

Proposed Marlborough Environment Plan

Topic 18: Nuisance Effects (Noise)

Reply to Minute 59

Report prepared by Paul Whyte

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April 23rd 2019

1. I refer to the Minute 59 issued by the Hearing Panel dated 12 April 2019 in which a number of issues were raised in respect of the recommended amendments to the noise provisions. I have considered these matters in conjunction with Mr Hegley and advise as follows. The issues have the same reference as those in the minute.

(i) Rule 3.2.4.1

2. The Panel has raised whether Submission 1039.114 gives sufficient scope to enable the proposed amendments to Rule 3.2.4.1. From further investigation it is apparent that this is an incorrect reference and the correct submission is 1039.115. This submission states the following:

3.2.4 Noise sensitive activity.

Submission

PRW generally supports these rules and considers they are appropriate measures to manage reverse sensitivity effects.

Decision Requested

Retain Standard 3.2.4, including any other or additional measures as appropriate to manage reverse sensitivity effects.

3. Mr Hegley considers that the proposed amendments to the respective decibel levels will improve the rule because the levels recommended better reflect the measured noise effects from frost fans as received within the dwelling. While there was no direct evidence on this matter Mr Hegley considers the amendments are appropriate having considered the overall evidence on frost fans. In particular, the amended levels are considered to provide sufficient mitigation and do not require persons to invest in unnecessary noise control when establishing a noise sensitive activity (such as a dwelling) to manage reverse sensitivity effects.
4. While it is acknowledged the amendments are “replacing” one figure with another one, it appears they can be considered as a “other measure” that will better “manage reverse sensitive effects” as per the Decision Requested in the Rural Environment Zone. If the Panel is comfortable with this the amendment can remain. If it takes a more strict and narrow view that the amendment is not within the ambit of the submission, then the decibel levels should be retained as notified.

(ii) Rule 4.2.3.1

5. The same argument that applies to Rule 3.2.4.1 also applies to Rule 4.2.3.1. However, in this case there is not a specific submission against Rule 4.2.3.1 and for there to be an amendment to the rule it would have to be regarded as consequential to Rule 3.2.4.1 (and Submission 1039.115). Given that the amendment will enable consistency with the other rule in the MEP then it does appear to be consequential. However, we understand this situation has arisen with other rules in the MEP and that any change should be consistent with this. Mr Hegley confirms this change will better “manage reverse sensitive effects” in the Coastal Environment Zone.

(iii) Rule 3.3.5.1(c)

6. In respect of the proposed deletion of Rule 3.3.5.1(c) which relates to the distance to dwelling houses, evidence was presented at the hearing by Ms Wharfe for Horticulture NZ that the proposed standards are arbitrary in terms of distances rather than based on the noise emitted from the advice. Mr Hegley agreed with this and as a consequence agreed that subclause (c) and also (e) could be removed and subclause (d) relied upon.

7. Ms Wharfe was speaking to her Submission 769.98 which was relied on to make the above changes. This submission requested the following:

Amend Standard 3.3.5.1 as follows:

A category A or Category B device must not be operated

a) After sunset and before sunrise

b) Exceed 65dB SEL when measured at the notional boundary of the nearest habitable building on a site other than on which the device is located or the zone boundary

8. It is apparent that this submission does not specifically refer to the deletion of subclauses (c) and (e) given that it relates to other subclauses. As a consequence, it appears this submission cannot be relied upon to make the proposed changes. I note that CJ Smith (592.03) does request amendment to (c) but does not appear sufficiently robust to allow for deletion of this subclause (or (d)). Accordingly, I consider that there is not sufficient scope to allow deletion of the respective subclauses.
9. The Panel should be aware that Rule 3.3.5.1 was also considered under the Rural Environment Topic. The Section 42A report recommended that the rule remain without amendment (para 436) and included consideration of 798.98¹. This recommendation conflicts with Mr Hegley's recommendation in respect of 3.3.5.1 (a) where he recommends that the "8pm/7am" is deleted and "sunrise/sunset" substituted. This matter was specifically addressed in para 421 of the Rural Environment Section 42A report and rejected.
10. Mr Hegley advises that in the supplementary evidence of Ms Wharfe, she noted that dawn and dusk are periods when birds feed and asked for this period to be used rather than 8pm/7am to provide more flexibility, to which he agreed.
11. The Panel will therefore have to resolve the different recommendations in respect of Rule 3.3.5.1(a) i.e. retain the status quo or insert "sunrise/sunset". It is understood that in February when bird bangers start to be used, sunrise is well before 7am so this may cause complaints in terms of sleep disruption and which the Panel may wish to consider.

(iv) A qualifier to dB level

12. Mr Hegley advises that "dBA" applies when the " L_{dn} " (average noise level) is being measured as set out in NZS 6809: 1999 Acoustics - Port Noise Management and Land Use Planning. Otherwise measurements relating to L_{FAmax} and L_{Aeq} are "dB" as adopted in NZS6802:2008 Acoustics – Environmental Noise. This explains the difference for Rule 13.2.3.1 and 14.2.3.1 referred to by the Panel.
13. In respect of Chapter 22 referred to by the Panel it is apparent that there is an error in terms of Rule 22.2.1 and that "45dBA" should be shown as "45dBA"

Recommendation

14. Accordingly, the following is recommended in respect of the above matters raised by the Panel:

¹ The Section 42A report omits subclause (d) in para 436 which is assumed to be an unintended omission.

- (i) That the submission for the amendment to Rule 3.2.4.1 is changed from 1039.114 to 1039.115.
- (ii) That the submission for the amendment to Rule 4.2.3.1 is changed from 1039.114 to 1329.115 assuming the panel determines the amendment is consequential.
- (iii) That given the lack of scope in Submissions 768.98 and 592.03 in respect of subclause (c) and (e) that Rule 3.3.5.1 is retained as follows:

3.3.5.1. A Category A or Category B device must not be operated:

(a) between 8.00 pm and 7.00 am the following day if the device is within 2km of a noise sensitive activity;

(b) within 800m of any rest home, public or private hospital;

(c) within 160m of the boundary or notional boundary of the nearest dwelling, visitor accommodation or other habitable building (except a dwelling, visitor accommodation or other habitable building on the same property as the audible bird-scaring device);

(d) such that sound is emitted at a level greater than 65 dB LAE, measured at or within the boundary (Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3 Zones, and Coastal Living and Rural Living Zones) or notional boundary (Rural Environment or Coastal Environment Zones) of the nearest dwelling, visitor accommodation or other habitable building (except a dwelling, visitor accommodation or other habitable building on the same property as the audible bird-scaring device).

(e) closer than 250m to any other audible bird-scaring device

OR the following amendment is made to Rule 3.3.5.1 (a) in terms of 798.69:

3.3.5.1. A Category A or Category B device must not be operated:

(a) between ~~8.00 pm and 7.00 am~~ sunset and sunrise the following day if the device is within 2km of a noise sensitive activity;

(b) within 800m of any rest home, public or private hospital;

(c) within 160m of the boundary or notional boundary of the nearest dwelling, visitor accommodation or other habitable building (except a dwelling, visitor accommodation or other habitable building on the same property as the audible bird-scaring device);

(d) such that sound is emitted at a level greater than 65 dB LAE, measured at or within the boundary (Urban Residential 1, Urban Residential 2 (including Greenfields) or Urban Residential 3 Zones, and Coastal Living and Rural Living Zones) or notional boundary (Rural Environment or Coastal Environment Zones) of the nearest dwelling, visitor accommodation or other habitable building (except

a dwelling, visitor accommodation or other habitable building on the same property as the audible bird-scaring device).

(e) closer than 250m to any other audible bird-scaring device.

(iv) That “45dBA” is shown as “45dBA” in Rule 22.2.1 in the tracked version sent to the Panel previously.