
Submission on Napier City Proposed District Plan

Form 5 Submission on publically notified proposal for policy statement or plan, change or variation

Clause 6 of Schedule 1, Resource Management Act 1991

To: Napier City Council - Planning Unit

Date received: 12/12/2023

Submission Reference Number #:97

This is a submission on the following proposed plan (the **proposal**): Napier City Proposed District Plan

Submitter:

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I wish to be heard: Yes

I am willing to present a joint case: Yes

Could you gain an advantage in trade competition in making this submission?

- **No**

Are you directly affected by an effect of the subject matter of the submission that

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition

- **Yes**

Submission points

Point 97.1

Section: NOISE - Noise

Sub-section: NOISE - Noise - Standards Table

Provision:

NOISE-S3: General noise limits within the Port Zone

Purpose: to enable the port to carry out its operations while managing reverse sensitivity affects.

1. The following noise conditions apply to all land uses, other than construction noise regulated under NOISE R2 and container repair and maintenance activities regulated under NOISE-S4.
2. All land uses within the Port Zone must be conducted so as to ensure the following noise limits are not exceeded at any point beyond the Inner Port Noise Overlay shown on the planning maps:

Time	Noise Level
Over any consecutive five-day period	65 dB L _{dn} (5 day)
On any day	68 dB L _{dn} (1 day)
10 p.m. – 7 a.m. the following day	60 dB L _{eq} (9 hour)
	65 dB L _{eq} (15 min)

3. The Port Operator shall produce an Annual Port Noise Management Plan which includes the minimum monitoring and reporting requirements for noise management as set out in APP5(a).
4. The Port Operator shall follow the Port Noise Mitigation Requirements for noise management as set out in APP5(b).
5. The Port Operator shall establish, maintain, and participate in a Port Noise Liaison Committee which shall operate in accordance with the requirements set out in APP5(c).
6. Noise must be measured in accordance with the provisions of *NZS 6801:2008 Acoustics Measurement of Environmental Sound* and assessed in accordance with *NZS 6809:1999 Acoustics Port Noise Management and Land Use Planning*.

Matters of discretion are:

1. Public health;
2. Amenity values, and
3. Functional and operational requirements of the port.

Sentiment: Oppose

Submission:

The Port is receiving an increasing number of noise complaints but its noise monitoring shows the port noise generated is not above 65dB. According to the Styles Group Report (November 2022) the existing Operative District Plan: "the very liberal averaging provision allows significant fluctuation in the actual noise level over the 5 days.

Key points of my submission:

Residents accept that the Port is economically important to the Hawke's Bay region and that mitigation requirements should not have an economic impact and effect on its competitiveness. But it must recognise and be obliged to mitigate houses severely

impact by its noise pollution. The port cannot be allowed to emit loud noise and be tardy about its mitigation obligations.

If the port wants to retain its current noise level consents, without more restrictive day/night operational hours – which will be concerning for residents – it must be obliged to put more investment into noise management strategies to reduce noise at source AND to provide fair and reasonable mitigation.

The Napier City Council-commissioned Styles Group Port Noise Review (November 2022) would have been useful if it had been done, as residents' requested, many years ago. It recommended all dwellings exposed to 55dB or greater be acoustically treated to achieve the proposed indoor design noise level of 40dB. "This will stop the inequity that currently exists for existing dwellings exposed to noise levels between 55dB and 59dB.

The report also stated: "We agree that the indoor design noise levels should be reduced to at least 40dB, and probably even lower." (Page 10/6.0 Proposed change from 45dB to 40dB internal noise level).

Noise modelling does not reflect residents' experiences. There is only one noise monitor and the Port is active in providing data from it. However, the most recent field verification of the noise contours was in 2012. Much has happened since then. (verification planned for this year, 2023, was disrupted by the cyclone)

When shipping activity returns to pre-Covid and pre-Cyclone levels, it is estimated (Styles Group Review) that there will be an increase in the number of ships visiting Napier and that the busiest five-day activity will be extended to become the norm throughout the whole year. This could result in greater noise for longer periods and greater noise disruption for residents. The Styles Review also states: 'very liberal averaging provision allows significant fluctuation in actual noise over five days'.

Mitigation requirements, eg, mitigation for houses above 55dB, should begin immediately. The proposed rules are more prescriptive than the existing Operative Plan. Without this directive, the port could delay further mitigation until at least 2025, when a new plan is expected to come operative.

Budget for mitigation by the Port established by the Environment Court 2009 decision was set at \$250,000 annually.

- This was for houses receiving 65dB or greater.

By the Port's admission there were no houses in this category. Houses currently being mitigated are around the 60 – 63dB level. In 2017, the Port began a voluntary mitigation programme for houses in this 60 – 65dB category.

The Port is supporting this category to now become the official mitigation level, which could be taken as an admission that houses in this category always deserved relief from port noise.

- If an annual, non-accruing budget of \$250,000 had been applied, adjusted annually for inflation and increased by the percentage increase in annual CPI, that amount would now equate approximately to \$355,000 (Reserve Bank calculator). However, the Port allocated just \$100,000 in the 2021/2022 year for mitigation, with the average remedial work per property costing approximately \$35,000. No new budget for the current financial year has been allocated or provided to the Port Noise Liaison Committee. Mitigating houses has been slow, with only 13 of 21 mitigated since 2017.

- Several residents have had to fight the port for several years before having their properties assessed as eligible for noise mitigation.

- If mitigation had been provided in fair and timely manner, most in urgent need of reprieve would have been treated.

- There is unfairness whereby houses side-by-side are treated differently, with one being approved for mitigation but the neighbour being denied, when both houses are clearly subjected to the same annoying noise.

- Noise mitigation should be provided for all houses adversely affected by noise in the 55dB contour, each at the same rate proposed for those receiving 60dB – that is, the port pays for the full cost of mitigation, Stages One (remedying door and window seals) and Stage Two (provide air conditioning units) up to a maximum contribution. The figure proposed is \$50,000 for those above 60dB and \$30,000 for those 55 – 59dB. These proposed figures are too low, given rising costs and that the life of the District Plan is at least 10 years. The agreed contribution should apply to all houses above 55dB, and determined on a case-by-case priority by the Port Noise Liaison Committee.

According to Marshall Day Acoustics (Napier Port acoustic engineers) the number of houses in the 55 – 60dB contour is likely to increase to 51 (from current 37) by 2035 (estimated life of plan). Mitigation of all adversely affected houses should be prioritised by the Port Noise Liaison Committee and annual budget set accordingly.

It would be unfair for the Port to decide what budget will be allocated each year without advance input from the Port Noise Liaison

Committee (PNLC). This would ensure realistic mitigation is carried out annually. Without input from the PNLC before the budget is set, there could be very slow progress on mitigation obligations. There are increasing complaints/concerns from residents further away from the Port since the completion of the new wharf. This wharf provides the Port with greater ability to berth ships 24 hours/day, which will also result in increasing noise. There will also be increased noise from truck and rail movements/rail that the Napier City Council may also agree to consider.

Relief sought

Increased / improved annual investment in reducing noise at source and the Port to provide more reasonable acoustic mitigation of noise-affected properties.

Point 97.2

Section: APP5 (b) - Port Noise Mitigation Requirements

Sub-section: Offers of Acoustic Treatment - Noise Sensitive Activities shown on the Current Port Noise Contour Map as being between 60 L dn (5-day) and 65 L dn (5-day)

Provision:

- b. The offer must be made to all [noise-sensitive activities](#) eligible in (a) above. To avoid doubt new offers must be made to [noise-sensitive activities](#) who have previously refused the offer if the owner(s) have changed for the [noise-sensitive activity](#).
- c. The Port Operator shall contribute 100% of the cost of necessary acoustic treatment to doors and windows (stage 1), installation of mechanical ventilation and cooling (stage 2), and reinstatement of painting and decorating disturbed by improvements (stage 1 and 2) provided that the total Port Operator contribution shall not exceed \$50,000 including GST (adjusted annually thereafter (indexed from 1 July 2024) using the Consumers Price Index to compensate for inflation.
- d. The Port Operator / [noise-sensitive activity](#) shall both contribute 50% each of the cost of further facade improvements required to achieve the indoor design sound level (stage 3) provided that the total Port Operator contribution shall not exceed \$50,000 including GST (adjusted annually thereafter (indexed from 1 July 2024) using the Consumers Price Index to compensate for inflation.

Sentiment: Amend

Submission:

(d) The proposed amount of \$50,000 port contribution should be EXCLUDING GST.

Relief sought

The average cost of mitigation per house is currently more than \$35,000. The real contribution to the affected homeowner becomes \$42,000 which leaves little scope to deal with increased prices or more complex remedies. The \$50,000 should be increased to \$60,000 if GST is to remain inclusive.

Point 97.3

Section: APP5 (b) - Port Noise Mitigation Requirements

Sub-section: Offers of Acoustic Treatment 55 - 60 dB L dn (5-day) - Noise Sensitive Activities shown on the Current Port Noise Contour Map as being between 55 L dn (5-day) and 60 L dn (5-day)

Provision:

- a. The Port Noise Liaison Committee shall consider acoustic treatment for any noise-sensitive activities shown on the Current Port Noise Contour Map as being between 55 dB L_{dn} (5-day) and 60 dB L_{dn} (5-day).

- b. On request by the property owner of the noise-sensitive activity, the Port Operator shall consider contributing up to 50% of the cost of acoustic treatment/sealing to doors and windows (stage 1), and/or installation of mechanical ventilation and/or cooling (stage 2) provided that the total Port Operator contribution shall not exceed \$30,000 including GST (adjusted annually thereafter (indexed from 1 July 2024) using the Consumers Price Index to compensate for inflation).
- c. All requests from property owners from noise-sensitive activities shall be considered by the Port Noise Liaison Committee and a recommendation made to the Port Operator not more than six months after receiving a request. The Port Operator shall notify owners of their eligibility to receive financial assistance for mitigation works.

Sentiment: Amend

Submission:

As with App5 (b), the mitigation amount includes GST, bringing the suggested maximum contribution of the port to \$25,500 in real terms to the affected home owner. 1) the amount should be GST exclusive. However, I would like to see the amount for homeowners adversely affected by port noise measured in the 55 - 60 dB contour category to also be entitled to mitigation, stages one and two, at a total port contribution cost to the maximum of \$50,000 excluding GST (or as I earlier submitted, \$60,000 if GST included).

There are approximately 37 houses in the 55 - 60dB contour. According to the port's acoustic engineers, Marshall Day, this is likely to increase to around 50 by 2035 (supposed life of District Plan).

The Napier City Council's Port Noise Review carried out by the Styles Group (Nov 2022) says: 'indoor design levels should be 40dB **or probably lower** . Taking this recommendation into account, I believe houses adversely affected by noise measured in the 55 - 60dB range should be fully mitigation as agreed for those in the plus-60dB category. Studies show adverse health effects begin when the average night noise is in the 40 - 55dB range. A small increase in decibels results in a huge change in the amount of sound. (eg. 30dB is 10 times louder than 20dB)

There must be a balance between the ability for the port to operate efficiently and for residents to expect a reasonable level of amenity and an environment in which they can sleep.

Is it a good living environment if Hawke's Bay residents cannot open windows? A noise-free sleeping environment is a necessity, not a luxury.

Relief sought

All homes adversely affect by noise from the port, particularly at night, in contours 55dB and above should be entitled to mitigation, with the port contribution being a maximum of either \$50,000 EXC gst or \$60,000 including gst.

The acceptable noise levels should be reviewed regularly to meet international standards and the Napier City Council should peer review the port's noise pollution, monitoring and mitigation measures every five years at the council's cost.

Point 97.4

Section: APP5 (b) - Port Noise Mitigation Requirements

Sub-section: Obligations of the Port Operator

Provision: General

Sentiment: Amend

Submission:

(a) The annual budget for mitigation needs to be more specific and set in consultation with the Port Noise Liaison Committee. Consideration should be given to either the minimum number of houses, and/or priority of houses for mitigation annually, or, a minimum budget.

The port will continue to have the power to decide what budget it allocates to mitigation, leaving residents powerless and the

Port Noise Liaison Committee easily over-ruled by the Port when considering an appropriate budget. The proposed obligation - that the port sets the budget for endorsement - doesn't appear to provide a fair consultative / goodwill / good neighbour approach to the effects based issue.

Relief sought

Since the port introduced a scheme to voluntarily mitigate houses in the 60 - 65dB category (in 2017), approximately three houses a year have received remedial work, averaging approximately \$35,000. This is slow progress for residents who suffer disturbed sleep, particularly when the port is busy.

This District Plan supposedly has a 10-year life, (current plan more than 15, and 20 years from the proposed stage). Hopefully, the port will continue to reduce its noise at source (quieter engines/machinery) so it may be that the number of houses requiring mitigation will reduce.

According to Port Noise Annual Reviews, the recent highest noise recorded was 63.6dB. Noise complaints have been increasing, although mainly due to C-scale vibration noise which is not detected by the port noise monitor.

Consented noise levels for the port remain high, 68dB, even though highest recent recorded level was 62.4dB Ldn in March 2016 and 63.4 Ldn (5 day) in February 2021. Rather than seek a reduction in the allowable noise generated and/or restriction in night-time operational hours, I submit that the port agree to a fairer mitigation package for all properties adversely affected by port noise.

Point 97.5

Section: APP5 (a) - Port Noise Management Plan

Sub-section: Minimum Monitoring and Reporting Requirements

Provision:

The minimum monitoring and reporting requirements are as follows:

- a. The Port Operator shall maintain at its expense permanent sound level monitoring equipment operating 24 hours a day 7 days a week and shall arrange for a suitably qualified person to perform continuous monitoring of noise emanating from port activities to ensure that the provisions specified in NOISE-S3 are complied with. The monitoring equipment shall as a minimum record noise level statistics in 15-minute periods so that the L_{eq} , L_{max} and L_{90} can be determined for each 15-minute period. In addition, the monitoring equipment shall be capable of recording the actual sound when a pre-set threshold or set of thresholds is exceeded, so that the sound can be listened to at a later time. All recorded data shall be kept for a minimum of six months, and be available if requested by Napier City Council.
- b. The Port Operator shall provide the results of the permanent sound level monitoring to the Council and the Port Noise Liaison Committee showing L_{Aeq} , L_{AFmax} , calculated L_{dn} sound exposure and all attended L_{AFmax} levels on a six monthly basis. The results shall be in summary form showing L_{eq} , L_{max} and calculated L_{dn} levels, within two weeks of the end of each month. Significant port noise emissions shall be highlighted and correlated with port activity and wind speed and wind direction data.
- c. The Port Operator shall arrange for a suitably qualified person to undertake an annual noise measurement survey to track port noise and to ensure that the provisions specified in standard NOISE-S3 are complied with. The annual noise measurement survey shall include evaluation of port noise against the standards in NOISE-S3 and against the current World Health Organisation (WHO) guidelines.
- d. The Port Operator shall provide the results of the annual noise measurement survey to the Council and the Port Noise Liaison Committee on an annual basis.
- e. The Napier City Council shall organise, at the Port operators cost, a biennial audit of the monitoring results received, and the reporting of this. This audit shall be undertaken by a suitably qualified and independent acoustic consultant. The results of this audit shall be provided to the Port Noise Liaison Committee and be made publicly available on the Port Operators and Napier City Council's websites.
- f. The Port Operator shall produce a Current Port Noise Contour Map based on the sound level monitoring measured in (a) above and the port noise contours shall be modelled at 1 dB intervals from 55 dBA $L_{dn(5-day)}$. This Current Port Noise Contour Map is to be attached to the Port Noise Management Plan and updated annually at the expense of the Port Operator. The current Port Noise Contour Map determines the Port Noise Mitigation Offers in accordance with Appendix 5(b).

- g. The Current Port Noise Contour Map shall be publicly available both within the Port Noise Management Plan and as a standalone map. Both shall be available on the Port Operator's and Napier City Council's websites.
- h. To ensure the accuracy of the current port noise contour map the Port Operator shall undertake field verification of calculated sound exposure levels of port noise at monitoring points identified in the Port Noise Management Plan. These monitoring points shall be as decided by agreement between the Port Operator's acoustic consultant and the Napier City Council. The Napier City Council may also undertake noise measurements and/or obtain a peer review of the current port noise contour map in accordance with its monitoring responsibilities under section 35 of the Resource Management Act 1991.
- i. In the event that sound level monitoring indicates that port noise may be exceeding 65 dB L_{dn} (5-day) or 65 dB L_{Aeq} (15min, 10pm - 7am) at any point beyond the Inner Port Noise Overlay shown on the planning maps the exceedance shall be recorded, investigated, and reported to the Port Noise Liaison Committee.
- j. When a noise complaint is received the Port Operator will advise the Napier City Council within 5 working days. When a noise complaint is received by Napier City Council they will advise the Port Operator within 5 working days.
- k. The Port Operator shall maintain a register of noise complaints and report the details of complaints and any action taken to investigate and resolve complaints to the Port Noise Liaison Committee at each meeting. A copy of this register shall be provided to the Napier City Council every six months.
- l. Copies of the Port Noise Management Plan are to be publicly available on both the Port Operator's and Napier City Council's websites.

Sentiment: Amend

Submission:

Clarity around biennial audit of monitoring results (e) and (h) - that the Napier City Council MAY undertake noise measurements and/or peer review.

Relief sought

The biennial audit would merely sign off the information from the sound monitor and what the Port's acoustic engineers provide. The Napier City Council conducted only one peer review in the life of the existing District Plan (Styles Group) and it provided recommendations for greater relief for residents. (eg. Pge 10, 6.0 Proposed change from 45dB to 40dB internal noise level - "We agree that the indoor design noise levels should be reduced to at least 40dB and probably even lower".)

If the council had commissioned such a review much earlier in the life of the District Plan, it could have supported residents to have their homes mitigated. Instead, the Port "voluntarily" offered mitigation when, in fact, mitigation should have been a requirement much earlier.

Point 97.6

Section: APP5 (b) - Port Noise Mitigation Requirements

Sentiment: Amend

Submission:

Regulations contained in the Proposed District Plan relating to port noise mitigation measures should be introduced immediately / when the submission period ends. The proposed new rules - in regards to mitigating houses in the 55dB-plus category - should be considered to 'have weight' in decision-making if there is no significant submission against that aspect. Otherwise, residents will be left in limbo and there will be no relief for those suffering adverse noise effects until after the District Plan becomes operative, which is probably not until 2025.

Relief sought

Mitigation rules to take effect in 2024.

Point 97.7

Section: APP5 (a) - Port Noise Management Plan

Sub-section: APP5 (a) - Port Noise Management Plan

Provision:

This appendix prescribes the matters that the Port Operator shall include in the Port Noise Management Plan required under rule NOISE-R11 and standard NOISE-S3. It also sets out minimum noise modelling, monitoring, reporting, and audit requirements.

Sentiment: Amend

Submission:

(h) Accuracy of the noise contour map.

Relief sought

Accuracy of noise contour map - Port to do field verification...at points identified in the Port Management Plan and decided by Port acoustic consultant, Napier City Council **AND THE PORT NOISE LIAISON COMMITTEE.**

Full field verification has not been carried out since 2012!

Napier City Council may also undertake noise measurements and / or peer review. Suggested amendment to: Napier City may also undertake noise measurements and / or peer views and consider doing so at the request of residents or PNLC if dispute arises.