oppose The Port opposes remedy [2] as it misunderstands the relationship between the rules INr.40 and INr.38 and the proposed amendment would fail to give proper effect to the intent of the Variation.

Oppose The Port opposes remedy [4]. Flexibility in the Port Noise contours is to ensure that mitigation offered by the Port is always consistent with the current Port Noise environment; the Port Noise management and mitigation plans, being located outside the proposed Plan, will not need a formal process to be updated.

The Port Effects Control Overlay is located within the proposed Plan and will require a Variation/Plan change to update it, this formal process may not need to occur every time the Port Noise contours are updated, but will depend on the appropriateness of the acoustic insulation/ventilation requirements owners are required to comply with to ensure new dwellings or additions meet the specified design standard.
See original further submission for examples.

Oppose The Port opposes remedy [5] because the Variation as proposed already provides adequately for this situation.

Oppose Remedy [7] misunderstands the purpose of the exclusion for log handling. The exclusion only relates to adjustments for special audible characteristics not noise from log handling per se.

COMMENT

This submission is essentially the same as the corresponding parts of Jim Sinner’s Statements 1 and 2, and therefore the same comments and recommendations apply.

RECOMMENDATION

Statement 1: *Accept*

Statement 2: *Accept in part*

Further Submission X2: *Reject*

Further Submission X3: *Accept in part*

Further Submission X4: *Accept*

AMENDMENTS TO PLAN

Amend INr.38, last paragraph in Permitted column as follows:

“This rule does not apply to (a) noise generated by the Airport and received within the Airport Effects Control Overlay, or to (b) noise generated within the Port Operational Area and received within the Port Effects Control Overlay, with the exception of noise received at Auckland Point School where it will continue to apply”.

Amend AP29.C.1 as follows:

Insert the following words:

“The Committee shall elect its own Chairperson”.

Sub#: 7	Submitter: Weyerhaeuser New Zealand Inc
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Clarification of 'Port Industrial Area' and 'Port Operational Area'	Statement# 1
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Support

Details: Weyerhaeuser NZ Inc. (WNZI) Manages 78,000ha of plantation forest in the Nelson/Marlborough Regions and is a major customer of Port Nelson. WNZI Supports chapter 2; MW 154: Definitions for” Port Noise”.

Reasons: WNZI Supports the exclusion of noise from vehicles on public roads from the definition of Port Noise. This exclusion recognises that Port Nelson has little ability to control noise levels or mitigate the effects of vehicles on Rocks Rd: a major access way for Nelson and one that contains several residential apartment blocks.

Remedy: Retain plan change to exclude noise from vehicles on public roads from the definition of Port Noise.

Support

Details: WNZI Supports option 3 (Port Chalmers Mitigation Approach) which requires the Port Operator to be responsible for the management of activities giving rise to noise as well as the mitigation of adverse effects of noise in adjacent areas..

Reasons: Adoption of measures that have been tested and endorsed by the Environment Court, in the case of Port Chalmers, is sensible and realistic. This option ensures minimal disruption to shipping services as there is no need under this option for a curfew. WNZI notes the requirements under the RMA that noise must not exceed reasonable levels and considers this statutory constraint will ensure the balance between competing use; being shipping operations and residential properties is maintained. Any disruption to current shipping services would have significant impact on WNZI's ability to viably export logs/lumber and maintain supply to overseas markets.

07/01 is an appropriate planning measure as Port activities were being undertaken long before majority of residential buildings were constructed.

Remedy Retain plan change so that the Port Operator is responsible for the management of activities giving rise to noise including mitigation of adverse effects.

Further Sub#: X4 Statement: 4 Further Submitter: Port Nelson Limited

Support The Port supports statement 1 - the retention of the definition of Port Noise which excludes noise from vehicles on public roads.

COMMENT

Statement 1: The submitter supports the exclusion of road traffic noise, and I understand that, as a matter of law, it cannot be regulated.

Statement 2: The support for proposed Variation 07/01 is noted.

RECOMMENDATION

Statement 1: *Accept*

Statement 2: *Accept*

Further Submission X4: *Accept*

AMENDMENT TO PLAN

Nil

Sub#: 8 Submitter: ENZA Ltd

Support

Details: ENZA supports the variation to provide contributions towards the cost of acoustic insulation to properties in the vicinity of Port Nelson.

Reasons: Any curtailment of Port operations would restrict our ability to load export apple and pear crops, with the risk of missing key market opportunities. This would in turn hurt the grower economy and Nelson economy.

Remedy: Retain plan change to provide contributions towards the cost of acoustic insulation to properties in the vicinity of Port Nelson.

Further Sub#: X10 Statement: 1 Further Submitter: Nelson Forests Limited (NFL) [Formerly Weyerhaeuser NZ Inc]

Support NFL supports the Port assuming financial responsibility for the acoustic insulation of properties most affected by Port Noise. As noted by ENZA any curtailment of Port operations would restrict exporters' ability to ship their product – which would have ramifications for the Region.

COMMENT

Statement 1: The support for variation 07/01 is noted.

RECOMMENDATION

Statement 1: *Accept*

Further Submission X10: *Accept*

AMENDMENT TO PLAN

Nil

Sub#: 9 Submitter: Northrop, Ian Richard

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 1

Oppose

- Details:**
 - [1] AP.29.A.2(a). The Port Operator should not be responsible for its own noise monitoring.
 - [2] Moving of noise line must not make it easier for the Port Operator to build and work an extension to Main Wharf South (MWS).
- Reasons:**
 - [1] A conflict of interest arises if the Port Operator or Nelson City Council monitors noise at the Port.
 - [2] The Port Operator, with certain consents could build an extension to MWS now. However that could not work because of noise constraints. If noise line is moved then it may give the Port Operator carte blanche to extend and work an extension to MWS.
- Remedy:**
 - [1] Ensure that noise is monitored by a third party.
 - [2] Assurance that extension to noise line will not enable the Port Operator to build and work extension to MWS without proper consultation.

Further Sub#: X3 Statement: 4 Further Submitter: Residents’ Representatives of the Port Nelson Liaison Committee

Support There is a potential for conflict of interest with Port Nelson or Nelson City Council responsible for noise monitoring – there should be an independent alternative available. We oppose moving the noise line.

COMMENT

Statement 1:

- [1] It is normal practice for large operators to conduct their own monitoring, and is not contrary to the RMA. The Port Noise Liaison Committee will oversee the process, and NCC will review the veracity of the data regularly.
- [2] There is no current application or proposal to extend Main Wharf South, and in any event this variation cannot pre-empt an applicant from making a resource consent application in the future. Any future application for a wharf extension would likely be publicly notified and subject to extensive scrutiny. The effects of any such application will be determined on its merits having particular regard to noise effects.

RECOMMENDATION

Statement 1: *Reject*

Further Submission X3: *Reject*

AMENDMENT TO PLAN

Nil

Sub#: 10

Submitter: Nelson Waterfront Protection Association

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 1

Oppose

Details:

Please see full submission for complete text. Main paragraphs are summarised below.

The Nelson Waterfront Protection Association (NWP) opposes the proposed Variation as it is deficient and unworkable. There are no enforceable noise limits on Port activities and the mitigation and compensation package is inadequate. NWP has no confidence that the Port Operator will "adopt the best practical option to ensure that the emission of noise from that land or water does not exceed a reasonable level", or that the adverse effects of Port Noise on health and wellbeing of the local communities will be adequately avoided, remedied, or mitigated as required under the Resource Management Act 1991.

Reasons:

- [7] The proposed Variation imposes no enforceable limits on Port activities and there is an absence of real consequences in the event of a breach (e.g. enforcement action or a curfew) or adequate incentives to reduce noise at source.
- [10] The proposed Variation is ambiguous as to whether any enforceable noise limits apply to activities in the wider Port Industrial Area (INr.37, INr.38 and INr.40).
- [12] There are significant gaps in the compensation package and therefore the incentive for the Port Operator to reduce noise (AP29.B) E.g. if a property owner cannot meet their part of the costs they will be left with no other option other than the offer of purchase. The Port Operator should be required to meet the full costs of mitigating the adverse noise effects of its activities.
- [14] No mitigation is provided for outdoor living areas (except for the unenforceable obligation of the Port Operator to minimise noise at sources as far as practical). Hegley Acoustic Consultants advised desirable level for outdoor living at 55dBA (20/12/05). Outdoor living is as essential part of the lifestyle of many Port Hills residents.
- [15] NWP considers the proposed measurement system for triggering mitigation measures inadequate. The 5 day rolling average measurement will enable the Port Operator to "maximise noise". The Leq (15 minute) measurement at night may not capture the unacceptable one-off noises that currently occur (such as the dropping of a container) which seriously affects residents sleep, and as a result, their physical and emotional wellbeing.
- [16] The composition of the proposed Port Noise Liaison Committee is weighted in favour of the Port Operator. Equal representation from i) the Port Operator, ii) Nelson City Council, iii) Representatives of the residents living in the Port Hills residential area, and iv) Representatives of the Port Industrial Area users and cargo owners. As Nelson City Council is a shareholder and the Port Operator and its tenants will likely share the same commercial imperatives, 3 of the 4 representatives appear to be ad idem. It appears difficult to see the representation as being "equal".

Remedy:

- [19] Withdraw the proposed variation and recommence extensive consultation with affected parties before re-notifying a new amended Variation; or
- [20] Decline the Proposed Variation, or
- [21] Amend the proposed variation so as to:
 - a) Impose enforceable noise limits on Port Activities;
 - b) Implement an effective noise monitoring and measurement system;
 - c) Provide a compensation package adequate to remedy or mitigate the adverse noise effects on the health and well being of the local communities that cannot be avoided;
 - d) Establish a Port Nelson Liaison Committee with truly equal representation; and
 - e) Impose any other measures required to ensure that the health and wellbeing of the local community is adequately recognised and provided for.

Further Sub#: X1 Statement: 5 Further Submitter: Ward, David and Jocelyn

Support in part

We support in part the submission of the Nelson Waterfront Protection Association. There is nothing in the Plan preventing an increase in Port Noise other than contributions to insulation. The Plan fails to contribute 50% more for houses should the noise contour move so that they become subject to the 'over 65db' area. A rule is required setting the current noise as the maximum i.e. the present noise contour should not move further
We support suggested remedy no. [21].

Further Sub#: X3 Statement: 5 Further Submitter: Residents' Representatives of the Port Nelson Liaison Committee

Support

Agree with all points raised but in particular reason [16] as it directly affects our roles as representatives for over 261 residences. We suggest that under reason [21]d) at least 6 representatives of the residents/owners be on the Port Noise Liaison Committee.

Further Sub#: X4 Statement: 5 Further Submitter: Port Nelson Limited

Oppose

Port Nelson opposes remedies [19], [20] and [21]. Considerable consultation has already occurred. The imposition of enforceable noise limits within the Plan goes against the philosophy of the proposed Variation which uses noise contours to trigger mitigation to affected property owners, conferring a financial incentive for the Port to manage its activities appropriately. Should noise increase, the noise contours will move and the Port will have to pay mitigation costs to more properties. By identifying the L_{dn} and L_{eq} values in this way to act as triggers and provide the appropriate acoustic design parameters, L_{max} will also be effectively controlled.

COMMENT

Statement 1:

[7] The submitter's concern is that there are no enforceable limits for noise or curfews. This is acknowledged, and is discussed in detail in the Section 32 report (refer to sections 7.2 and 4.6 respectively). The proposed variation adopts a different approach to the more traditional enforcement regime (as per the recent Port Otago and Port Lyttelton cases). It does not require enforceable limits, and curfews are considered impractical and unnecessary.

[10] These rules are not considered to be ambiguous. There are no enforceable limits within the Port Effects Control Overlay, or the Port Operational Area, but Rule INr.38 does include noise limits which apply to activities in the balance of the Industrial Zone.

[12] The mitigation package, and the Port Operator's contributions, have been established in recognition of the fact that these residential properties have been purchased by owners in full knowledge of the Port as a close neighbour, and owners of properties in close proximity to the Port can therefore reasonably expect to receive some noise at their properties, and that noise comes from sources other than the Port (e.g. road traffic noise). A 50% contribution from the Port operator in these circumstances is considered equitable and reasonable.

[14] The submitter's concern is that no mitigation is provided for outdoor living areas. This is one of the key issues addressed in the Section 32 report (refer to section 7.6). As stated, the focus of the proposed variation is on achieving an adequate sleeping environment for residents in noise-affected areas, and this is extended to require insulation of other habitable spaces within dwellings. The levels of noise received in outdoor areas will be managed in terms of the Port Noise Management Plan, which includes measures to reduce noise at source (such as itemised in reference documents '14' and '15'). I will be able to elaborate further on this issue at the hearing if required.

[15] The Port Noise Standard contains the 'busy 5 day' operating scenario – and this provides for a cycle of typical activity on which to base planning such as is embodied in the contour mapping, and will include the effects of operating in a tidal port such as Nelson. This is not considered a mechanism to allow the Port to maximise noise. The effect on sleep of isolated sudden impact noises is acknowledged and has been a major concern of residents throughout the consultation process. However an Lmax control has been discounted as inappropriate and ineffective (refer to section 32 report section 7.6) The use of an Leq (15 min) standard is considered an appropriate measurement method for capturing isolated one-off noise events. Mr Ballagh will be able to elaborate on this matter if required.

[16] I consider the make-up of the Committee is balanced in terms of equal representation from all stakeholders, and it has been working effectively in my experience.

RECOMMENDATION

Statement 1: *Reject*

Further Submission X1: *Reject*

Further Submission X3: *Reject*

Further Submission X4: *Accept*

AMENDMENT TO PLAN

Nil

Sub#: 11 **Submitter:** *[Duplicate]*

Submission# 11 was a duplicate of an existing submission

Sub#: 12 **Submitter:** Port Nelson Limited

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 1

Oppose

Details: Please refer to the full submission for detailed explanations of the following points:

- [3.1] Port Nelson Limited (the Port) supports the overall philosophical approach adopted in 07/01, but
- [3.2] Opposes generally the objectives and policy framework as it does not contain the necessary amendments to provide a strong enough objective and policy framework to implement the proposed approach and methods adopted.
- [3.3] Heritage provisions.
- [3.4] Outdoor living Environments.

Reasons and Remedies: As submission 12 is of considerable length and detail, the following list represents issue headings only. Please refer to the full submission for detailed explanation of the following points:

- [4.1] MW71A: Habitable Space;
- [4.2] Definition MW.111A: Mechanical Ventilation and Appendix 19.2ii a) or b);
- [4.3] AD11.3.14: Port Effects Overlay;
- [4.4] DO12.1.2: Future expansion at the Port Industrial Area;
- [4.5] DO12.1.3, DO12.1.3.i, DO12.1.3.ii, DO12.1.3.iii, DO12.1.3.iv, DO12.1.3.v: Noise effects;
- [4.6] DO12.1.4, DO12.1.4.i, DO12.1.4.ii: Management of noise receiving environment;
- [4.7] DO12.1.4.iv: Management of noise receiving environment;
- [4.8] DO12.1.5, DO12.1.5.i: Management of noise receiving environment;
- [4.9] RE2.1, RE2.1.viii, RE2.1.ix: Noise;
- [4.10] REr.65A and associated rules in other zones including SCr.69A and INr.71A and associated Appendix 19 (Acoustic Insulation Requirements), including AP19.2: Port Effects Control Overlay;
- [4.11] INd.3: Description of Port Industrial Area;
- [4.12] IN2.2: Nuisances;
- [4.13] INr.40: Port Noise Management Plan;
- [4.14] CM3.1. CM3.1.i: Coastal Marine Area;
- [4.15] AP29, AP29.A.2.i.a) to e) and (f): Continuous monitoring and other related provisions;
- [4.16] AP29.B, AP29.B.1 and AP29.B.2: Port Noise Mitigation Plan;
- [4.17] AP29.B.4: Staging of mitigation for noise-affected properties;
- [4.18] AP29 Generally;
- [4.19] General.

Further Sub#: X2 Statement: 4 Further Submitter: Nelson Waterfront Protection Association

- Oppose** Nelson Waterfront Protection Association (NWP) opposes Port Nelson Limited's (PNL) submission in its entirety as it seeks changes to the proposed Variation that further undermine the extent to which it provides for the health and wellbeing of NWP residents. For example:
- (i) PNL suggest amendments to DO12.1.3 and DO12.1.3i to acknowledge that the management of Port activities can not reasonably achieve compatibility with outdoor living, and should only include indoor living (Paragraphs [3.4] and [4.5]). NWP considers that Port activities should aim to achieve compatibility with both indoor and outdoor living.
 - (ii) PNL proposes exemptions from the requirement to provide acoustic treatment (Paragraphs [3.3] and [4.16]). The currently proposed 50% contribution does not adequately meet the needs of the house owners. NWP seeks a 100% contribution from the Port Operator.
 - (iii) NWP objects to the 'watering down' of the nuisance policy (IN2.2: Paragraph [4.12]), and seeks that it remains unchanged.
 - (iv) NWP opposes the proposed changes to the noise management and mitigation plans, including that continuous noise monitoring should not be required (Paragraph [4.15]). NWP opposes the proposed deletion of the provision for mitigation to be offered where a property receives trigger levels on more than 3 occasions in a 12 month period (and rely on the noise contour lines alone) (Paragraph [4.16]). NWP opposes the proposed changes to the timeframes for the provisions of acoustic treatment (Paragraph [4.17]).

**Further Sub#: X10 Statements: 2-4 Further Submitter: Nelson Forests Limited (NFL)
[Formerly Weyerhaeuser NZ Inc]**

- Support** NFL supports the overall approach which requires the Port Operator to be responsible for managing the activities giving rise to noise, as well as mitigation of the adverse effects of noise in the adjacent areas (Point [3.1]). Adoption of measures that have been tested and endorsed by the Environment Court, in the case of Port Chalmers, is sensible and realistic.

- Support** The management of reverse sensitivity issues must be recognised as a significant factor contributing to the efficient and effective operation of the Port and requires addressing in the Variation (Point [4.5]).
- Support** NFL agrees with the submitter that any new activities planned for the Port Effects Overlay that are noise sensitive should be limited (Point [4.6]). It is recommended that consent be sought from Port Nelson, as an affected party, prior to considering any resource consent applications by such activities. Alternatively reword Policies, Rules and Explanations to ensure new noise-sensitive activities are limited in the Port Effects Control Overlay, and in particular the Port side of the 65dBA Ldn contour.

COMMENT

Note: The following assessment is based on the specific remedies sought in PNL's submission, and not the Summary of Submissions above, which is incomplete.

Statement 1:

- 3.1.2 The Port's overall support for the proposed Variation is noted.
- 3.2.3 The objectives and policies provide a fair balance and in general no further change is considered necessary (note: some minor changes are recommended in relation to more specific submissions from PNL). The importance of the Port has actually been strengthened in places (including DO12.1.1) and there are existing reverse sensitivity issues mentioned in DO12.1.3.i, the introduction of the mitigation approach is described in DO12.1.3.ii, DO12.2.3v describes the noise management plan and noise mitigation plan approach, the restrictions on subdivision are explained in the new DO12.1.4.v, and DO12.1.5 introduces the concept of minimisation of noise (in addition to reduction of noise). Overall, it is considered this objective and policy framework is sufficiently strong to implement the proposed approach. However, should the submitter be able to suggest some specific wording changes this can be further evaluated and commented on at the hearing.
- 3.3.3 The submitter has suggested the use of an exception mechanism to relieve the Port or the owner of all or part of their obligations to insulate a building based on any heritage aspects it may have, together with some amendment to the objectives and policies to reflect this. It is agreed that some modification to reflect the specific requirements for heritage buildings may be appropriate, such as a 'tag' on the acoustic certificate to describe for instance any rooms that the certificate does not apply to, because of the heritage aspect. It is beyond the scope of this Planner's report at this stage (given the time constraints to prepare the report) to develop new provisions in this regard, and the submitter is invited to present some suggested wording for further consideration at the hearing.
- 3.4.3 Whilst the effects of noise on outdoor living are not specifically mentioned in the objectives and policies, it is anticipated that, from the implementation of the variation, residential owners will receive some reduction, or at least no worsening of the situation, in respect to noise in outdoor living areas through successful management of activities at the source. It is not a principal focus of the variation to address outdoor noise for all of the reasons outlined in the Section 32 report, and therefore inclusion of specific policies in the variation on this issue is not supported. As for the previous submissions, if the submitter intends to present some suggested wording this can also be evaluated and commented on at the hearing.
- 4.1.3 (i) Motels and hotels are intended to be included in this variation as requiring acoustic treatment where they are located in the Port Effects Control Overlay. This is clear by the wording in DO12.1.4.i, which states: "*Residential activity is regulated because it is very sensitive to noise. Similarly, noise sensitive activities such as hospitals or schools may need protection, as does tourist accommodation*". It is therefore agreed that the definition of 'habitable space' needs further refinement to specifically include short term living accommodation (as well as educational facilities and hospitals). It is noted however that these types of activity will require resource consent in the Residential Zone, and the effects of noise from the Port can be individually assessed at the time. The 'habitable space' definition in my view implicitly includes kitchens (noting that pantries are specifically excluded), but the definition can readily be amended to make this clear. (ii) It is accepted that any parts of dwellings that have been constructed or altered unlawfully need not be a responsibility of the Port to insulate. However, any wording changes to achieve this may need legal advice to avoid doubt in situations where for

instance there are long established dwellings that may have no record of building consents. Any suggested wording presented by the submitter can be evaluated and commented on at the hearing.

- 4.2.3 (i) It is accepted that the wording in the definition of 'mechanical ventilation' would be clearer if it deleted the reference to a) or b).
(ii) It is considered the wording of 19.2ii is sufficiently clear and does not need amendment.
- 4.3.3 It is noted in AD11.3.14 that any non-residential activities requiring resource consent will be assessed for noise effects, and therefore any change to the rules or to AD11.3.14 may not strictly be necessary. However on balance it is considered that other activities sensitive to noise in the Port Effects Control Overlay, including educational facilities, short-term living accommodation, and hospitals should be subject to the insulation requirements. (See also comments in section 4.1.3(i) above on definition of 'habitable space'). It is not considered necessary to further amend AD11.3.14 to refer to the Suburban Commercial and Industrial zones, as the provision relates to the Port Effects Control Overlay regardless of the zoning.
- 4.4.3 It is agreed that the proposed deletion of references to the areas defined within the Coastal Permit and Waterways Lease goes beyond the scope of the variation as notified. This appears to have been a 'tidy up' editing change, but it has the effect of restricting port activities to the Port Industrial Area only, and this is not the intent of the variation.
- 4.5.3 (i) It is agreed that the word 'compatible' in Policy DO12.1.3 may create a false impression of the standard of amenity that can reasonably be expected to arise in the noise-affected areas of the Residential Zone. A more appropriate description, in accordance with the Explanation that follows the policy, might be to include reference to providing a reasonable standard of residential amenity including an environment where reasonable sleep can occur.
(ii) Policy DO12.1.3 (as recommended to be amended above) and its accompanying explanation are considered adequate to address this issue. This policy is concerned with managing noise effects, and there is not considered a need to change the scope to introduce the issue of reverse sensitivity.
(iv) The suggested amendments to DO12.1.3 are generally considered unnecessary. If this policy was to be amended as requested by the submitter to focus specifically on the indoor living environment, and the Explanation and Reasons section amended to exclude the control of noise in the outdoor environment, the Policy will in my view then be too narrowly focused. I agree with the concerns of NWPA in this regard, and this has been a consistent matter raised during consultation. Whilst the variation does not contain specific controls to protect amenity in outdoor areas, it is nevertheless an expectation that the overall effective management of noise may have indirect benefits in terms of reduced exposure to outdoor noise, and this should not therefore be exempted from the Policy as being unattainable. Having said that I do agree with the suggested wording in the final sentence of the Explanation and Reasons DO12.1.3.i that states: "...to address effects, particularly on the indoor living environment of areas adjacent to the port". This in my view provides a better balance, and does not exclude the issue of outdoor noise altogether. I also agree with the addition of a reference to the Suburban Commercial Zone in this explanation, as properties in this zone are also subject to Port noise and are required to be treated if they lie within the Port Effects Control Overlay.
- 4.6.3 (i) The submission seeks to reduce the potential for new residential units and apartments to occur in the noise-affected parts of the Suburban Commercial Zone. That Zone is not primarily set up to provide for residential accommodation. Whilst the rules in some situations may enable permitted residential development to occur, the standard of amenity is clearly different to the Residential Zone, and therefore developers and owners need to be aware that effects such as noise arising from within this commercial zone, and from adjacent activities, may be at higher levels than for residential zone. The prospect of restricting development within the Suburban Commercial Zone has not been part of the development of this variation and has not been consulted on to my knowledge, so I am not recommending any changes.
(ii) Affected party approval from the Port for applications for resource consent would in all probability most likely be required in all instances where resource consent is required. However this should be determined on a case-by-case basis, having regard to the relevant

- sections of the RMA for determining notification and affected party approvals, and not prescribed in the policies and objectives of the NRMP in my view.
- (iii) It is considered that DO12.1.4.i and ii adequately describe the need to restrict the potential for people and noise sensitive activities to be exposed to noise effects.
- (iv) As above.
- 4.7.3 (i) It is accepted that premises used for living purposes and educational facilities within the Residential Zone are appropriately included for acoustic insulation. As noted earlier, any proposals for new or expanded activities such as this will generally require resource consent and precise noise requirements can be determined at that time, but there is merit in amending this Method (DO12.1.4.iv) to exclude specific reference to strictly residential units.
- (ii) The term 'noise-affected properties' is intended to describe only those properties eligible for acoustic treatment. Accordingly, the description in this Method needs to be widened to include other noise sensitive activities as requested by the submitter.
- 4.8.3 (i) I can accept there is a potential duplication in Policy DO12.1.3 (Noise effects), and Policy DO12.1.5 (Reduce noise from port operations) in regards to the management of operations at the port to reduce or minimise noise. However, the feedback from consultation has consistently been that affected residents wish to see genuine measures in place, and further developed, to actively reduce or minimise noise at source, and not to rely solely on the mitigation methods. I agree with that, and on balance I would prefer to see DO12.1.5i retained in its proposed form to provide this emphasis on noise reduction or minimisation.
- (ii) The Port Noise Liaison Committee and the Management Plan will serve an important role in identifying ways to reduce or minimise noise and should not be deleted from this method.
- (iii) It is not clear what commitment the lessees at the Port have made to environmental management and monitoring, to date the focus has been on the Port operator which has shown initiative in this area.
- 4.9.3 (i) I do not agree that there is any need to delete the last two methods (RE2.1.viii and ix), proposed to be added to Policy RE2.1. The submitter states that these methods, describing rules requiring acoustic insulation and minimum areas for subdivision, will not achieve a reduction in noise levels from the port at adjacent site boundaries. However RE2.1.i explains that *"This policy aims to ensure noise received on or from an adjacent site is reasonable for a residential zone"*. I consider the Policy is wide enough to include the acoustic treatment of dwellings so as to ensure noise received within dwellings is 'reasonable', and the last method supports the rule restricting subdivision in the zone, in order to reduce the overall exposure of people to noise effects, and is therefore necessary.
- (ii) It is agreed that a new method should be added to describe the adoption of noise minimisation techniques to reduce noise effects.
- 4.10.3 (i) The wording of these rules could be improved to avoid any ambiguity. In some circumstances opening windows may be sufficient to provide ventilation and still achieve desired acoustic insulation (e.g windows at the back of a house, away from noise sources)
- (ii) It is agreed that changes are required to these three rules to provide consistent wording in relation to the activities required to be acoustically treated.
- 4.11.3 (i) It is agreed that a better balance would be achieved by amending INd.3 to include a reference to reverse sensitivity effects from adjacent activities on the Port.
- 4.12.3 (i) It is agreed that Policy IN2.2 Nuisances requires amendment to provide the appropriate balance between avoidance and mitigation of adverse effects.
- (ii) Amendment is required to IN2.2xii to refer to 'habitable space'.
- 4.13.3 (i) – (iv) Whilst the timeframes in INr.40 are generally supported, it is accepted that there are some matters that are under contention by the Port operator (including continuous noise monitoring provisions) and it would be unreasonable to require the implementation of such provisions until such time as they have been resolved (3 months has been suggested, but may not be sufficient time to allow for any appeal periods etc). It is considered beyond the scope of this Staff report to prepare amended wording to resolve this issue, as it requires further discussions and consideration when all parties are present at the hearing.

- 4.14.3 This part of the submission addresses the Coastal Marine Area and requests changes that are considered beyond the scope of the variation, which is to do with noise issues and not the modified nature of the coastal marine area.
- 4.15.3 (i) It is considered that continuous monitoring is appropriate and necessary to demonstrate or verify that circumstances haven't changed at the Port. This will provide reassurance to the residents that the Port is meeting its obligations to manage noise in an acceptable way, and was strongly favoured by residents during the consultation phases leading up to notification of the variation (and is raised in the further submission of NWPA). It is noted that continuous monitoring is required at Port Otago.
(ii) The recording of an acoustic certificate on a LIM report is supported, however this cannot be achieved by a rule in the Plan as it relates to internal Council procedures.
(iii) Monthly reporting of noise monitoring results is considered appropriate to enable the Port Noise Liaison Committee and the NCC to be aware of the noise environment in the Port Effects Overlay on a regular basis for appropriate action to be taken as and when required.
- 4.16.3 (i) The 'three strikes' was originally advocated by PNL and was included in the draft variation that it prepared, and is included in the Port Chalmers package of methods. This provision has been extended in the proposed variation from the 65dBA and above area, to also apply to the next category down (i.e. the 60 – 64dBA category). However it is considered that on balance the 'three strikes' provision should be limited to the highest exposure category, as it is in the Port Chalmers case. It is likely that any situation which causes a 'three strikes' situation in either exposure category would trigger a revision of the port noise contours and so dwellings in this exposure category (60-64dBA) would be included in the mitigation package but at a few months delay.
(ii) The heritage provisions would be improved by modifications as suggested to include exceptions to the required level of acoustic treatment where for heritage or other reasons it is not practicable to achieve the desired level of acoustic treatment. The submitter is invited to produce some suggested wording amendments to these provisions (and to the definitions as appropriate) for further consideration at the hearing. However, there is not considered any need to provide an exclusion where the owner elects to contribute to a lesser standard of treatment. This could be covered by a private agreement between the parties, and the Port would not then be in breach of AP29.B.1 and 2.
(iii) The circumstances of any current owner may change, and therefore it is prudent to retain the provision so that an offer made by the Port operator can be taken up at a later time, and the rights of future owners of affected dwellings can be protected.
(iv) It is accepted that the 50% of the property limitation should also apply to both categories for consistency.
(v) In principle, it is considered reasonable that if the Port is to be responsible for mitigation, the noise received at a property should first be determined as having been attributable to port noise. However, this may raise practical difficulties in determining precisely what the source of the noise is, and how it is distinguished from other noise such as traffic noise. The relief sought is not precise as to requested wording, or the exact provision which needs to be changed. The submitter is invited to address this at the hearing for further evaluation and comment at that time.
- 4.17.3 (i) and (ii) Such amendments are not considered necessary as the time starts once the owner has accepted, and not before.
(iii) It is quite possible that a longer time frame may be required to make the initial offers to contribute, but this is best judged following evidence from the Port operator on its progress to date.
- 4.18.3 It is accepted that AP29 is not a 'rule' as such. It is given effect to through Rule INr.40. However it is considered that the Appendix needs to be written in such a way that it is clear and certain for residents and the Port operator alike, and the current wording achieves this. Any suggestion that the submitter may have for improved wording can be commented on at the hearing.

RECOMMENDATION

Statement 1: *Accept in part*

Further Submission X2: *Accept in part*

Further Submission X10: *Accept in part*

AMENDMENTS TO PLAN

Amend **MW.71A** as follows:

Habitable space means a space used for activities normally associated with domestic living, **such as housing, hotel, motel, hospital, retirement complex or other accommodation where people live day and/or night, and any classroom of an educational facility, and shall include kitchens,** but excluding any bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, clothes-drying room or other space of a specialised nature occupied neither frequently nor for extended periods.

Amend **MW.111A** as follows:

Mechanical ventilation means a mechanical system or mechanical ventilation systems as described in Appendix 19.2ii **a) or b).**

Amend **AD11.3.14 Port effects control overlay** as follows:

*“Acoustic insulation is required for spaces within buildings associated with new activities normally associated with domestic living, **such as housing, hotel, motel, hospital, retirement complex or other accommodation where people live day and/or night, and any classroom of an educational facility, or for alterations to such buildings.** Where resource consents are required (eg for activities that are not residential, as defined in the Plan), effects of noise will be **further** taken into account”.*

Amend **DO12.1.2** as follows:

Re-instate the strikethrough words so it reads:

*“Port activities should **generally** be confined to **the Port Industrial Area, those areas defined within Port Nelson Limited’s Coastal permit and Waterways Lease**”.*

Amend Policy **DO12.1.2 Explanation and Reasons** as follows:

Delete the underlined words in the last sentence so it reads:

“Minor reclamations ~~within the confines of Port Nelson Limited’s Coastal Permit~~ to enable better use of existing resources ...”.

Amend Policy **DO12.1.3** as follows:

*“Noise effects arising from port-related activities should be managed in a way that **will provide a reasonable standard of residential amenity including an environment where reasonable sleep can occur** ~~is compatible~~ **within** the neighbourhoods surrounding the Port Industrial Area”.*

Amend Policy **DO12.1.3i Explanation and reasons** last sentence as follows:

*“The noise produced by the Port Industrial Area is to be managed and mitigation used, to address effects, **particularly on the indoor living environment of areas adjacent to the port**”.*

Amend Method **DO12.1.4.iv** as follows:

*“Rules requiring acoustic insulation **for new building work involving the creation of new habitable spaces within existing or** new noise-affected properties **and other activities sensitive to noise effects.** ~~that are either new residential units or alterations to existing residential units.~~”*

Amend Policy **RE2.1 noise, Methods** to include a new method as follows:

“RE2.1.x Rules requiring the adoption of noise minimisation techniques to reduce noise effects”.

Amend Rule **REr.65A.1a), and SCr.69A.1a) and INr.71A.1a)** as follows:

*“the building is acoustically insulated to reduce noise levels to no greater than 40 dBA L_{dn} inside any new or altered habitable space and has **either ventilating windows open or** minimum ventilation requirements as set down in Appendix 19 (acoustic insulation requirements), and”*

Amend **INd.3** by including a new sentence as follows:

“In addition the proximity of residential activity close to the Port Industrial Area creates potential for reverse sensitivity effects, and accordingly some restrictions are placed on development within the adjacent areas to minimise and mitigate the adverse effects on those areas of noise exposure”.

Amend **IN2.2 nuisances** as follows:

*“Activities should not produce, beyond the boundaries of the site and in particular on any zone boundary, **unreasonable** levels of adverse effects such as noise, dust ... which detract (or have the potential to detract) from adjacent activities and the surrounding environment **unless the adverse effects are able to be reasonably mitigated**”.*

Amend **IN2.2xii** as follows:

*“Rules requiring acoustic insulation for **habitable spaces in buildings ~~with bedrooms and/or living areas~~** within and adjacent to the Port Industrial Area”.*

Amend **AP29.B.1** as follows:

Mitigation for Noise-affected properties above 65 dBA

AP29.B.1.i The Port Operator shall

- receive **an assessed** 65 dBA L_{eq} (15min, 10pm-7am) or greater on more than three occasions (more than 24 hours apart) during any rolling 12 month period”

Amend **AP29.B.2** as follows:

Mitigation for Noise-affected properties 60dBA and up to 65 dBA

AP29.B.2.i The Port Operator shall contribute towards the costs of Acoustic treatment for Noise affected properties which:

- are shown on the current Port noise contour map as being between the 60 and 65 dBA contours, ~~or~~
- ~~receive an assessed 60-65 dBA L_{eq} (15min, 10pm-7am) on more than three occasions (more than 24 hours apart) during any rolling 12 month period"~~

Amend **AP29.B.2 (b)** as follows:

*"Acoustic treatment of properties shall be carried out in accordance with procedures specified in the Port Noise Mitigation Plan. The Port Noise Mitigation Plan shall provide for the staging of this work in accordance with Section AP29.B.4 below. **The Port Operator shall not be required to spend on acoustic treatment more than 50% of the value of the property after deducting the land value for the property**".*

Sub#: 13 **Submitter:** Ward, David & Jocelyn

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 1

Oppose

- Details:** [1] REr.64 – Do not support increasing the net area to 600m².
- Reasons:** [1] The issue is noise, not numbers of dwellings. If acoustic insulation is required, that should be sufficient.
- Remedy:** [1] In REr.64.1 delete the reference to "Port Effects Overlay".

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 2

Support

- Details:** [2] AP29.B.1 – Support noise mitigation
- Reasons:** [2] Support noise mitigation measures, although the measures should be in keeping with existing architectural style when being retro-fitted to existing dwellings.
- Remedy:** [2] AP29.B.1 – include a statement to the effect that any acoustic treatment carried out will be in keeping with the existing architectural style of the house being treated.

Further Sub#: X2 Statement: 3 Further Submitter: Nelson Waterfront Protection Association

Support in part Nelson Waterfront Protection Association (NWPA) supports in part Statement 2 of Submitter 13, in that the proposed amendment to provision AP29.B.1 should include a statement that any acoustic treatment carried out will be in keeping with any existing architectural style of the house being treated. NWPA sees it as necessary that the market value of the noise affected properties is not compromised.

Further Sub#: X3 Statement: 6 Further Submitter: Residents' Representatives of the Port Nelson Liaison Committee

Support Support statements (1) and (2); noise is the issue and as there are a considerable number of period houses they should be reinstated after insulation according to their original style and characteristics.

Further Sub#: X4 Statement: 6 Further Submitter: Port Nelson Limited

Oppose Re: 600m² provision (Statement 1). Port Nelson does not support the deletion of the Port Effects Overlay in REr.64.1. This provision already existed in the proposed Plan prior to the Variation. It is considered appropriate to limit the number of people exposed to Port Noise by limiting infill.

COMMENT

Statement 1:

[1] The 600m² site area restrict for new dwellings in Rule REr.64 exists in the NRMP, and is not being changed. It is noted however that REr.107, the subdivision rule, is proposed to be amended to reflect the 600m² restriction in REr.64.1.

Statement 2:

[2] It is accepted that the acoustic treatment should ideally be in keeping with the design of a dwelling. However, I cannot envisage drafting a rule that could provide complete certainty and fairness in such a subjective matter as architectural style, and precisely how this is to be provided. This matter may be able to be revisited following the submitter's presentation at the hearing. If suitable wording cannot be developed, the precise form of acoustic treatment will need to be a matter for negotiation between the owner, the acoustic engineer and the Port.

RECOMMENDATION

Statement 1: *Accept in part*

Statement 2: *Reject*

Further Submission X2: *Accept in part*

Further Submission X3: *Accept in part*

Further Submission X4: *Accept*

AMENDMENT TO PLAN

Nil (but this matter may be revisited at the hearing)

Sub#: 14	Submitter: Norman, Annabel Claire
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Revision and updating of the Port Noise Contours

Statement# 1

Oppose

Details: Reconsider properties in Stanley Crescent not shown as affected by noise to place these properties on the plan as affected by noise.

Reasons: As a resident in Stanley Crescent I am affected by Port Noise at night. Particularly loud is movement of machinery and shifting of logs. The logs are located outside the restricted Port area but often work is going on in these areas at night. The greatest noise disturbances come from the old site of Nelmac (cnr QEII drive and Haven Rd) also logs stored just off Vickerman St. The noises include the loading and movement of logs, machinery noises and in particular reversing alarms on machinery.

Remedy: Amend to include more properties affected by noise – those on the east end of Stanley Crescent and Beachville Crescent, Maori Rd.

COMMENT

Statement 1:

The contours will be updated annually, and there is provision for one-off adjustment by way of the three strikes provision. In this way the properties mentioned by the submitter may be included as part of future reviews.

RECOMMENDATION

Statement 1: *Reject*

AMENDMENT TO PLAN

Nil

Sub#: 15

Submitter: Robertson, Bruce

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 1

Oppose

- Details:**
- [1] Port noise levels as stated are non conclusive to actual noise levels.
 - [2] The only option for noise control is a 12pm – 6am curfew (all berths) – option 5.
- Reasons:**
- [1] The Port did two weeks of study into Port Noise levels, one week was over Christmas (my home was used as a noise level test site)
 - [2] Nelson will always remain a small feeder port
- Remedy:**
- [1] I believe that 1 full year of 24hr noise recording needs to be taken from at least 3 different locations
 - [2] As with airports, a curfew between 12pm and 6am

Revision and updating of the Port Noise Contours

Statement# 2

Oppose

- Details:**
- [3] Option 2 and 3 of assessment options and Port acoustic contributions to home owners
- Reasons:**
- [3] The difference between Port contribution for above 65dBA and 60-65dBA should be a sliding scale in acoustic noise control. If you have noise levels of 65dBA Port will pay up to 50% of value of property in acoustic noise control. If you have noise levels of 64dBA Port will only pay 50% of Acoustic treatment.
- Remedy:**
- [3] The pay out of Port Noise acoustic treatment should be on a sliding scale (if curfew is not successful)

Further Sub#: X3 Statement: 7 Further Submitter: Residents' Representatives of the Port Nelson Liaison Committee

Support Support both statements with a proposed curfew of midnight to 6am. Possible scepticism over noise recording; where a dispute arises over noise level recording an independent recording should be obtained at the expense of Port Nelson or Nelson City Council.

Further Sub#: X4 Statement: 7 Further Submitter: Port Nelson Limited

Oppose The noise environment around the Port is already well understood and continuous monitoring is unnecessary. Curfews will substantially affect the efficient and effective operation of this tidal Port.

COMMENT

Statement 1:

- [1] The noise contours are based on modelling, and the modelling was reviewed by Mr Ballagh, Council's noise consultant. The contours will be updated annually, and continuous monitoring of noise from a single location will be required. Mr Ballagh's advice is that monitoring from three locations would be unnecessary, and would require significant extra resources.
- [2] Curfews are not supported as they would place unrealistic restraints on this tidal Port and would achieve minimal benefits. A specialist report was provided on this matter (reference document '21'), and the option of curfews (Option 5) was fully explored as part of the Section 32 report (refer to section 4.6).

Statement 2:

- [3] On the face of it, the suggestion of a sliding scale for Port contributions has some merit, but would be difficult to write into a certain and precise rule, and would add to the complexity of the provision, particularly as contours may be expected to change over time. The 10dBA 'bands' have been devised for simplicity, and in all practicality there must be a readily understood and workable point of demarcation between the contours and the degree of contribution that is attributable.

RECOMMENDATION

Statement 1: *Reject*

Statement 2: *Reject*

Further Submission X3: *Reject*

Further Submission X4: *Accept*

AMENDMENT TO PLAN

Nil

Sub#: 16	Submitter: [Withdrawn]
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Submission# 16 was withdrawn 16 September 2007

Sub#: 17	Submitter: Evans, William Peter Pressley
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Section 32 Evaluation

Statement# 1

Oppose

Details: When my home was built in the 1920's (facing east) the Port was out of sight, out of mind, and generally out of earshot. The property now faces the reclaimed Port Industrial Area, but is not close to or insight of the cargo container servicing wharfs. The property is just inside the outer control boundary of the 55dBA zone line on the Appendix 3 Port Noise Control Map.

Reasons: My hearing is good and there is insignificant road noise here. I have not been troubled by any Port Noise from Port operations since the removal of the woodchip piles when dozers worked them at night several years ago.

I believe currently there is no need for acoustic noise abatement protection at this location nor is there likely to be in the future. There was no sample monitoring site close to my home (only several hundred metres away) and I question the sensitivity of the current plat (contour map) in this area.

Section 32 Evaluation point 4.3 (Option 2) requires compliance incurring expensive improvement and development costs without any guarantee of assistance if and when they are required. Those properties on the opposite (western) side are much closer to and in some cases in sight of the container cargo servicing wharfs and subject to clanging container strops and Haven Road traffic are not to be subject to these expensive compliance requirements in their properties.

Remedy: I note further ongoing acoustic testing will be done and that zones may change. Hopefully affected properties will be more finely defined, but in the meanwhile I believe it is unreasonable to require those properties on the eastern face of the hillside (which at the time of development no existing or future Port activity was considered likely to cause disturbance or to disadvantage them as the proposed variation suggests) be required to spend substantial sums on acoustic protection of a situation they are not responsible for, may not be needed, and has no a guarantee of financial assistance.

To require compulsory increased acoustic protection without guarantee of financial compensation is not equitable; if the Port operations require changes they should pay for them on basis of better defined assessment based on need, complaints and equity.

COMMENT

Statement 1:

I interpret the concern in this submission to be that residents are being required to acoustically treat their dwellings without good cause, and that the contours do not accurately reflect the noise environment as the submitter is experiencing it. Implicit in the relief sought is that the requirement for acoustic insulation should be deleted unless there is a guarantee of financial assistance from the Port operator.

I note that the NRMP currently requires acoustic treatment of houses in the Port Effects Control Overlay, without any prospect of compensation. In terms of the proposed variation the most affected properties will receive compensation to varying degrees from the Port.

RECOMMENDATION

Statement 1: *Reject*

AMENDMENT TO PLAN

Nil

Sub#: 18 **Submitter:** Nelson Pine Industries Ltd

Amendments to reflect proposed approach to noise management, including deletion of the Noise Limit Line

Statement# 1

Support

- Details:** Port Nelson is a critical facility for the region and must be able to run 24 hours a day unimpeded.
- Reasons:** The proposed variation provides a fair and reasonable way forward to address noise issues with neighbours.
- Remedy:** Adopt proposed variation as notified.

Further Sub#: X10 **Statement: 5** **Further Submitter:** Nelson Forests Limited (NFL)
[Formerly Weyerhaeuser NZ Inc]

Support NFL agree with the submitter that Port Nelson is a critical facility for the region and must be able to operate 24 hours a day unimpeded. Any disruption to current shipping services would have a significant impact on NFL's ability to viably export logs/lumber and maintain supply to overseas markets.

COMMENT

Statement 1:
The support of the submitter is noted.

RECOMMENDATION

Statement 1: *Accept*

Further Submission X10: *Accept*

AMENDMENT TO PLAN

Nil

