

Commissioners' Decision

PLAN CHANGE 16

Inner City Noise



**Report and Decision of the Hearing Panel appointed by Nelson
City Council pursuant to Section 34 of the Resource Management
Act 1991**

17 June 2014

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Nelson City Council Report of the Hearing Committee

Proposal Description:

Proposed Change 16 to the Nelson Resource Management Plan – Inner City Noise

Committee Members:

David McMahon (Independent Commissioner, Chair), Ian Barker (Councillor), Eric Davy (Councillor)

Date of Hearing:

2 May 2014

Hearing declared closed:

26 May 2014

1.0 INTRODUCTION

Context

- 1.1 We were appointed by the Nelson City Council (“**the Council**” or “**NCC**”) to hear submissions to, and to consider and make a decision on, Proposed Plan Change 16 (“**PC16**” or “**the Plan Change**”). PC16 seeks to revise the inner city noise standards to provide a more effective and enforceable way of managing inner city noise, while also enabling some commercial activities with potential for noise characteristics (such as bars and entertainment activities) and residential activity to occur in the city centre. To achieve this end, the Plan Change proposes several amendments to the existing rules in the Nelson Resource Management Plan (“**NRMP**” or “**the Plan**”), and introduces new rules, appendices and other methods to apply specifically to the inner city.
- 1.2 The Plan Change has an extensive background, which we will canvas in due course, and has been the subject of a Council “section 32” report, extensive community and stakeholder consultation, and of course the public notification and hearing, culminating in this report.
- 1.3 Before discussing the details of the Plan Change and the submissions to it, there are some preliminary matters that we will address, beginning with our role as Commissioners.

Role of Commissioners and Report Outline

- 1.4 We were appointed by the Council by delegation dated 12 December 2013. The terms of that delegation were carried as follows:

“THAT the Planning and Regulatory Committee recommends to Council that an independent Commissioner chaired Council assisted

Hearing Panel hear and make decisions on submissions on Proposed Plan Change 16 Inner City Noise;

AND THAT the Planning and Regulatory Committee recommends to Council the membership of the Hearing Panel for Plan Change 16 Inner City Noise consists of an independent Commissioner as Chair and Councillor Ward^[1] and Councillor Barker as Council Commissioners.

- 1.5 Under this delegation, our role is to make a decision on the Plan Change pursuant to Clause 10, Schedule 1 of the Act.
- 1.6 In terms of the above, having familiarised ourselves with the proposed Plan Change and the background material, read all submissions and evidence, conducted the hearing and heard from the submitters and the appointed Council advisors, as well as having visited the locality on several separate occasions, we hereby record our decision.
- 1.7 In this respect, and in addition to this introduction, this report is generally divided into the following parts:

(a) Factual Background & Plan Change Outline:

This part (comprising report Sections 2 and 3) is largely factual and includes an outline of the background to the Plan Change, including the sequence of events leading to this report. It also outlines the main components of the Plan Change, including an overview of the locality. This background section provides a relevant context to considering the issues raised in submissions on PC16. Here, we also record the various submissions received, provide a brief outline of the concerns raised by the submitters to the Plan Change, and provide an account of the hearing process itself.

(b) Evaluation of Key Issues:

The final part of our report (comprising report Sections 4-6) contains an assessment of the main issues raised in submissions to PC16, and where relevant, amplification of the evidence/statements presented at the hearing (in Section 4). We conclude with a summary of our recommendations on each relief point sought (in Section 6), having had regard to the necessary statutory considerations that underpin our considerations (in Section 5). This part of the report is evaluative, and records the results of our deliberations and the reasons for our findings.

Preliminary Comments

- 1.8 In advance of setting out more substantive background matters, we wish to record our appreciation at the manner in which the hearing was conducted by all the parties taking part. In this respect, we would like to acknowledge the following endeavours:

^[1] By way of subsequent resolution under Council's delegation, Councillor Ward was replaced by Councillor Davy.

- the constructive input provided by all submitters appearing before us;
 - the efforts of Council's Administration Officer, Ms Gayle Brown;
 - the assistance afforded to us from Council Officers and Advisors within the s42A report, at the formal proceedings and through subsequent information-gathering exercises; and
 - the assistance of our Hearing Advisor, Mr Jason Jones.
- 1.9 The above actions promoted a much-focused proceeding that has greatly assisted us in assessing and determining the issues, and in delivering our decision.
- 1.10 These initial thoughts established, we now set out the factual background to the Plan Change.

2.0 BACKGROUND

Pre-Plan Change Initiatives and Sequence

Context

- 2.1 The area directly affected by the Plan Change comprises the Inner City Zone (“**IC Zone**”). The NRMP describes this zone as follows:

The Inner City Zone covers the commercial area of inner Nelson. It extends from Pioneer Park in the west, to include the Polytechnic and the government precinct in Albion Square on the eastern side. The Maitai River and residential areas form a natural boundary to the north, while the Cathedral and residential areas in the vicinity of Nile Street (East and West) define the southern extremity.^[2]

- 2.2 As shown on **Figure 1** below, the IC Zone includes both the City Centre and City Fringe sub-zone areas. The City Centre (shown in light purple) is generally contained within the ring road formed by Collingwood, Halifax, and Rutherford Streets, and Selwyn Place. The NRMP^[3] characterises the area as a “concentration of mainly comparison shopping, services such as banks and offices, as well as a growing number of restaurants, cafes and other entertainment activities.”

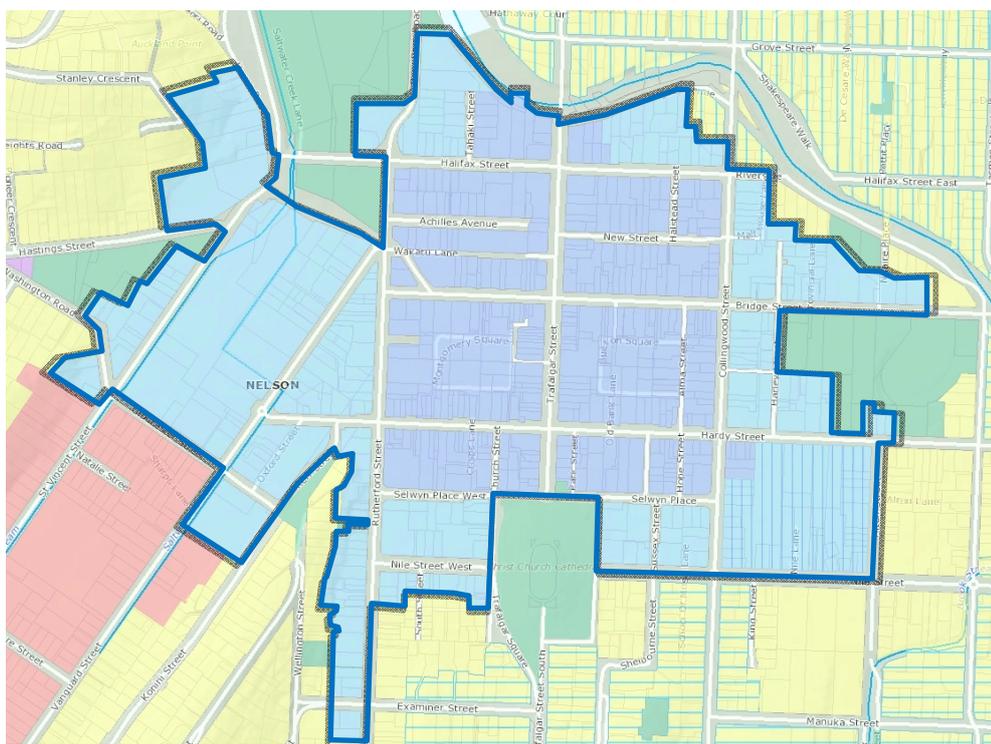


Figure 1: Inner City Zone (heavy blue outline), with City Centre (light purple) and City Fringe (light blue) sub areas.

- 2.3 The City Fringe (shown in light blue on Figure 1) essentially surrounds the City Centre, and has been formed to provide a transition from the City Centre to other

^[2] NRMP, Chapter 8, p. 8-1, para 1Cd.1

^[3] NRMP, Chapter 8, p. 8-1, para 1Cd.4

areas and as a containment mechanism of the retail focus in the Centre^[4]. The Plan^[5] anticipates that activities in this area will be more vehicle-orientated than in the City Centre, and include such uses as supermarkets, service industries, large site retailing (such as bulk retail and second hand stores), offices, the Nelson Polytechnic, cultural and recreational facilities, wholesaling, and retailing for commercial users in the City Centre.

Timeline of key dates: Notification & summary of submissions

- 2.4 The Plan Change was publicly notified on 7 September 2013, with the period for receiving submissions closing on 4 October. A summary of decisions requested in those submissions was publicly notified on 26 October 2013 with the period for further submissions closing two weeks later on 11 November.
- 2.5 We discuss subsequent process matters and related dates below.

The Plan Change

- 2.6 This section outlines the key components of the Plan Change in a purely factual sense. We rely on this information in our evaluation in Section 4 of this report without having to repeat the provisions verbatim.
- 2.7 Unlike privately-requested plan changes, the Act does not require that Council-initiated plan changes state a reason and/or purpose. Notwithstanding this, the Council elected to define a 'vision' for PC16 as a guiding statement on what the Plan Change seeks to achieve. The vision was derived from relevant NRMP objectives and policies and from Council's *Heart of Nelson Central City Strategy (2009)*, stating:

A vibrant night life and encouraging more people to live in our CBD both play an important part in keeping our young and young at heart living in and visiting our city. However some inner city attractions and activities can be noisy and some inner city dwellings were designed for quieter environments. People choosing to live in the CBD are much more likely to use the city and its restaurants, bars and clubs as their playground but they need to recognise that living in the CBD is likely to be noisier than living in the suburbs. There is much that the providers of inner city dwellings and the providers of entertainment can do to create a "liveable" inner city environment. If this is to happen we all need to take responsibility for managing noise; Council seeks to strike a balance between those who make the noise and those on the receiving end. We want to improve how noise is managed by supporting entertainment-makers, patrons and residents to make this city a great place to live, work and play. ^[6]

- 2.8 To give effect to this vision through the NRMP, PC16 (as notified) proposed six amendments to the IC Zone rules and methods. These amendments were roughly summarised^[7] in the Clause 5 public notice as follows:

^[4] NRMP, Chapter 8, p. 8-2, para ICd.13

^[5] NRMP, Chapter 8, p. 8-1, para ICd.12

^[6] proposed plan change, Section 1.5, p.9, first para

^[7] Note – we have modified the text from the notice slightly for grammatical purposes. For full detail of the amendments, reference should be made to the notified plan change.

- new permitted activity requirements for new bedrooms in residential units, or new rooms intended to be used for sleeping in 'Short Term Living Accommodation' units (hotels, motels etc) in the Inner City Zone to be acoustically insulated to reduce noise entering these sleeping areas;
 - requirements for new or extended 'noise generating activities' to apply for a resource consent to allow for consideration of noise issues;
 - plan provision retaining control over night time maximum noise level (LAFmax);
 - retention of, and amendment to, the rule controlling noise at properties in the Residential Zone;
 - use of the unreasonable and excessive noise provisions of the RMA to manage and enforce noise within the Inner City Zone rather than the current noise rule ICr.42; and
 - new guidance on non-regulatory approaches including ongoing education.
- 2.9 The Plan Change also proposes to update relevant New Zealand Standards that are incorporated by reference^[8] within the NRMP.
- 2.10 The Plan Change proposed no change to the settled objectives and policies of the NRMP.

Notification and submissions

- 2.11 As noted above, the Plan Change was publicly notified on 7 September 2013. A total of 14 submissions were received prior to the closing date, and one additional submission was received subsequently. Two further submissions were received, both of which were lodged prior to the closing date.
- 2.12 On 28 February 2014, we considered an application for a waiver for an extension of time^[9] to receive the late submission referred to above. The waiver was granted, and the late submission was formally received, as set out in **Appendix 1** to this report.

Pre-hearing Procedural Matters

Minute 1

- 2.13 Following our formal engagement, we were provided with copies of the Plan Change documentation and submissions received. Having canvassed those documents, we set out a pre-hearing programme by way of a Minute dated 24 February 2014.
- 2.14 This communication set the stage for the manner in which we wished to conduct the hearing, and covered the following matters:

^[8] pursuant to Part 3, Schedule 1 of the Act

^[9] pursuant to s37 RMA

- **Hearing Date** – an indicative start date of 2 May 2014 was signalled;
- **Witnesses** – all parties were instructed to provide a list of witnesses (if any) that would be presenting evidence on their behalf and the disciplines of any experts to be used;
- **Council s42A Report** – we indicated our direction to the Council to circulate the s42A Report well in advance of the statutory minimum timeframe (by 7 April);
- **Site and Locality Visits** – we indicated that we would be undertaking site visits at some stage, and invited the parties to advise of any particular sites or localities they consider we should have regard to; and
- **Timetable** – we set out an indicative timetable for all pre-hearing exchanges and the start date of formal proceedings.

2.15 A copy of each of the Minutes we issued is included in **Appendix 2** to this report.

Pre-circulated material

2.16 As directed by our Minute, we received some additional material from submitters prior to the commencement of formal proceedings. Namely, we received statements from McDonalds Restaurant (NZ) Ltd (Submission 10), and Ms Gaile Noonan (Submission 13). The former indicated that they simply wished for the statement to be tabled and that no representative would be appearing at the hearing, while Ms Noonan spoke to her statement (as we discuss below).

2.17 We were also advised by NCC's Reporting Officer, Mr Peterson, that the Council had received^[10] further information from two parties:

- Ms Michelle McLean (Submission 9); and
- Mr Peter Mayes (Submission 3)

2.18 For our purposes, we have accepted this information as 'tabled', and are therefore compelled to describe the information for the sake of completeness.

2.19 In relation to Ms McLean's correspondence, we were made aware of two emails from Ms McLean to Ms Brown on 30 April. In these emails, Ms McLean referred to the following (in summary):

- high chronic pain rates in Nelson;
- delta wave sleep, and in turn anabolic processes, neurotransmitters and other cellular processes, disrupted by noise, port, traffic, construction; and
- a question as to whether or not the Council considered noise cancelling technology to reduce noise (which may reduce violence and mental health issues).

^[10] For completeness, we note that we were advised of Ms McLean's communications to the Council prior to the start of proceedings; however, we were not made aware of Mr Mayes' correspondence until Mr Peterson advised us at the hearing. This is discussed further below under our discussion of the 2nd Minute.

- 2.20 Mr Mayes' additional information was by way of email to Mr Peterson dated 8 April. In that correspondence, Mr Mayes sought clarification from Mr Peterson as to whether or not details raised in his submission had been adequately considered. These related to the effectiveness of the proposed Plan Change methods versus other methods, including economic and operational effectiveness.
- 2.21 We do not intend to address the information provided by Ms McLean and Mr Mayes to any substantive extent here. Again, we have summarised these points for the benefit of all parties in understanding the full extent of information before us. As will be apparent below, our assessment of substantive issues in Section 4 of this report considers the issues raised by these submitters (and all others) in an evaluative sense.
- 2.22 These preliminary matters recorded, we now set out an account of the formal hearing proceedings.

3.0 THE HEARING

3.1 We convened the hearing at 10.30am on Friday 2 May 2014 at the Council Chambers in Central Nelson, adjourning late that afternoon. Immediately prior to this, we conducted the first of our two locality visits. We circumnavigated the central city zone and noted the boundaries between the central and fringe sub zones.

3.2 At the hearing, we heard from the following parties:

Submitters in attendance^[1]

- Mr Thomas Marchant, on behalf of Port Nelson Limited (Submission 7) and Port Nelson Liaison Committee (Submission 5)
- Mr Kent Inglis, resident of Nelson (Submission 1)
- Mr Dan McGuire, resident of Nelson (Submission 2)
- Mr Neville Male, President of Nelson Grey Power (Further Submission 2)
- Mr Graeme Downing, resident of Nelson (Submission 8)
- Ms Gaile Noonan, resident of Nelson (Submission 13)

Council Advisors

- Mr Reuben Peterson, Planning Advisor (NCC)
- Mr Matt Heale, Principal Planner (NCC)
- Mr Keith Ballagh, acoustic consultant of Marshall Day Acoustics
- Mr Bob Askew, Senior Environmental Health Officer (NCC)

3.3 Before hearing from any of the parties, we set out some procedural matters and outlined the manner in which we intended to conduct proceedings.

3.4 We then asked Mr Peterson to set out a factual background for PC16. Over the course of this session, we invited Messrs Heale, Ballagh and Askew to contribute to the presentation, and sought clarification on matters of fact from all of them.

3.5 Prior to a brief lunch adjournment, we heard from Mr Marchant, Mr Inglis, Mr McGuire and Mr Male. Mr Downing and Ms Noonan appeared immediately after the break, which brought the presentations from submitters to a close.

3.6 This was followed by a session with Council's advisor in which we heard from them in an evaluative sense. We explored a number of the matters raised by submitters with Officers, and sought to gauge their collective view on alternative methods for implementing the Plan Change vision as a result of submitters' recommendations.

3.7 By the end of proceedings, we had given several directions to the Council advisors to come back to us with additional information. In light of these circumstances, we resolved that we would adjourn the hearing, set out a process in writing for the gathering and distribution of further information, and advise of a process to draw the formal proceedings to a close.

3.8 At the request of Mr Downing and Ms Noonan, we undertook a second locality visit of the Central City, commencing at 11.45pm, and finishing at 2am. During that time, we orbited the Central City, pausing at times to make observations

^[1] For completeness, we note that we also read in full the notices of submissions from those submitters who were unable to, or chose not to, attend the hearing.

about the nature and intensity of noise we heard. We specifically visited a handful of sites owned by submitters, as well as some of the local sources of night time noise referred to by Officers and submitters. This included noise from outdoor areas of bars.

Hearing adjournment

3.9 On 5 May 2014, we issued our **2nd minute**. This correspondence formalised those verbal directions we issued over the course of the hearing, including requests for:

- a copy of an email from Mr Peter Mayes (Submission 3) to Mr Peterson, referred to by Mr Peterson in his opening factual presentation;
- a copy of the monitoring report undertaken by Malcolm Hunt Associates (July 2009), referred to (indirectly) in the s42A report, and (directly) during questioning of Mr Peterson;
- data requested of Mr Askew in respect of enforcement action, abatement notices, and complaints relating to inner city noise since 2006 – this is to include (as a minimum) detailed descriptions of the nature of the complaint/action, parties involved and spatial data (mapped if possible) about the complaint/action;
- the most recent s35(RMA) report produced by NCC (as referred to by Mr Heale during questioning);
- clarification in respect of the application of clauses (a) & (b) under proposed Rule ICr.42A.1;
- further evaluative feedback from Officers in respect of:
 - proposed Appendix 13.2 and its relationship to, and effectiveness in implementing, s327 of the RMA;
 - whether there were any advantages to be gained, and/or complications that may arise, from utilising elements of both the operative Rule 42 and proposed Rule 42A approaches (i.e. prescribed limit at generator site boundary +/- Noise Generating Activity approach +/- s16 & s327 provisions); and
- Mr Ballagh’s report(s), particularly in reference to the management of low frequency noise.

3.10 The minute also contained a proposed timetable for the delivery of the further information to us and all other parties, including a request that submitters advise the Council if they wish to receive a copy of the information.

3.11 All of the information was provided in a timely fashion, and was to our satisfaction. However, upon reviewing the material, we considered that additional clarification should be provided to all parties (not least of which ourselves) in relation to the issue of low frequency noise.

- 3.12 Through our review of background material, our questioning of the parties at the hearing, and our subsequent review of material obtained via the 2nd Minute, we became aware that:
- the Council’s assessment from Malcom Hunt Associates indicated that there were “significant” levels of low frequency noise observed at times in the inner city;
 - the Council consulted on a draft version of the Plan Change which originally included a low frequency noise control;
 - the draft was eventually amended and the rule deleted prior to the formal notification of PC16; and
 - it was not clear to (at least some) parties appearing before us why this amendment took place.
- 3.13 To get some further understanding about this course of action, we issued a **3rd Minute** on 14 May. The stated aim of the minute was to obtain some additional technical input from Mr Ballagh, and a supporting planning evaluation from Mr Peterson. In summary, we asked them to clearly set out:
- the advantages to be gained and/or complications (from a technical point of view, and in terms of meeting the objectives and policies of the NRMP) of not utilising a low frequency noise control; and
 - on the basis that we *may* elect to apply such a control as requested by submissions, what would be an appropriate standard to apply, and from where the standard should be applied/measured.
- 3.14 Mr Ballagh and Mr Peterson provided brief statements addressing the above matters in detail. These responses are discussed further under our evaluation below in Section 4.

Hearing Closure

- 3.15 Having received all of the further information sought through our post-hearing Minutes, we were satisfied that we had sufficient information to complete our deliberations and deliver a decision on the Plan Change.
- 3.16 Accordingly, we closed the hearing at 1:30pm on **Friday 23 May 2014**.

4.0 EVALUATION OF ISSUES

Overview

- 4.1 As in the s42A report, we have grouped our discussion of the submissions (and the reasons for accepting, rejecting, or accepting them in part) by the *matters*¹²¹ to which they relate – rather than assessing each issue on a submitter by submitter basis.
- 4.2 This approach is not to downplay the importance of the input from submitters; to the contrary, such input has been invaluable in shaping our collective view. However, we consider it will be to everyone’s benefit for our recommendation to be as tightly focused on the key issues as possible. For those parties who are only interested in a particular matter as it pertains to their submission(s), we have provided a submitter-by-submitter summary of decisions requested in **Appendix 3**, which includes our decision on each relief point sought. Those specific decisions have been derived from our issues assessment below.
- 4.3 In order to be concise, and notwithstanding the numerous amendments proposed in the Plan Change, we have distilled our discussion into the following key issues:

Issue 1: The need for the Plan Change

Issue 2: Management of noise within the IC Zone

Issue 3: Residential Activities vs Short Term Living Accommodation

Issue 4: Management of noise at the IC Zone / Residential Zone interface

Issue 5: Low frequency noise

Issue 6: Other matters

Evaluation Preamble

- 4.4 As a precursor to our detailed evaluation of the key issues, we wish to signal the key matters that have underpinned our discussion below, and which we have kept very much at the ‘front of mind’ throughout the hearing.

Statutory framework

- 4.5 Firstly, we note that **the requirements of the Act** which underpin our role have been a continual reference point during the hearing, and in our reporting. We provide a summary evaluation of these statutory considerations at the close of this report (at Section 5), and our discussion of issues is essentially a running commentary of our examination of the Plan Change within that statutory context. These considerations include whether or not the proposed Plan Change:

¹²¹ Clause 10(2)(a) of Schedule 1, RMA sets out that a plan change decision may address submissions by grouping them according to either the provisions of the plan change to which they relate, or to the matters to which they relate.

- has been designed to accord with, and assist the Council to carry out its functions so as to achieve the purpose of the Act;
- gives effect to any relevant national policy statements (“NPS”) and the New Zealand Coastal Policy Statement (“NZCPS”);
- gives effect to the regional policy statement (“RPS”);
- is consistent with any regional plans;
- has had regard to any relevant management plans and strategies under other Acts;
- rules implement the policies of the NRMP;
- methods (including each rule), having regard to their efficiency and effectiveness, are the most appropriate method for achieving the objectives of the district plan taking into account: a) the benefits and costs of the proposed policies and methods (including rules); and b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; and
- rules will result in any actual or potential effect of activities on the environment.

4.6 Secondly, at the outset of proceedings, we signalled that these requirements could largely be distilled into two main questions:

- is intervention required in order to improve the NRMP as it relates to the management of noise in the Inner City; and
- is the proposed rule framework the most appropriate mechanism to deliver on the improvements sought?

4.7 In considering these questions, we record that our decision is based on the notified Plan Change documentation, the submissions and further submissions received, the Council s42A report, and the statements/presentations from all submitters appearing before us. It is not for us to introduce our own evidence, and we have not done so – rather, our role has been to test the evidence of others, and to determine the most appropriate outcome based on the views we consider best achieve sustainable management. So, what did we hear?

4.8 At a fundamental level, **the general message we received from virtually all parties** was that there are existing problems with noise in the Inner City, and that at least part of those problems relate to the manner in which the NRMP manages noise currently. That said, there was some contention amongst the parties as to whether or not the new methods proposed by the Plan Change are indeed an improvement over the status quo – which we consider in more detail shortly.

4.9 **The majority of submitters we heard from** were in partial opposition to the proposed provisions. That is to say, no party conveyed to us that the entire Plan Change should be abandoned.

- 4.10 In highlighting these high-level positions expressed during the hearing, it is not our intention to derogate from the more detailed findings we set out below. We do, however, consider it appropriate to record these generic themes here to provide a broad context within which our evaluation is framed, and to illustrate that, while there was a general consensus that *some* change is required, the nature of that change was by no means universally accepted.

The 'right' s32

- 4.11 We are aware that **Parliament has recently amended^[13] the RMA**, including proposed changes to provisions that are relevant to our recommendation. At the outset of the hearing, we sought clarification from Mr Peterson and Mr Heale as to the 'version' of the Act that we should adhere to for this proposal, and particularly the provisions of s32 that we should apply.
- 4.12 The Officers confirmed to us that the 2013 Amendment Act provisions do not apply in this case. While the new provisions took effect on 4 December 2013, the previous section 32 requirements^[14] continue to apply as PC16 was already notified and past the further submission period by that date.
- 4.13 We simply note this here to avoid any confusion about the statutory tests which are, in fact, relevant for our deliberations.

Issue 1: The Need for the Plan Change

- 4.14 The case for changing the NRMP to improve the management of inner city noise is well canvassed in the s32 report, the s42A report, and in the many submissions received on the Plan Change. Throughout the hearing and the post-hearing information gathering exercise, we endeavoured to broaden our understanding of the needs case. In doing so, we have distilled the key contributors into the following list, which we will discuss in turn:
- monitoring & enforcement difficulties;
 - Court proceedings;
 - the 2009 report from Malcolm Hunt Associates;
 - Council's s35 Efficiency and Effectiveness Review Report (2012/2013); and
 - the Plan Change vision.

Monitoring & enforcement difficulties

- 4.15 The s32 report provides a useful summary of the difficulties NCC has had with monitoring inner city noise for enforcement purposes. In particular, it records the following:

^[13] Resource Management Amendment Act 2013

^[14] as well as other provisions in the RMA pre-Amendment Act

“Noise levels have...been measured periodically over a number of years and have regularly been carried out for the purposes of enforcement. These periods of monitoring and recording noise levels have shown that at times noise levels exceed those specified in the operative Nelson Resource Management Plan.

The noise issue also relates to enforcement of the current operative noise rules, with particular reference to rule ICr.42 ‘Noise’. This requires noise to be measured ‘...at, or as close as practicable to, the boundary of any site...’ and for specified levels not to be exceeded. Experience shows that this is difficult to monitor and enforce due to contamination from adjacent noise sources and from the high ambient noise levels on the street.”^[15]

- 4.16 This latter conclusion was amplified strongly to us by Mr Ballagh and Mr Askew at the hearing. Mr Askew in particular explained to us the **difficulty he has experienced in monitoring inner city noise and in enforcing Rule ICr.42** over recent years. He noted that the rule would (in theory) be reasonably straightforward to apply if noise generators were operating in isolation. However, as many of the noisy sources in the inner city are aggregated together (for example, bars located side-by-side on Bridge Street), he advised that it can be very difficult to reach a conclusion - based on noise measurement techniques - with absolute certainty that one activity and not another (or multiple others) is indeed in breach of the NRMP standards. It was his express preference, based on his experience, that the rule be deleted in favour of a more observational approach to monitoring and enforcement – as enabled by the Plan Change.
- 4.17 Mr Ballagh supported Mr Askew’s comments, noting that a further problem with existing Rule ICr.42 is that **the standards used under the rule are out-of-date and unrealistically restrictive**. In his view a 55dBA L10 threshold is extremely difficult for activities operating at night time to achieve. To practically reinforce that conclusion he illustrated that the level of sound generated by the dialogue between the parties at the hearing would be more in the order of 60dBA.
- 4.18 We asked Mr Ballagh how the 55dBA figure compared to the approach adopted by Councils in other New Zealand urban areas. He advised that the figure was relatively low, and that 65dBA was more common.
- 4.19 We surmised that the 55dBA figure was a relic of the original NRMP created under the RMA, and Mr Peterson confirmed this in questioning. For our own understanding, we asked if the Council had considered simply raising this figure to a more realistic (and up-to-date) threshold. Mr Peterson advised that such an option was mooted during Plan Change formulation; however, it was ultimately discarded given the same noise contamination problems described by Mr Askew. In other words, it makes no difference whether the noise limit at a generator’s boundary is 45, 55, or 65 dBA as the ability to physically determine compliance is the material constraint.
- 4.20 Ultimately, we are compelled to **accept this advice from Officers**, particularly as we had no alternate technical advice to refute it. That is to say that no party gave us cause to consider that:

^[15] PC16 Section 32 Report (7 September 2013), p. 3

- contamination issues have not made monitoring and enforcement of the existing NRMP provisions difficult or even impossible in some instances; or
- the existing standards under Rule ICr.42 are not unreasonably stringent.

4.21 On this basis, we accept that (at the very least) *some* modification to ICr.42 is required.

4.22 That said, we are mindful that Mr Downing has recommended that the rule is retained with only minor modifications. This is in contrast to the advice from Officers that the rule be abandoned altogether. Resolution to these contrasting views is something that we will turn to subsequently; however, for the purposes of this initial component of our evaluation, we signal initial agreement with Council Officers that some modification to the IC Zone rules is needed.

Environment Court proceedings

4.23 As noted in the s42A report^[16], the expressed enforcement difficulties created by Rule ICr.42 were the subject of scrutiny by the Environment Court^[17] in 2006. Both Mr Peterson and Mr Downing provided us further background on this matter in their respective presentations to us at the hearing, and we subsequently obtained a copy of the judgement to assist our deliberations.

4.24 In that judgement, the Court^[18] identified two issues of relevance to the Council's difficulty in enforcing Rule ICr.42. Specifically, the Court sought to answer whether:

- Rules ICr.42 and ICr.43 are intended to function in tandem or separately; and
- if they are intended to operate separately, can the Council "*turn a blind eye to breach of a rule when the only apparent adverse effect of that breach is upon a zone whose guaranteed standards of amenity in terms of noise are still being met?*"

4.25 Ultimately, the Court found the mechanical interrelationship between Rules ICr.42 and ICr.43 was not clear cut; but irrespective of this, the clear conclusion was that "*the residents of Nelson should be able to base their decision on the premise that the rules of the plan will apply, or that if there is an argument for not applying them, that argument will be tested through the resource consent process...in short...[residents] are entitled to the benefits of Rule ICr.42*^[19]."

4.26 In other words, the Court found that the rules are there and they should be enforced.

4.27 We find that judgement to be eminently sensible; however, we are also mindful that the Court *did not* make a ruling on whether or not ICr.42 should be retained or replaced – it merely recorded that the Council should enforce its District Plan as it is required to do under s84 of the Act.

^[16] s42A report, p.6, para 2.4

^[17] Environment Court decision number C9/2006, Env C 70/05, 30 Jan 2006.

^[18] Environment Court decision number C9/2006, Env C 70/05, 30 Jan 2006, p.5, para.16

^[19] Environment Court decision number C9/2006, Env C 70/05, 30 Jan 2006, p.8, para.23

- 4.28 The Schedule 1 process we are currently engaged in allows for the testing of the appropriateness of the Plan's rule framework, having regard to the relevant statutory tests. These tests include an examination of (for example) how effective the proposed rule framework is compared to the existing rule framework in terms of achieving anticipated amenity levels in the City's residential areas.
- 4.29 Again, the Court decision did not assist us in that regard; however, it has provided us with an excellent reminder that the rules we ultimately endorse in this decision – whether we retain operative rules, adopt the notified rules or opt for some alternatives within the scope afforded to us – must be enforced, and therefore must be *enforceable*.
- 4.30 The uncontested evidence before us is that at least one of the operative rules is very difficult to enforce, if not unenforceable, under circumstances which commonly exist in the Central City. Again, we find this lends support to the needs case for amendment to the NRMP noise provisions.

Malcolm Hunt Associates report

- 4.31 This report (“**the Hunt Report**”), dating from 2009, has been referred to in both the s32 and s42A reports, and was raised by multiple submitters at the hearing. Mr Downing^[20], in particular, drew our attention to several excerpts of the report relating to low frequency noise.
- 4.32 The Hunt Report contains a number of observations relating to ambient noise surveys conducted at multiple points within and near the Central City. Of particular relevance for us, the report noted (our *emphasis*):
- ***Compliance with Rule ICr.42.1 cannot be determined*** directly from the readings as the measurements were not performed directly at the site boundary to the noise-making premises. Importantly, the effects of ***passing traffic have not been excluded*** from the measured levels. This is because the survey was designed to ***indicate typical noise levels as received by existing or future residents of the central area and the adjacent residentially zoned area***^[21];
 - *The District Plan (outdoor) noise limits are exceeded regularly within the Central City however **this is not to say there is widespread non-compliance**. This is because much of the measured sound is contributed by road vehicles, a noise source not controlled by the NRMP. There are however times (including average daytime or night time periods) when ambient sound levels are measured lower than the noise limits set out in the NRMP*^[22];
 - ***Vehicle activity*** appears to be the most identifiable sound source within the central city. The pattern of daily levels of ambient sound indicates more noise occurs during daytime periods when people are most active and vehicle activity is greatest^[23];

^[20] Submissions on behalf of G Downing & S Trevena, 2 May 2014, p.1, para 2.2

^[21] *Nelson Inner City Noise Survey 2009: Measurement Report & Summary Results*, Malcolm Hunt Associates, p.34

^[22] *Nelson Inner City Noise Survey 2009: Measurement Report & Summary Results*, Malcolm Hunt Associates, p.35

^[23] *Nelson Inner City Noise Survey 2009: Measurement Report & Summary Results*, Malcolm Hunt Associates, p.35

- *Analysis of night time periods on weekends reveals **atypical periods of low frequency sounds from amplified music** arising within parts of the Central area and affecting adjacent residentially zoned sites in the general vicinity. The predominance of low frequency sounds for periods of several hours indicates the **potential for noise nuisance for inner city residents** seeking quiet for sleep unless the dwelling is particularly well insulated from external sound.*^[24]
- 4.33 In distilling the key messages from the Hunt Report findings, we consider that the above is further evidence that **Rule ICr.42 is particularly problematic from an enforcement perspective**. The matter of traffic noise is not a matter we are able to manage through this process, and yet it is evident from the Hunt Report that it is at least part of the problem. That is to say, the seemingly common non-compliances with the NRMP provisions are in part a function of an inability to control for a major contributor of that non-compliance. At the very least, the contribution of vehicle noise compounds the difficulty of measuring activity noise generation due to contamination.
- 4.34 We see a **potential fairness issue** in this respect, as the current construct of the NRMP could effectively require an activity which operates at a noise level considerably lower than the noise generated by adjacent passing traffic to obtain resource consent to generate that noise. This is not to suggest that noise generators should not “do their part,” but it is to acknowledge that we recognise this additional difficulty attributed to the operative plan provisions.
- 4.35 We also note the Hunt Report’s findings in relation to **low frequency noise**, the observed high night time levels of that noise, and the authors’ conclusion that this could be a source of nuisance for both Inner City residents and nearby Residential Zone neighbours. Again, Mr Downing spoke to us at length about this point, and we were compelled by his presentation to better understand the low frequency noise problem specifically, and what measures (if any) should be adopted to address it. This is something we discuss at length below.
- 4.36 In summary, we consider that the Hunt Report further signals a need to amend the NRMP approach to Inner City noise management.

s35 report

- 4.37 Section 35 of the RMA requires the Council to monitor the state of the environment and the effectiveness of its RMA plans (among other things). In respect of this latter monitoring component, the Council is also required to produce a review of the effectiveness monitoring it has done. These reports, in turn, often identify shortcomings of the relevant RMA plan under investigation, thereby affecting the preparation of Plan Changes to improve plan effectiveness.
- 4.38 The Council last produced a s35 report in 2013, a point which Mr Heale drew our attention to at the hearing. We obtained a copy of the report as part of our post-hearing fact finding exercise, and noted several findings that are relevant to our considerations.
- 4.39 For example, the ‘key findings summary’ (p.5) notes “*All...objectives are only being partially achieved... [a]menity objectives are largely being met, apart from*

^[24]Nelson Inner City Noise Survey 2009: Measurement Report & Summary Results, Malcolm Hunt Associates, p.35

Inner City noise issues." The s35 report draws on the Hunt Report and notes the Environment Court proceedings referred to above. It also contains an interesting quantitative expression of noise complaints registered with the Council between 2001 and 2011. Of 17,416 complaints, 7% fell under the category 'Plan rules and RMA compliance.' The complaint record summary provided by Mr Askew and his team following the hearing suggests this figure includes (but is not wholly comprised by) those complaints relating to inner city noise generation.

- 4.40 In the main, the s35 report has not afforded us with any additional substantive data over-and-above those sources already cited. However, we consider it appropriate to note our reference to the report, and our agreement with the findings set out within it that there are existing effectiveness issues with the NRMP noise provisions that should be remedied.

The Plan Change vision

- 4.41 While this is more a strategic consideration than an evidentiary component of the needs case, we find the vision for PC16 to be a helpful reference to set the scene for our more detailed evaluations.
- 4.42 To this end, our consideration of the 'issues in play' has been framed against this strategic Council aim to strike a balance between potentially conflicting uses – noisy inner city activities and residential activities. The Plan Change vision is, in our collective view, a logical link between the *Heart of Nelson Central City Strategy (2009)* – which we have had regard to^[25] in our deliberations – and the NRMP.
- 4.43 We recognise there is a strategic direction to us that change may be required to achieve both vibrant urban spaces, and living environments with appropriate levels of amenity. That said, the extent to which this aim is applied ultimately must be appropriate to the statutory context.

Finding on the need for the Plan Change

- 4.44 In summarising the above, we find that the needs case for change is compelling. Our view is that the status quo is suboptimum, and revisions to the inner city noise provisions are required to better implement NRMP policy expectations.
- 4.45 The discussion that follows sets out the amendments we consider will best implement those higher order aims.

^[25] under s74(2)(b)(i), RMA

Issue 2: Management of noise within the Inner City Zone

Issue identification

- 4.46 The second issue we consider here is the manner in which PC16 manages noise *within* the Inner City Zone. Specifically, we evaluate and attempt to resolve the issues in contention relating to, the following methods proposed by the Plan Change:
- insulation requirements for new bedrooms in the Inner City (new Rule ICr.43A and associated methods);
 - new consenting requirements for ‘noise generating activities,’ including the need to prepare a noise management plan (new Rule ICr.42A and associated methods); and
 - reliance on the excessive and unreasonable noise provisions of the RMA^[26] (including proposed Appendix AP13.2).
- 4.47 We recognise that there is an interrelationship between these methods, which represents a collective shift from the operative District Plan approach. However, there are complexities to each of these three proposed new methods that require an initial individual examination before the broader ‘sum of the parts’ conclusion can be reached. To this end, we examine the appropriateness of each of these methods in isolation before considering them as a united package.
- 4.48 That said, we acknowledge Mr Peterson’s view^[27] that the combined use of these methods is a move towards a more balanced approach to noise management in the Inner City – one where both generator and receptor have a role to play. Again, we will make a substantive finding on that broad principle shortly, but note it here for context as a precursor to our more focussed assessment of the components that collectively comprise that principle.

Insulation requirements

- 4.49 Before we address the insulation requirement method in detail, we note that one matter underpinning this issue relates to a distinction between “residential activities” and “short term living accommodation”. We have addressed this under a separate part of the report (**Issue 3**) given the matter’s own complexities. Our focus here with Issue 2 is more on the appropriateness of the proposed insulation requirements, *in general*.

Summary of evidence

- 4.50 At a policy implementation level, Mr Peterson advised^[28] that the noise insulation requirements included in PC16 are designed to better achieve existing aims in the plan to both:
- **enable a diversity of activities** in the Inner City which enhances vitality and vibrancy of the City; and

^[26] sections 16 & 327, RMA

^[27] s42A report, p.14, para 6.4

^[28] s42A report, p.14, para 6.4

- ensure that a **reasonable level of residential amenity** is provided to sites used for residential activity.

4.51 Mr Peterson^[29] also drew our attention to the Plan's recognition that the fundamental character of **the Inner City area is non-residential**. We have no evidence before us to challenge this overriding characteristic (other than our own general observations), and so have accepted (as a starting point) that the Inner City should not be impacted by PC16 in a way that compromises the primacy of non-residential activities as a consequence.

4.52 Notwithstanding this, Mr Peterson also stressed upon us that **residential activities within the inner city are desirable**, noting that they (as well as noise-generating activities) play a '*central role in creating a vibrant and vital Inner City*'^[30]. This, in his view^[31], is consistent with the aims of the *Heart of Nelson Central City Strategy (2009)*, which seeks that Central Nelson is '*... a vibrant, attractive place in which people can live, work and play and in which businesses operate.*'

4.53 Mr Peterson acknowledged^[32] that the proposed insulation requirements carry **an additional cost** for perspective developers, and existing property owners who may wish to create new bedrooms, over and above current Building Code and District Plan requirements; however, he considered that additional **cost is minimised** due to the insulation requirements being applied to bedrooms only (i.e. not across an entire apartment unit).

4.54 During the PC16 formulation stage, the Council undertook an indicative modelling exercise to ascertain the likely increase in build cost to implement the noise insulation requirements under consideration. This study used two 2-bedroom apartment units that were recently constructed in the inner city as a basis for assessment (one was a "standard" sized mid-level unit, the other a "large" upper level unit). The exercise concluded that applying the insulation requirement across the entire unit would result in a net increase of 12.8 – 17.5%, whereas the 'bedroom only' scenario resulted in a more modest 4 – 5.4% increase. Mr Peterson expressed the view that the 'apartment-wide' results represent a potentially unreasonable outcome; however he considered that the 'bedroom only' scenario is:

"...a fair representation of the 'share' of noise management which falls ultimately to the purchaser/developer of the residential unit... [and that this] approach allows for a reasonable amenity within the Inner City but also recognises that the Inner City environment will involve a higher level of noise and activity than would typically be acceptable in the Residential Zone."^[33]

4.55 **Mr Inglis** disagreed with this conclusion. In his view, the insulation requirements are '*likely to impose great cost for little benefit, which will discourage investment in inner city residential units to the detriment of the vibrancy of the inner city*'^[34]."

^[29] s42A report, p.14, para 6.4

^[30] s42A report, p.29

^[31] s42A report, p.29

^[32] s42A report, p.14, para 6.5

^[33] s42A report, p.30

^[34] submission notice of Kent Thomas Inglis, p.2

- 4.56 During our questioning, Mr Inglis expressed his opinion that the 4 - 5.4% increase would be “significant” and likely to be a “deal-breaker” for his own residential development aspirations. His preference was that the noise insulation requirement be removed from the Plan Change in favour of a more flexible approach, whereby developers could engage with Council on a case-by-case basis to determine whether insulation would actually be required.
- 4.57 For completeness, we note that noise insulation requirements were both supported and opposed by many other submitters that did not appear before us.

‘Mechanical’ issues with the proposed rule

- 4.58 At the hearing, we tested the performance aspects of the proposed noise insulation requirements. To this end, we wanted to be satisfied that the ‘mechanics’ of the proposed methods would operate effectively, should we be of the view that the insulation requirements are appropriate to retain.
- 4.59 Principally, this entailed our questioning Mr Peterson in relation to:
- matters of drafting; and
 - the activity status for building activities that failed to meet the permitted activity conditions under Rule ICr.43A.
- 4.60 In relation to **drafting**, we firstly note that Mr Peterson recommended several amendments to the rule – as notified – as a result of the various submissions received. From a general drafting point of view, we have no reason not to accept those alterations given the general agreement between the parties on those matters, and the net result of those changes.
- 4.61 However, we questioned Mr Peterson at length on the **appropriateness of the term ‘construction’** as the basis for the rule. Our concern was that this term might limit the application of the rule to new construction activities only, and therefore would not catch scenarios where (for example) non-bedrooms are converted to bedrooms without the need for a building consent (which would otherwise trigger any need for resource consent).
- 4.62 Mr Peterson advised that the drafting of this rule was a matter that received some scrutiny during the formulation of the Plan Change. In his view, the phrase “construction of new bedrooms” is the most appropriate in this case. He considered that most conversions would trigger a building consent, and in turn, the resource consent process under this rule. He conceded that there may be isolated instances where an office or a living room may be converted to a bedroom, but considered the risk of this occurring to be sufficiently low such that a drafting response was not needed to account for that eventuality.
- 4.63 Our evaluation under the next issue heading (Issue 3) is also relevant to this drafting issue, but we will not go into any detail on that matter here.
- 4.64 In terms of the **default activity status** where the permitted activity conditions are not met, we questioned why a fully Discretionary status was preferred over a Restricted Discretionary status. Mr Peterson’s initial response was that the fully Discretionary status was appropriate given the policy context; however, he later expressed that Restricted Discretionary may be an acceptable alternative.

Our findings on insulation requirements

- 4.65 On balance, we find that proposed rule ICr.43A and its associated methods are **generally appropriate**. We accept that the application of this rule is likely to equate to an added economic cost for parties seeking to construct new residential activities in the Inner City. That said, we amplify Mr Peterson's view that this has been minimised through the application of insulation requirements to bedrooms only.
- 4.66 Moreover, **the rule approach allows flexibility** for future developers to find the most cost-effective means of achieving an outcome that suits their needs, whilst also achieving the Plan Change's aim of balancing vibrancy and vitality with residential amenity. Specifically, developers will be able to choose whether it is best for them to:
- use the 'paint by numbers' approach established by Clause a) under Rule ICr.43A.1, whereby specific construction materials can be utilised to demonstrate compliance with the rule; or
 - use a more bespoke, site-specific acoustic insulation approach to achieve a minimum noise reduction level – this must be certified by a qualified acoustic engineer; or
 - choose neither option and apply for resource consent.
- 4.67 There is no evidence before us to contest the robustness of the Council's estimated average cost increase per residential unit study (the 4 – 5.4% increase), and so we are inclined to rely on that as an indicator of the *likely* economic cost that will result from the application of this rule. While this *may* have a downstream effect on housing affordability, and/or act as a deterrent to residential development, we consider that those *potential* effects are sufficiently low, and acceptable given the benefits anticipated, including:
- improved health and well-being for new inner city residents, through reduction in the adverse effects generated by noisy activities – and therefore, a *reasonable* level of residential amenity given the predominantly non-residential character of the Inner City; and
 - reduced likelihood of reverse sensitivity effects arising such that non-residential activities that contribute to the vibrancy and vitality of the Inner City are not compromised by the desired increased prominence of residential activity – and therefore, a diverse balance of activities that (overall) enhances that vibrancy and vitality.
- 4.68 Though we are not able to direct the Council to monitor the effectiveness of this rule approach, we assume that it will do so under its general obligations in the Act. That said, we consider it would be good practice for the Council to **establish a monitoring framework** for this rule at an early stage. At a minimum, we envisage such a framework would identify indicators (to the extent practicable) such as the following:
- the actual experiential increase in cost for new residential activities in the Inner City resulting from the application of Rule ICr.43A and its associated

methods, and the appropriateness of that cost compared to the anticipated cost underpinning the Plan Change;

- any trends observed as to preferences for the ‘paint-by-numbers’ approach versus the bespoke acoustic insulation approach;
- any evidence that the methods are actively deterring (in part or in total) the establishment of residential activities in the Inner City (both anecdotal, and observational); and
- any evidence that the insulation levels achieved by new residential activities constructed in accordance with Rule ICr.43A are successfully mitigating noise from non-residential sources (for example any trends in number, nature and severity of complaints compared to uninsulated units).

4.69 In terms of the rule **drafting and mechanics**, we have proposed a **minor consequential change** such that the Rule applies to any “bedroom” rather than “bedrooms.” This will clarify that the rule is not applicable only where more than one bedroom is considered.

4.70 We also consider that it is most appropriate to account for the eventuality that a **non-bedroom is converted to a bedroom** under this rule. While there may be a low likelihood of this occurring, it is (in our view) a ‘gap’ in the current provisions, and one that can be remedied rather simply. Accordingly we have altered the rule as follows (our changes are **highlighted**):

ICr.43A.1

Construction of **any** new Bedrooms **is** a permitted activity if...

- a) the new Bedrooms **are is** acoustically...
- b) the new Bedrooms **are is** acoustically ...
- c) ... with option b) above.

For the purposes of this rule, the ‘construction of any new Bedroom’ shall also include the conversion of any existing room to a Bedroom. ‘Bedroom’ is defined in Chapter 2 Meanings of Words.

4.71 Finally, we have elected to modify the **status of the activity** where the permitted activity conditions are not met. We consider it is inefficient to allow unfettered discretion to be applied by decision-makers where consent is sought for failing to insulate a new bedroom. In our view, this is a relatively focussed matter that can be effectively assessed as a restricted discretionary activity. If a given proposal is acceptable, it may be approved, and conditions may be applied. Alternatively, a poor proposal may ultimately be declined, which would be an appropriate outcome in our view. These three outcomes (approve, approve with conditions or decline) would be the same, whether the activity is fully discretionary or restricted discretionary, and we are not convinced that the former is required in order to ensure that the objectives and policies of the plan are implemented, and adverse effects sufficiently mitigated.

4.72 While this specific relief has not been sought by any submitter, we consider that scope is afforded us to make this change through those submitters – for example Mr Inglis – that sought the deletion of this rule. Our proposed amendment gives effect to those submissions (in part), by providing greater certainty to future

applicants who require resource consent under Rule ICr.43A.3 as to the manner in which their application will be considered.

4.73 For completeness, we also note that our proposed amendment includes matters of restricted discretion as per the normal format of the NRMP. In this respect under Rule ICr.43A.3 activities that contravene a permitted condition are a restricted discretionary activity with discretion restricted to:

- i) Location and orientation of Bedrooms in relation to noise sources, and
- ii) Insulation or other measures required for noise mitigation purposes for Bedrooms,
- iii) Health and well-being effects for residents, and
- iv) Potential reverse sensitivity effects on other activities.

4.74 In arriving at these matters of discretion we have been guided by the following factors:

- The policy guidance in the NRMP as highlighted in Mr Petersons s42A report;
- The technical evidence of Mr Ballagh and Mr Askew and the evaluative evidence of Mr Peterson; and
- The nature of the of the assessment criteria already contained in rule ICr.43A.4.

4.75 Further we were conscious of not making the matters of discretion so broad so as to negate the purpose of restricted discretionary activity status, but also we wanted them to be inclusive enough in order to allow council officers to consider the relevant matters at issue with any application required under Rule ICr.43A.3. We believe that the proposed wording achieves that desired balance.

DECISION [D1]

D1.1 Those submissions in support of the insulation requirements set out under proposed Rule ICr.43A and Appendix 19.3 are **accepted in part** to the extent that they accord with the amended provisions set out in Appendix 4.

D1.2 Those submissions that oppose those insulation requirements are **rejected**.

Approach for new Noise Generating Activities

4.76 The second major method we consider here is the manner in which the Plan Change proposes to alter the management of noisy activities themselves. Broadly this involves:

- the deletion of existing Rule ICr.42, which sets maximum noise generation limits at the boundary of a given (noise generating) site;
- insertion of a new Rule ICr.42A, which requires resource consent for any new 'noise generating activity' ("NGA");

- a requirement for new NGAs to prepare a noise management plan in accordance with guidelines set out in a new Appendix (AP13.1);
 - retention of the 75dB L_{AFmax} maximum noise generation level, but a change to the location from which this is measured (previously at *generator* site boundary, proposed to be at any external wall of any *receiving* residential unit or short term living accommodation; and
 - reliance upon the excessive and unreasonable noise provisions of the RMA (which we address separately).
- 4.77 As alluded to in our discussion under **Issue 1** above, Rule ICr.42 does not solely function as a noise management tool for the Inner City – its implementation also has the ability to affect the noise environment in adjoining zones, including the Residential Zone. We will focus on that **relationship with the Residential Zone in Issue 4 below**, but our focus here is on the appropriateness of the new methods solely *within* the context of the Inner City.

Summary of evidence

- 4.78 In his opening presentation to us, Mr Peterson outlined the Plan Change approach summarised above. He expressed the view that these amendments represent the noise generators’ “fair share” of responsibilities to Inner City noise management.
- 4.79 As with his recognition that the noise insulation requirements potentially carry an additional economic cost to parties constructing new bedrooms in the Inner City, he also noted that the new NGA approach could also have economic implications for new commercial premises that come under the definition of NGA. Specifically, he noted that the preparation of a noise management plan for NGAs *may* require specialist input, and/or physical modifications to a building or site to manage noise levels accordingly.
- 4.80 That said, Mr Peterson also advised that the definition for NGAs had been designed to allow “*quieter activities, or those that close earlier to open without the upfront need for a resource consent (but still subject to all other controls over noise produced)*”^[35].
- 4.81 Notwithstanding the likelihood of additional cost, and apart from adopting some refinements to the rule package as suggested by submitters, Mr Peterson considered^[36] that the approach outlined above best represented the sustainable management of noise effects in the Inner City.
- 4.82 Certain components of the various rules were tested more substantially by submitters, however. For example, **Mr Downing and Ms Trevena** supported the NGA definition in part, but queried the effectiveness of the **100W maximum output control** and the stipulated **hours of operation** under the definition. In respect of the latter, these submitters requested the night time trigger under which the definition would apply to be altered to 10pm (from 11pm on weekdays and 1am on weeknights).

^[35] s42A report, p.39

^[36] s42A report, p.39

- 4.83 Mr Peterson's response^[37] to these two points was as follows:
- irrespective of the wattage used or hours operating, activities will need to operate in a manner that does not generate unreasonable or excessive noise;
 - according to Mr Ballagh, '*... a sound system of less than 100W total would be very unlikely to generate complaints;*'
 - again, the output wattage and hours were put in place to allow smaller scale operations that might not be open later into the night, or have low level background music, to open without the need for resource consent – utilising a lower wattage output control could potentially dissuade smaller operators with less likelihood of generating nuisance from establishing in the City; and
 - there is a subtlety in the distinction between the existing 10pm night time noise trigger in the operative Plan (which is the point at which *permitted activity noise levels change*) and the proposed night time limit applied under the NGA definition (which is the point at which an activity *must get a resource consent*) – this ultimately goes back to the preceding point about minimising the need for activities to obtain resource consent where they are unlikely to create a noise nuisance.
- 4.84 **McDonald's Restaurants (NZ) Ltd** tabled a statement at the hearing, but did not appear in support of that statement. The Submitter expressed its continued opposition to PC16 as it related to the impact on one of its existing restaurants on the corner of Selwyn Place and Rutherford Street in the Inner City. In particular, the Submitter opposed the requirement for resource consent to be obtained for expansion to its facilities under proposed Rule ICr.42A.1 in the future given that the restaurant could (by definition) be classified as a NGA.
- 4.85 Mr Peterson clarified his view in the s42A report that "*it is not just noise from bars and nightclubs that can cause a noise problem in the Inner City.*"^[38] To this end, he did not support that an exemption be applied to unlicensed premises (such as McDonalds) that operate during night time hours.

'Mechanical' issues with the proposed methods

- 4.86 As with the noise insulation provisions, we tested the effectiveness of the rule mechanics relating to the noise generation provisions with Officers in questioning. Again, our examination of these aspects of PC16 included questions relating to drafting and the activity status of activities considered under these rules.
- 4.87 We also note here that the Nelson Marlborough District Health Board proposed a number of amendments to these proposed rule provisions in order to improve clarity and effectiveness. We record that in most cases, Mr Peterson adopted those recommendations and we are inclined to accept those alterations as appropriate.
- 4.88 The first of the **drafting** issues we identified related to the definition of NGAs. Specifically, we questioned whether the **third bullet point** under the definition (relating to the exclusion of temporary events) was more appropriate as a stand-

^[37] s42A report, p.38-39

^[38] s42A report, p.15, para 6.10

- alone clause, rather than a continuation of the opening sentence. Mr Peterson agreed that alternative drafting may improve the clarity of the definition.
- 4.89 Mr Peterson also noted that he unintentionally failed to **delete the reference to Rule ICr.42B** under both the definition and the associated explanation Clause ICr.42A.5 (this was an oversight, and it was his signalled intent in the s42A report that reference to this rule be deleted throughout the Plan Change).
- 4.90 A final drafting point that we discussed with Officers was in relation to Clause ICr.42.1, which reads (as amended in the s42A report): *“The sound level assessed 1 metre from any external wall of any Residential Unit or Short Term Living Accommodation Unit shall not exceed the following noise limit during the hours 10:00pm to 7:00am...”*
- 4.91 In our initial review of this clause, we considered that there may be some ambiguity for plan users and decision makers as a result of the “passive” wording of this rule. As drafted, we observed that the clause places the emphasis on the level of sound measured at a specific point, not on the activity (or activities) that generate that level of sound per se. Mr Peterson acknowledged our concern, but was comfortable with the drafting proposed.
- 4.92 We also tested the **mechanics** of Rule ICr.42A.1, and in particular:
- the effectiveness of clauses a) and b) (being the thresholds for increased patron capacity and increased hours of operation/noise generation, respectively) as consent triggers; and
 - the appropriateness of the fully discretionary default activity status for any NGA under Clause ICr.42A.3.
- 4.93 With respect to the former, we appreciated that Mr Peterson would benefit from some additional time to consider the effectiveness of those clauses. We considered it appropriate to direct that he respond to the issue after the adjournment (as recorded in Minute 2). His response was as follows:
- “[Clause] a)...relies on Council holding records showing what the permitted number of patrons is. This knowledge is held for any premises holding a liquor licence. The Certificate of Compliance which forms an integral part of the licence application specifies the number of people permitted to be within the area covered by the liquor licence. Anyone seeking to increase the number of patrons would need to seek a variation to their liquor licence through Council thereby providing knowledge for part a) of the definition. A second method of obtaining knowledge for part a) is through the building consent process and associated fire safety provisions of the Building Code. The fire report will either specify the maximum number of patrons, or a maximum ‘patron density’. This building consent / fire safety provisions method is applicable whether a ‘noise generating activity’ has a liquor licence or not.*
- Part b) ... relies on the liquor licence, or on a change in operating hours being brought to the attention of Council by either the ‘noise generating activity’ owner/operator or member of the public. A liquor licence specifies the hours for which that licence is held. However a venue may have operating hours which are less than those specified in the liquor licence. So the trigger works in two ways. The most certain is if an application is made*

*to extend the period for which a liquor licence is held. The second relies on an increase in hours being reported to Council. This may result in a decision having to be made by Council resource consents staff or enforcement contractors on what the operating hours of a 'noise generating activity' have been to then determine if they are being extended."*¹³⁹¹

- 4.94 In relation to the **activity status** issue, we again queried why fully Discretionary was the status preferred by Officers. This line of questioning was (in our view) more significant than our similar questions about the noise insulation provisions, given that:
- NGAs are expressly *not* permitted under Clause ICr.42A.1, and so the 'entry' status for any NGA would default to fully Discretionary; and
 - proposed Clause ICr.42A.3 also includes a condition that a noise management plan be provided in accordance with Appendix 13.1.
- 4.95 In this latter respect, we surmised there would be an additional default activity category that non-compliance with ICr.42A.3 would 'cascade' to where a noise management plan is not provided. However, we were (and still are) unclear if the intention was for this scenario to default to a Non-Complying activity (under Clause ICr.6), or if it would remain fully Discretionary as the default status is 'innominate' under the rule. The alteration we have made clarifies the activity status as a result of Rule ICr.42A.3 not being met is non-complying.
- 4.96 Mr Peterson signalled again that while his preference was for the fully Discretionary status to apply, he was not opposed to utilising restricted discretionary status. That said, he was uncertain as to whether or not we have scope to make a change to this outcome.

Our findings on the new noise generation approach

- 4.97 Notwithstanding the further consideration we give to the deletion of operative Rule ICr.42 under Issue 4 below, we accept that the new approach to NGAs is appropriate.
- 4.98 We agree with Mr Peterson and the submitters who support this approach to controlling NGAs that it represents a practical means of managing new noisy activities, and we note that it does so in a manner that alleviates several of the Council's concerns discussed above in relation to the noise contamination problems that have made the existing noise generator control rule (ICr.42) difficult to monitor and enforce. To this end, we are comfortable with the deletion of operative rule ICr.42 as it relates to Inner City sites.
- 4.99 We find that the above are an appropriate suite of methods to apply to noise generators to combine with those methods we have endorsed previously in relation to insulation requirements for receptors. In our collective view, these management techniques for generators will assist with the balanced approach to implementing the NRMP aims for a vibrant centre that also enables a reasonable level of amenity for those who chose to live in the Inner City.

¹³⁹¹Reporting Officer Response to Commissioner Minute 2, 9 May 2014, pp.1-2

4.100 That said, we do consider that some alterations are required to both the definition of NGA and the structure of rule ICr.42A as follows:

- As summarised above, there are some drafting issues which we have attended to in **Appendix 4**, including, for example the reformatting of bullet point 3 under the NGA definition.
- Ideally, we would have preferred that the drafting anomaly we identified above in relation to proposed Rule ICr.42 is addressed. We would prefer the activity itself to be the focus of the rule, rather than a passive effect of that activity. However, we recognise the similarity in this rule approach and that of Rule ICr.43, which is unchanged from the operative Plan. On that basis, we are comfortable with the wording as proposed in the s42A report.
- We also have modified the structure of Rule ICr.42A such that the 'entry' activity status for NGAs that provide a noise management plan in accordance with Appendix 13.1 is **Restricted Discretionary**. The rationale for adopting this activity status and the manner in which the matters for discretion (ICr.42A.3) have been derived is as per the rationale provided earlier in respect to Rule ICr.43A.3, albeit that the factors are slightly different for Rule ICr.42A.3.
- Failure to provide a sufficient management plan would then default to the **non-complying** status anticipated under Rule ICr.6; however, we consider it will improve the legibility and the effectiveness of the Plan if this default status is expressly stated under the Rule a la proposed Rule ICr.43.3.

4.101 For similar reasons to those we explained above in relation to the default activity status for insulation requirements, we find that a fully Discretionary status is not warranted. In our view, a Restricted Discretionary status will be equally *effective* and will carry additional *efficiencies* by providing for a more focussed resource consent process. We find that unlimited discretion is not necessary or desirable.

4.102 We consider that we have scope to make this change given the general opposition to the identification of NGAs as a discretionary activity set out in the submission from McDonalds Restaurants (NZ) Ltd. That said, we are not compelled to adopt the formal relief sought by that submitter to exempt its premises (or others like it) from the new NGA provisions. We consider that a new activity that falls within the definition of a NGA should require a resource consent to establish, as should existing activities that extend beyond the extent permitted by the conditions under Clause ICr.42A.1.

4.103 Notwithstanding this, we signal to this particular submitter our understanding that there are scenarios where the existing restaurant could still be extended as a permitted activity^[40] – for example, by limiting the increase in patronage by less than 10%, or by opting not to generate amplified sound from a sound system with greater than a 100W output between the hours specified under the definition (among other options). In either event, the submitter is not *prohibited* from pursuing a future extension to its existing facilities - it simply may require resource consent to do so depending on the proposal it advances.

^[40]subject to compliance with any other relevant NRMP rules

- 4.104 As a final matter on the rule approach, we note that we would have been compelled to make a similar change to the **activity status structure of proposed Rule ICr.42** (night time noise limits) that we did for ICr.42A; however, we do not consider that it is within our jurisdiction to do so, given the nature of submissions received.
- 4.105 Overall, with the above alterations (as set out in Appendix 4), we consider that the proposed amendments for the management of noise generating activities in the Inner City are appropriate as described above.

DECISION [D2]

- D2.1 Those submissions in support of Rule ICr.42A and associated methods (including the definition of Noise Generating Activity and proposed Appendix 13.1), and proposed Rule ICr.42 are **accepted in part** to the extent that they accord with the amended provisions set out in Appendix 4. Those submissions that have sought that the provisions be amended, are also **accepted in part** to the extent that they accord with the amended provisions in Appendix 4.
- D2.2 Those submissions that seek that those provisions be deleted are **rejected**.

The RMA's excessive & unreasonable noise provisions

- 4.106 As noted by several parties we heard from-, the RMA sets out general duties for all people to avoid generating *unreasonable* noise^[41], and enforcement powers to Councils for the control of *excessive* noise generation^[42]. These provisions apply irrespective of the approach adopted in PC16; however, a key consideration for us is to ensure that the provisions in PC16 do not directly contravene, or dilute the full force of, s16 and s327.
- 4.107 We note that Mr Peterson recommended changes to the notified Plan Change provisions that directly relate to these RMA provisions as a result of submissions received (such as that of **Mr Downing** and **Ms Trevena**). In particular, he acknowledged^[43] that proposed Rule ICr.42B was not required to implement s16 and s327, and potentially it had an opposite effect of creating confusion in the NRMP. He recommended that the rule be deleted, and we consider that recommendation is prudent.
- 4.108 That said, the Plan Change also proposes to improve certainty for Plan users by outlining (at Appendix 13.2) matters that may be taken account of where the Council is making a determination as to whether or not noise is unreasonable or excessive. This is a matter that we questioned both Mr Peterson and Mr Downing on at the hearing, and one which we also asked Mr Peterson to reflect on after the adjournment. In his response to our Second Minute, Mr Peterson added:

^[41]under s16, RMA

^[42]under s327, RMA

^[43] s42A report, p.56

“The appendix does not constrain the assessment process which is properly and solely carried out in terms of the RMA. Importantly AP13.2.1.i uses the term ‘generally’ and AP13.2.1.ii uses the term ‘may’ to ensure assessment is not limited or constrained. However Council’s ability to utilise the RMA for enforcement would not be changed if this provision did not exist in the Plan, but the explanation function that it provides to all parties involved would be lost. This could create a level of uncertainty for people who are concerned about the ‘subjective’ nature of noise assessment.”^[44]

4.109 Though **Mr Downing and Ms Trevena’s** submission originally opposed the inclusion of this appendix, in questioning, Mr Downing clarified that the appendix could be useful as long as it does not constrain the Council’s legislative discretion.

4.110 Generally, we agree with Mr Peterson that the appendix is a reference guide only, and is useful to assist plan users in understanding the more subjective considerations that may be applied when Council is making a determination on unreasonable or excessive noise. It is, in effect, a non-statutory method, included to improve the legibility of the Plan, and we support that outcome. Accordingly, there is no need for us to take this matter any further.

DECISION [D3]

D3.1 Those submissions in support of proposed Appendix 13.2 are **accepted** to the extent that they accord with the amended provisions set out in Appendix 4.

D3.2 Those submissions that oppose the appendix are **rejected**.

D3.3 Those submissions that seek the deletion of proposed Rule ICr.42B are **accepted**.

Overall finding on noise management within the Inner City

4.111 Broadly, we find that the combined approach to noise management in PC16 to be an improved methodology to achieve sustainable management of the Inner City, and to enable the continued vibrancy/vitality of the Inner City to be enhanced while providing reasonable amenity for Inner City residents, including because:

- it will be an effective enhancement to the NRMP methods to require future residential receptors to insulate bedrooms, thereby minimising potential reverse sensitivity effects on desirable non-residential activities and providing for the health and safety of residents;
- the proposed definition, rules and other methods proposed for NGAs will be an effective new method to manage future noisy activities in a reasonable and practicable manner; and
- both the receptor and generator methods will remain supported by the Council’s monitoring and enforcement roles, which have been elevated in significance, and further clarified, by the Plan Change.

^[44]Reporting Officer Response to Commissioner Minute 2, 9 May 2014, p.2

4.112 In our view, and for the reasons set out above, the amended version of the Plan Change included in Appendix 4 is the most appropriate means to implement the higher order objectives and policies for the Inner City.

Issue 3: Residential Activities vs Short Term Living Accommodation

4.113 The notified Plan Change applied the same insulation requirements to Short Term Living Accommodation (“**STLA**”) and Residential Activities. However, Mr Peterson subsequently recommended^[45] that STLA be exempt from those requirements as a result of submissions received (for example, from **Mr Purves**). In Mr Peterson’s view^[46], this was an appropriate response to recognise that:

- STLA is a commercial activity rather than a residential activity;
- the policy guidance that supports the insulation requirements is in relation to residential activities, not commercial activities;
- as a commercial activity, STLA is a potentially desirable contributor to the policy aims of vitality and vibrancy; and
- the long term impact of not meeting the PC16 insulation requirements would not be as significant as on residential activities.

4.114 We accept that rationale and consider his recommendation to remove STLA from Rule ICr.43A to be appropriate as a result. However, a matter of concern arose for us in relation to this amendment over the course of the hearing. Specifically, Mr Inglis brought this concern into sharp focus when he mooted a potential scenario whereby a developer could erect a building for use as an STLA only for future owners to convert those units to residential activities (potentially without any physical works or building consent required). We considered that such a scenario could potentially create a ‘loophole’ that developers could exploit to avoid the insulation requirements for residential activities under Rule ICr.43A.

4.115 We asked Mr Peterson for his view on the matter, while he recognised that this scenario could arise, he considered that there was a low likelihood that the loophole would actually be exploited to any significant extent.

4.116 While Mr Peterson’s opinion may ultimately be accurate, we prefer to avoid the uncertain effective implementation of Rule ICr.43A the loophole potentially creates. As it happens, we consider that this uncertainty will be removed by the proposed amendment we have made to ICr.43A to clarify that the term ‘construction’ under that rule also includes conversions of any non-residential room for use as a residential bedroom. For the same reasons we have set out above for adopting that change, we consider it is an appropriate resolution to the potential conflict that might have otherwise arisen here.

DECISION [D4]

^[45]§42A report, p. 14, para 6.5

^[46]§42A report, p. 14, para 6.5

- D4.1 Those submissions seeking that Short Term Living Accommodation be exempted from the insulation requirements set out under proposed Rule ICr.43A and Appendix 19.3 are **accepted in part** to the extent that they accord with the amended provisions set out in Appendix 4.
- D4.2 Those submissions that seek to apply those insulation requirements to Short Term Living Accommodation are **rejected**.

Issue 4: Management of noise at the IC Zone / Residential Zone interface

4.117 While we have generally accepted the Plan Change approach as it relates to the management of new noise generators and new sensitive receptors *within* the Inner City, we note that the management of Inner City noise generation also has implications on adjoining residential areas. To this end, we consider here whether or not PC16 sufficiently manages this interface.

Summary of evidence

4.118 This issue was a focal point for several submitters, including Mr Downing, Mr McGuire and Ms Noonan who made individual presentations to us on the matter. For example, **Mr Downing** made the following observations^[47] about the changes proposed to the Inner City / Residential Zone interface (in summary):

- while the proposed retention and updating of Rule ICr.43 (noise control applying from Residential Zoned sites) is supported, the deletion of operative Rule ICr.42 is not;
- there is a need to retain a noise rule measuring noise at the boundary of the noise maker, and the practical difficulties associated with the application of that rule should not be reason for removing it from the NRMP; and
- the rules apply not only in the City Centre, but also the Fringe sub-zone, which (in his view) has the greatest impact on the Residential Zone given its immediate proximity.

4.119 **Ms Noonan** shared Mr Downing's views on the Fringe, noting that it is generally closer to the Residential Zone than the City Centre. **Mr McGuire's** presentation was in general support of Mr Downing.

4.120 In his s42A report^[48], Mr Peterson considered that the interface issue would be sufficiently managed by the retention of the existing Rule ICr.43, in combination with the new noise management requirements for new NGAs. Though his report only noted this in relation to their *general* application, we assume that Mr Peterson would also consider that the excessive and unreasonable provisions of the RMA and proposed Rule ICr.42 – relating to the overall maximum night time noise generation impact on any residential activity – would also be applicable to the Inner City / Residential Zone interface. To this end, we understand that those other provisions work in tandem with ICr.43 to *collectively* manage Inner City noise generation effects on the adjoining Residential Zone under PC16.

^[47] Submissions on behalf of G Downing & S Trevena, 2 May 2014, pp.1-2, paras 2.1-2.5

^[48] s42A report, p.16, para 6.21

Testing the interface issue

- 4.121 As this issue emerged at the hearing, we quickly recognised Mr Downing's concern with the deletion of operative Rule ICr.42. Presently, and notwithstanding the enforcement difficulties associated with it, **the rule provides a *de facto* level of protection to adjoining residential areas.** Roughly speaking, residents such as Mr Downing could (in theory) rely on the maximum noise generation from any Inner City site being within the permitted (or consented) range, which would be attenuated further as distance between his residence and any generator increased^[49].
- 4.122 The Plan Change essentially **removes this potential 'protection'** to Mr Downing, as well as other residents in both the Residential and Inner City Zones, and this highlighted some fundamental questions for us – namely:
- is it necessary to retain ICr.42 in order to achieve amenity levels for residents in the Residential Zone anticipated by the NRMP; and
 - if not, is the plan change approach the most appropriate alternative to the status quo, or is some other permutation of what is proposed preferable?
- 4.123 Towards the close of the hearing, we tested this further evaluation of alternatives with Mr Peterson. During that exercise, we identified that it would benefit our deliberations if Mr Peterson was afforded some time to consider the matter further and come back to us in writing. To this end, we directed Mr Peterson (in Minute 2) to consider whether a 'hybrid' approach may be appropriate in light of Mr Downing's presentation.
- 4.124 Mr Peterson's response was comprehensive. Among other points, he noted^[50] that (in summary):
- despite the recognised enforcement issues with Rule ICr.42, combining aspects of operative Rule ICr.42 and proposed Rule ICr.42A could deliver some advantages, including **increased certainty** for all parties as to what noise levels can be produced as of right;
 - while a 'combined' approach would require a noise management plan, this could be an **unreasonable obligation** on these activities when they would already have an obligation to meet the specified noise limit (under ICr.42) anyway;
 - again, no *one* method proposed by PC16 operates in isolation – rather, they are all part of a package designed to achieve a balance of noise management and control, and a change to the application of one aspect of this package would mean the other aspects would need to be **considered for appropriateness**;

^[49] Both here and further below, we refer to separation distance as a means of noise attenuation. We accept that this will not be the *only* contributing factor to attenuation, and we also accept that the level of attenuation afforded by separation distance will not necessarily be uniform (on account of other environmental factors).

^[50] Reporting Officer Response to Commissioner Minute 2, 9 May 2014, pp. 5-8

- however, the methods noted above can be appropriately **split** in their application between the two main ‘sub-parts’ of the Inner City Zone - these being the Inner City Centre and the Inner City Fringe;
- the policy direction^[51] of the operative Plan does set an expectation that **different controls could exist in the Inner City Centre and the Inner City Fringe** as the character of these areas are different - this difference could point to noise controls in the Inner City Fringe being more stringent than those in the Inner City Centre.
- the policy direction also seeks a **vitality and vibrancy in the Inner City Centre**, and recognises that activities in the **Inner City Fringe could potentially have adverse effects on the adjacent Residential Zone**.

4.125 Within this broad context, Mr Peterson specifically evaluated two scenarios that he considered *may* be appropriate alternatives to the Plan Change approach, whereby the City Centre and City Fringe are managed differently. These are reproduced in Table 1 below.

Table 1: Comparison of alternatives – Inner City / Residential interface

Methods	Alternative 1		Alternative 2	
	Centre	Fringe	Centre	Fringe
Noise Generating Activity Consent required?	Yes	No	Yes	Yes*
s16/s327 RMA as primary means of noise assessment / enforcement?	Yes	No	Yes	No
Operative noise rule ICr.42 as primary means of noise assessment / enforcement?	No	Yes	No	Yes

* with amended hours applied under the definition for NGA

4.126 In relation to **Alternative 1**, Mr Peterson^[52] made the following evaluative comments (in summary):

- City Centre noise would be managed proactively through the ‘upfront’ requirement to prepare a noise management plan;
- use of the ‘objective’ noise measurement may be appropriate in the Fringe, where contamination is *less* prevalent than in the Centre – however, the shortcomings of the implementation of Rule ICr.42 may continue to eventuate and contamination could therefore become *more* prominent in the Fringe (thereby undermining the perceived protection ICr.42 provides); and
- additionally, as the Fringe is *generally* closer than the City Centre is to the Residential Zone, the potential restriction on activities in the Fringe established by Rule ICr.43 is more prominent – accordingly, there is arguably

^[51] In particular, Mr Peterson drew on Inner City Objectives 4 & 5 and associated policies,

^[52] Reporting Officer Response to Commissioner Minute 2, 9 May 2014, p.6

a corresponding lesser need (relative to the City Centre) for ICr.42 to apply *also*.

4.127 Similarly, Mr Peterson^[53] evaluated **Alternative 2** as follows (in summary):

- changing^[54] the operational hours under the NGA definition to between 10:00pm and 7:00am on any day in the Fringe only would have the effect of requiring more NGAs to enter into the resource consent process in the Fringe than is the case in the City Centre - this approach could ultimately be appropriate due to the proximity of the Fringe to the Residential Zone;
- it also has the *potential* to help manage any aggregation of NGAs in one area creating an area of noise contamination and additional noise effects;

Our findings on the interface issue

4.128 In returning to the first fundamental question we highlighted above, *is it necessary that Rule ICr.42 be retained?* – the answer is not a straightforward one.

4.129 There is clearly a level of protection afforded to residents in the Residential Zone by existing Rule ICr.42. However, in the City Centre (at least), the effectiveness of this rule has been undermined by its very nature to the extent that noise contamination has made the rule neigh on unenforceable. During the time the rule has been in effect, activities have been established under the supposition that they meet the Plan's permitted activity requirements, though (based on the evidence before us) the Council's ability to ascertain whether that supposition is correct cannot be confirmed easily, if at all.

4.130 Rightly or wrongly, this is the existing situation as described to us, and whilst we cannot retrospectively manage it, we are not inclined to allow any further exacerbation of this outcome. **As far as the City Centre is concerned**, we consider that the NGA approach will be a more effective, practical and (importantly) enforceable means of managing future noisy activities than the rule regime that has allowed this situation to eventuate.

4.131 That said, the evidence before us also suggests that the **contamination issues are not as prolific in the Fringe** currently, and so the enforcement of ICr.42 is perhaps not difficult to the point of impossibility there. In that respect, we see that application of the rule in the Fringe does not have the same practical limitation that it does in the City Centre – but the question remains, is it *needed*?

4.132 This ultimately comes back to the relationship between operative ICr.42 and ICr.43 as highlighted by Mr Peterson, and the continuum of protection these rules collectively afford to the Residential Zone currently. Under the operative Plan, the rule that is the more limiting of the two (and thereby affords greater benefit to the Residential Zone) will vary depending on how far from the Residential Zone a noisy activity is located (among other factors). Essentially, the closer to the Residential Zone a noisy activity is located, the more likely that Rule ICr.42 will be the more 'protective' method.

^[53] Reporting Officer Response to Commissioner Minute 2, 9 May 2014, p.6

^[54] the notified definition proposed the hours of 11:00pm and 7:00am Sunday to Thursday nights, and for the nights of Friday, Saturday, Christmas Eve and New Year's Eve 1:00am and 7:00am

- 4.133 Recalling Mr Ballagh’s technical view that the current L10 noise limits set out under operative Rule ICr.42 are unreasonably low by current standards, we record here that, *if* we were inclined to retain ICr.42 for the Fringe, it would be amended to allow for a more generous level of noise to be produced than the status quo. However, this is an academic exercise as we do not prefer the retention of operative Rule ICr.42.
- 4.134 Ultimately, we agree with Mr Peterson that **ICr.43 is the key rule to retain** as it is the most effective ‘preserver’ of reasonable amenity for residents in the Residential Zone. Retaining ICr.42 in the Fringe *may* further assist this outcome as a ‘belts and braces’ method – but ultimately, we consider such an approach would (at least) have the undesired effect of penalising activities in the Fringe which are further from the Residential Zone and are otherwise able to comply with ICr.43. In short, we think ICr.43 is ‘enough.’
- 4.135 Moreover, we amplify Mr Peterson’s point that the NGA approach will bolster the NRMP’s ability to effectively manage the Inner City / Residential Zone interface. Future noisy activities will have to proactively manage noise effects on Residential Zones, and those NGAs will continue to be subject to *proposed* Rules ICr.42 and 43, as well as the excessive and unreasonable noise provisions in the Act. On balance, we find this rule ‘package’ is the most efficient and effective for implementing the relevant Inner City and Residential Zone policies and objectives.
- 4.136 That said – and this relates to our second fundamental question posed above – we agree with Mr Downing that the hours stipulated under the definition for NGAs should be refined as they apply to the Fringe. We consider it is appropriate that activities that have the potential to generate high levels of night time noise in proximity to the Residential Zone should have to obtain consent to do so, and 10pm is a reasonable threshold at which that requirement should apply.
- 4.137 We acknowledge, as Mr Peterson pointed out, the consequence that this may have of increasing the number of activities in the Fringe that require resource consent relative to the notified provisions; and in some instances, those activities, such as late night cafes, may ultimately be less likely to disturb residential amenity values. This is not unreasonable in our view, and we consider it is consistent with the view expressed by Mr Peterson in his response to our second Minute that the Plan’s policy framework steers us towards more stringent noise controls for the Fringe than the City Centre. To that end, we find that **Mr Downing’s suggested alteration to the hours set out under the definition of NGAs should be accepted** as they pertain to the Fringe.

DECISION [D5]

- D5.1 Those submissions in support of proposed Rule ICr.43 are **accepted** to the extent that they accord with the amended provisions set out in Appendix 4.
- D5.2 Those submissions seeking that operative Rule ICr.42 be retained are **rejected**.

D5.3 Those submissions seeking to amend the definition of Noise Generating activities to extend the hours of operation under which consent will be required are **accepted in part** to the extent that they accord with the amended provisions set out in Appendix 4.

Issue 5: Low frequency noise

Issue Identification

- 4.138 This final *specific* issue we address before moving on to our ‘wrap-up’ of outstanding general matters relates specifically to low frequency noise. As noted above, the Hunt Report identified atypical periods of low frequency sounds from amplified music in the Inner City, with potential nuisance consequences for residences.
- 4.139 Several submitters picked up on this finding, seeking that specific controls be applied on the generation of low frequency noise over and above broadband frequencies. We learned over the course of the hearing that such a control was originally considered by the Council, but ultimately abandoned prior to the notification of PC16.
- 4.140 This section of the report evaluates whether or not such a control should be included in the Plan Change.

Summary of evidence

- 4.141 In addition to selected excerpts of the Hunt Report, **Mr Downing** presented us with a copy of the draft low frequency rule consulted on by the Council before PC16 was finalised and notified. As drafted, the clause was a subset of proposed Rule ICr.42, which also includes the 75dB maximum noise control. In effect, the draft provision retained the 75dB L_{AFmax} condition for full frequency noise, but also applied a 70dB L_{10} threshold for low frequency noise generated in the 63Hz Octave Band.
- 4.142 Through questioning, we learned that Mr Downing had no knowledge as to why the low frequency provision was removed from the draft Plan Change prior to notification. In his review of relevant PC16 material, he was unable to find an explanation for this shift. His preference was that the low frequency control be included in the Plan Change.
- 4.143 In the s42A report^[55], **Mr Peterson** advised that the basis for disregarding the use of a low frequency-specific noise rule was based on advice from Mr Ballagh that measurement of such a rule would be potentially subject to noise contamination problems as per other frequencies. He further noted that the sound levels stipulated by proposed Rule ICr.43 “cover all frequencies audible to the human ear, including low frequencies, so this is still specifically controlled in this circumstance.”

^[55] s42A report, p. 16, para 6.19

Testing the low frequency issue

4.144 As with the previous interface issue we discussed above, we obtained further information from Officers around the issue of low frequency noise during the adjournment. In our 3rd Minute, we sought that Mr Ballagh provide us with additional technical assistance on the matter, supported by Mr Peterson in a planning policy sense.

4.145 In his response^[56], Mr Ballagh cited several reasons why he believed it was preferable *not* to include a specific low frequency control. In summary, these included:

- the notified approach **would not require specialist equipment or specialist technician involvement** to measure low frequency noise;
- **contamination factors** are less of an issue than with broadband noise, but can interfere with a technician's ability to obtain a sufficiently reliable reading;
- a fixed numerical limit may **excessively constrain certain activities**, depending on their distance from the Residential Boundary (similar to the interface issue we canvassed above);
- **determining direction of sound** from low frequencies can be particularly **difficult**, thereby complicating the determination of the source(s);
- it is better to use *either* a measurement approach or a subjective one, but not to mix them – Mr Ballagh's experience (supported by Mr Askew) further led him to prefer the subjective approach given its practicality, and its ability to quickly remedy excessive noise generation on a case-by-case basis; and
- if we were of a mind to include a low frequency control, Mr Ballagh recommended that the limit be as per the draft rule (70dB L₁₀) as measured from residential receivers.

4.146 **Mr Peterson** also responded to our request for him to evaluate why the inclusion of a low frequency rule would not improve the ability of the NRMP to implement its objectives and policies relating to residential amenity. In that response^[57], he advised the use of a low frequency control in the Plan would *not* improve the NRMP's ability to implement its objectives and policies as the method is subject to the same key difficulty of contamination that this proposed Plan Change seeks to resolve by removing the current Inner City Noise rule ICr.42. This factor, in his view, *reduces* the effectiveness of this method particularly when the recommended^[58] application position of any low frequency noise standard is considered, and given the associated difficulties this creates in obtaining reliable measurement data.

^[56] Letter from K Ballagh to R Peterson, 19 May 2014, pp.1-2

^[57] Reporting Officer Response to Commissioner Minute 3, 21 May 2014, p.2

^[58] We understand this to be the recommended position of Mr Ballagh, being measured from the outside wall of a residential activity

Our finding on low frequency noise

- 4.147 On balance, we agree with the Council that a specific low frequency control is neither necessary, nor desirable. We have relied upon the finding of the Hunt Report that low frequency noise is an existing issue in the Inner City; however, we are not convinced that a specific control is needed to address that problem, over-and-above what PC16 already proposes.
- 4.148 We highlight Mr Peterson's general point that – **for the Residential Zone interface** at least – the 53 dB L_{Aeq} daytime and 43 dB L_{Aeq} night time limits set out under proposed Rule ICr.43 will capture **all** frequency ranges, including low frequency. If we were to adopt Mr Ballagh's recommended hypothetical low frequency rule of 70dB L_{10} , we understand^[59] that this would essentially equate to an adjusted level of 44dBA if the control is 'A' weighted for the human ear. As far as the Residential Zone is concerned, we consider that the protection afforded to residents by ICr.43 is, therefore, sufficient to manage low frequency noise (again, in combination with the other methods proposed by the Plan Change). In our view, introduction of a separate low frequency control could be (in part) redundant, and at times (for example, during daytime) overly restrictive compared to Rule ICr.43.
- 4.149 That said, the draft low frequency rule is not specific to reception within the Residential Zone, and would apply to **all residential activities in the Inner City Zone** as well – including those immediately adjacent to existing noisy activities. Application of the draft control at the boundary of those Inner City residences could (in our view) unreasonably constrain some night time activities, thereby undermining the Policy outcome for the Inner City to recognise the primacy of non-residential activities in order to achieve vibrancy and vitality there.
- 4.150 In short, we consider that non-residential activities in the Inner City should be able to generate low frequency noise for entertainment (or other) purposes, so long as that noise is not excessive or unreasonable for residents of the Inner City. Council's enforcement Officers can 'police' this outcome in accordance with the powers afforded them under the Act for *both* existing and future NGAs. Again, this will be bolstered by the requirement for future NGAs to operate in accordance with an approved noise management plan and for new residential activities to meet insulation requirements.
- 4.151 In light of the above, we consider that PC16 will not be improved through the introduction of a specific low frequency noise control.
- 4.152 Given the findings of the Hunt Report, and the verbal feedback we received from Mr Ballagh and Mr Askew about the special characteristics of low frequency noise, we do consider it is appropriate for this matter to be specifically identified as an assessment matter for future consent applications for NGAs and for activities which are not permitted by proposed Rule ICr.43. We have included new assessment criteria to achieve this end in Appendix 4.

DECISION [D6]

^[59] This is spelled out in Appendix 3 to Mr Downing's submissions (p.8-6 of the draft plan change)

D6.1 Those submissions seeking to introduce a specific low frequency noise control are **accepted in part** to the extent that they accord with the amended provisions set out in Appendix 4 (including amendments to assessment criteria).

Issue 6: Other matters

Issue Identification

4.153 This final issue section discusses the remainder of the matters raised in submissions. Those sub-issues include:

- general support / opposition;
- changes to policy explanations;
- other methods; and
- notification issues; and

4.154 Starting with the first of these matters, there were submitters both in **general support** of, and **opposition** to, the Plan Change. In respect of the latter, parties such as **Mr Inglis** and **Mr Downing** distilled their partial opposition to the proposal into more identifiable issues, which we have addressed above and/or below. For parties that have signalled general support for the proposal – including **Port Nelson Limited** and the **Port Nelson Liaison Committee** – we have essentially considered their support as aligned with the view expressed by the Council.

4.155 In this way, we have elected to evaluate matters of general support or opposition via analysis of the component parts of potential effects. We do not consider it is necessary for us to elaborate any further on the general submissions given our evaluation approach.

4.156 As we have noted above, the Plan Change proposed several **amendments to the explanation and reasons to existing NRMP Policies**. Most submissions received in relation to these amendments were supportive; however, Mr Peterson did recommend some refinements to the notified provisions in light of submissions from the **Nelson Marlborough District Health Board**.

4.157 We have reviewed both the notified amendments to the explanations and the further refinements proposed by Mr Peterson and consider they will assist in the future interpretation and implementation of the relevant policies. In particular, we note the recommended change to explanatory Clause IC4.2.ii (amenity levels in the Fringe), which notes that the Fringe is often located adjacent to more sensitive activities in residential areas. Again, this change gives a policy steer toward the amendment we have made to the definition of NGAs in relation to the hours where consent would be triggered in the Fringe Zone.

4.158 In light of this, the general agreement between the parties as to the appropriateness of the amendments, and our own satisfaction that the amendments are efficient and effective, we have adopted the amendments as proposed in the s42A report.

- 4.159 We note that one submitter – **Mr Mayes** – suggested an **alternative internal noise management solution** for noisy activities. In this regard, we further note Mr Peterson’s point^[60] that such a method *may* form part of a future noise management plan for a NGA, and therefore we record for Mr Mayes’ benefit that the plan change does not preclude the use of such an option. For the practical reasons cited by Mr Ballagh, however – including the calibration of internal control systems, variation in building condition and construction, and proximity to residential units – we are of the view that these measures should not be *required* by the plan change.
- 4.160 A final point that we address here relates to **notification procedures for future resource consents**. This was a matter of particular concern for both **Ms Noonan** and **Mr Male** (for Grey Power). Essentially, these parties were interested in being consulted with and/or notified where new noisy activities are proposed in the future which may affect them.
- 4.161 We explored this with the submitters and Mr Peterson through questions, and Mr Peterson clarified that notification (neither public nor limited) is not expressly precluded in the proposed Plan Change approach. He reminded us that the Plan Change enables decision-makers to make a determination under s95 of the Act as to whether or not future activities that require resource consent under this rule regime should be publicly notified or limited notified.
- 4.162 Although not overtly stated in her submission, at the hearing Ms Noonan expressed some unease to us about that discretionary judgement, and preferred that the NRMP provides stronger guidance on notification procedures.
- 4.163 In this case, we do not believe there is a particularly strong case to be made for notification to be a *requirement* of future applications for resource consent under the proposed PC16 rules. We are comfortable with the combined guidance to decision makers set out in the Act, and with the ability of decision-makers to make a judgement based on the information before them for a given application.
- 4.164 If the effects of a new NGA on the wider environment are significant, we expect that proposal will be notified – if a new residential building seeks resource consent under Rule ICr.43A to avoid insulation requirements, and a NGA is located adjacent to that activity, that NGA may well be limited notified if the effects of the residential proposal are more than minor. Again, this level of judgement is made on a daily basis by decision-makers throughout New Zealand, and we do not consider any variation to the notification procedures established by s95 is required by PC16.

DECISION [D7]

- D7.1 Those submissions in general support to the plan change are **accepted in part** to the extent that they accord with the amended provisions set out in Appendix 4). Those submissions in general opposition are **rejected**.

^[60] s42A report, p.64

- D7.2 Those submissions seeking to amend proposed alterations to policy explanations are **accepted in part** to the extent that they accord with the amended provisions set out in Appendix 4.
- D7.3 Those submissions seeking to introduce additional methods for the management of noise in the Inner City are **accepted in part** to the extent that they accord with the evaluation above.
- D7.4 Those submissions seeking amendment to the notification criteria for activities considered under the proposed rules to PC16 are **rejected**.

5.0 STATUTORY CONSIDERATIONS

Assessment

- 5.1 In its *Long Bay* decision^[61], the Environment Court set out a summary framework for the matters to be evaluated in respect to a proposed Plan Change. For completeness, we recite that framework here and discuss the extent to which PC16 accords with the individual framework elements.

A district plan (change) should be designed to accord with, and assist the territorial authority to carry out its functions so as to achieve the purpose of the Act.

- 5.2 PC16 involves the establishment of new methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of Nelson City (and in particular the area comprising, and in the vicinity of, the Inner City Zone). Further, the Plan Change aims to control:

- the emission of noise and the mitigation of the effects of noise; and
- the actual or potential effects of the use, development, or protection of land.

- 5.3 Accordingly, we find that the PC16 is generally designed to accord with and assist the Council to carry out its s31 functions.

When preparing its district plan (change) the territorial authority must give effect to any national policy statement (NPS) or New Zealand Coastal Policy Statement (NZCPS).

- 5.4 No NPS, nor the NZCPS, are relevant to the Plan Change.

When preparing its district plan (change) the territorial authority shall: a) have regard to any proposed regional policy statement; and b) give effect to any regional policy statement.

- 5.5 The Nelson RPS became operative in March 1997. The Objective of the RPS that is of most relevance to this proposal is Objective DA2.2, which seeks to achieve “an environment in which unreasonable noise is avoided, remedied or mitigated.” There are three policies that implement this Objective, including the following two which are particularly relevant to PC16:

DA2.3.1

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

^[61] Decision No. A078/2008, pp.29-31. We note that this judgment has since been reviewed and updated to account for the 2009 RMA Amendment Act Changes in *Colonial Vineyard Ltd v Marlborough District Council* (ENV-2012-CHC-108, [2014] NZEnvC 55) – however, the alterations arising from that review are of such moment that we need consider them here.

DA2.3.3

To acknowledge that there are noise sensitive activities which may not be compatible with existing facilities which are sources of noise.

- 5.6 We consider that the Plan Change was been prepared in a manner that will continue to enable the NRMP to give effect to the RPS, including this objective and its supporting policies. The balanced approach proposed by PC16 implements the above aims of both providing for reasonable amenity for residents, and recognising that inner city non-residential activities may be adversely affected by future sensitive uses.

In relation to regional plans: a) the district plan (change) must not be inconsistent with a regional plan for any matter specified in section 30(1) [or a water conservation order]; and b) must have regard to any proposed regional plan on any matter of regional significance etc.

- 5.7 In our evaluation, the Plan Change is not inconsistent with any other regional plan. There currently are no proposed regional plans that need to be considered.

When preparing its district plan (change) the territorial authority must also: a) have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations, and to consistency with plans and proposed plans of adjacent territorial local authorities; b) take into account any relevant planning document recognised by an iwi authority; and c) not have regard to trade competition

- 5.8 The matters of most relevance include *Heart of Nelson Central City Strategy (2009)* and the Council Long Term Community Plan, and we consider that PC16 has had sufficient regard to those documents.

The district plan (change) must be prepared in accordance with any regulation

- 5.9 No regulations are relevant to PC16.

The formal requirement that a district plan (change) must also state its objectives, policies and rules (if any) and may state other matters.

- 5.10 This requirement is met in respect of PC16. The Plan Change includes new rules and other methods, and relies on the settled objectives and policies of the NRMP.

Each proposed objective in a District Plan (change) is to be evaluated in terms of the extent to which it is the most appropriate way to achieve the purpose of the Act.

- 5.11 The Plan Change does not include any new objectives. The settled objectives of the operative NRMP have already been deemed to be the most appropriate way to achieve the purpose of the Act through prior First Schedule processes.

The policies are to implement the objectives, and the rules are to implement the policies.

- 5.12 We consider that the proposed rules (as amended in Appendix 4) implement the aim of the operative policies to provide for vibrant and vital centre that also enables a reasonable level of amenity for those who chose to live in, or nearby to, the Inner City. No new policies are proposed by PC16.

Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account: a) the benefits and costs of the proposed policies and methods (including rules); and b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

- 5.13 This requirement has underpinned our evaluation of issues in Section 4 above. We have signalled throughout that evaluation where we have identified and weighed the costs and benefits of options considered. Our evaluation represents a continuation of the original evaluation of these matters contained in the s32 report that accompanied the notified Plan Change, with the broadening of issues and options introduced through the various submissions received.
- 5.14 We have concluded that the most efficient and effective means to achieve the settled objectives and policies of the NRMP is through the adoption of PC16 with modifications as set out in Appendix 4.

In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.

- 5.15 This is an additional consideration which underpinned our evaluation under section 4 above. As per our conclusion in relation to the efficiency and effectiveness of the proposed methods, we have concluded that the proposed Plan Change as amended in Appendix 4, in tandem with the other applicable rules in the operative NRMP, will appropriately manage any actual and potential adverse effects generated by activities within the area subject to the Plan Change (including effects on neighbouring areas).

Finally, territorial authorities may be required to comply with other statutes

- 5.16 No other statutes are relevant in this case.

Summary

- 5.17 In summary, and based on our discussion of Issues 1-6 in Section 4 of this report, we conclude that when assessed against the relevant statutory framework and the individual elements produced under that framework, PC16 accords well with all of those matters. In particular:
- the Plan Change has given effect to the RPS;

- PC16 as amended in Appendix 4, in tandem with the other applicable rules in the NRMP, will appropriately manage any actual and potential adverse effects of relevance; and
- the most efficient and effective means to achieve the settled objectives and policies of the NRMP (and in turn, the sustainable management purpose of the Act) is through the adoption of the proposed Plan Change with modifications as set out in Appendix 4.

6.0 OVERALL CONCLUSION & RECOMMENDATION

Overall Conclusion

- 6.1 In terms of the fundamental questions we signalled in the introduction to Section 4, and based on the assessment of key issues that followed, we conclude that:
- intervention is required in order to improve the NRMP as it relates to the management of noise in the Inner City; and
 - the proposed rule framework as amended in Appendix 4 is the most appropriate mechanism to deliver on the improvements sought.

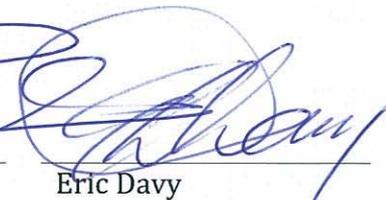
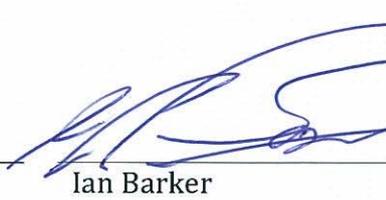
Decision

- 6.2 Based on our consideration of all the material before us, including the section 42A report from the Council advisors, submissions, further submissions, evidence presented at the hearing and before the closing, and following consideration of the requirements of Section 32 and other relevant statutory matters, we make the following decision under delegated authority from the Nelson City Council:
- (a) **The Plan Change is accepted as amended in Appendix 4** and all submissions on the Plan Change are accepted or rejected to the extent set out above (and summarised in Appendix 3); and
 - (b) Pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991, the **Council is directed to give notice of this decision on submissions** to Plan Change 16 as soon as practicable.

DATED AT WELLINGTON & NELSON THIS 17th DAY OF JUNE 2014



David McMahon
Commissioner (Chair)



Ian Barker
Nelson City Councillor

Eric Davy
Nelson City Councillor

APPENDIX 1
s37 Waiver – Submission 15

27 February 2014

Memo To: Plan Change 16 – Inner City Noise Hearings Commissioners
Memo From: Reuben Peterson
Planning Adviser
Subject: Waiver of Time for Late Submission – Plan Change 16

Recommendation

- 1.1. The proposed Plan Change was publicly notified on 7 September 2013, with submissions closing on 5pm 4 October 2013. Fifteen submissions were received.
- 1.2. Submission 15, C Sharp Family Trust, was received after the closing time/date for submissions. The date of receipt by Council was 9 October 2013 or 3 working days late.
- 1.3. A summary of decisions requested by submitters was prepared and then notified on 26 October 2013. The closing date for further submissions was 5pm 11 November 2013. Further submissions were received from two parties.
- 1.4. This late submission was received prior to the preparation and notification of the Summary of Decisions Requested and therefore all parties had the ability to lodge a further submission on the late submission content. In my view this caused no delay or disadvantage to any party. The content of the submission itself is similar to other submissions that had been received within time – namely Submitter 6, Charles and Rosemary Shaw.
- 1.5. I recommend to the Commissioners that a waiver of time is granted under Section 37 1 (b) of the RMA 1991 in relation to the late submission received from C Sharp Family Trust. A waiver will formally allow this submission to form part of the upcoming hearing process.

Decision

I accept that the late submission won't raise any new material and that no person will be prejudiced by its acceptance.

I therefore direct that the submission be received in terms of Section 37 1 (b) of the RMA 1991.



DJ McMahon
Independent Commissioner (Chair)

28 February 2014

APPENDIX 2
Minutes issued by Commissioners

NELSON CITY COUNCIL
PROPOSED PLAN CHANGE 16
INNER CITY NOISE
MINUTE 1 OF COMMISSIONER

Introduction

1. I have been appointed by the Nelson City Council ("**NCC**" or "**the Council**") as Chair of the Hearing Panel to hear and determine proposed Plan Change 16, Inner City Noise ("**PC16**" or "**the plan change**"), and the submissions lodged to it. The general function of this minute is, on behalf of my fellow Panel members, to set out some preliminary matters in preparation for the hearing, which is tentatively set down for early May 2014. In particular, my objective is to provide for a smooth and easily navigable pre-hearing and hearing process for all parties. This requires some action from the parties in readiness for the formal proceedings, which I will now outline in detail.
2. In this respect, this Minute covers the following matters:
 - (a) Hearing Date
 - (b) Evidence Preparation and Circulation
 - (c) Hearing Process and Presentations
 - (d) Site and Locality Visits
3. It is possible that there will be further instructions issued by way of Minute before and after the hearing.

Hearing Date

4. I am advised by the Council that the hearing is likely to commence on Friday 2 May 2014 run to the end of business on that day. I am also advised that the Council will officially write to all submitters shortly with final confirmation of the exact hearing date and will invite submitters to book a timeslot for the presentation of their submissions where attendance at the hearing has been sought.

Evidence Preparation and Circulation

5. I anticipate that some parties will be calling expert witnesses in support of their submissions, while others will opt to 'go it alone.' In either case, I request that all parties provide the NCC Policy and Planning Administrator - Gayle Brown - with a list of all individuals that will be presenting evidence on their behalf by 14 March 2014. This instruction applies even if a submitter is representing his/herself without any additional representation. This will assist in scheduling the proceedings – both in terms of indicating the likely duration of the hearing, and in terms of understanding roughly how long each party will require.

6. While I am on the matter of evidence, I will be requiring pre-circulation of:
 - All evidence of submitters wishing to attend the hearing; and
 - Supplementary written statements from those submitters not wishing to attend the hearing but wanting to table material in support of their submissions.
7. To assist with this I have also directed that the Council s42A planning report on the plan change and the submissions to it is circulated to all parties a minimum of 15 working days prior to the hearing.
8. The proposed timetable for circulation is as follows:

Date (2014)	Action
14 March	All Submitters attending the hearing – to provide a list of evidence authors / witnesses to be called in support of their submission(s) to the NCC (plus any site and localities that they wish me to visit prior to the hearing). In addition, any party wishing to take part in pre-hearing meeting(s) and/or expert conferencing should notify NCC by this date.
7 April	NCC – s42A report to be circulated to the parties
23 April	All Submitters wishing to attend the hearing and present evidence/or provide supplementary written statements in support of their submissions – to lodge with NCC all written evidence/statements in support of their submission(s)
2 May	Likely date for Hearing commencement

9. The above timetable, in my view, allows ample time for reports and evidence to be prepared. Notwithstanding this, where any submitter (or their representative) is unable to make the above timetable, other arrangements can be made. It is my strong preference, however, that every effort be made to follow the prescribed schedule.
10. For completeness, I am happy to hear any legal submissions during the proceedings themselves, and there is no need for these to be pre-circulated.
11. I understand that Council will collate all pre-circulated evidence and make it available on the Council website. Further instructions about accessing this information (including where hard copies of the evidence may be viewed) will be conveyed by the Council following receipt of all materials.

Hearing Process/Presentations

12. As evidence is being distributed to all parties prior to the hearing, and will be read by the Hearing Panel prior to the hearing commencing, it will not be necessary for a verbatim oral presentation of the written evidence at the proceedings. I am happy for submitters (and their witnesses) to speak to a summary of their evidence, which could either be:
 - a separate tabled statement that condenses the key points from evidence (i.e. a couple of pages); or

- via highlighting particular points within their evidence during their presentation.
13. With this approach in place, I envisage presentations will be in the ballpark of 15 minutes per speaker, though this is not a fixed time requirement. My intent in signalling this is less a stipulation that speakers rigidly adhere to an imposed time limit, and more a *guide* for those wondering how long their presentation is likely to last.
14. I want to be clear that submitters and officers will be given reasonable time to adequately present their views. The main reason in favour of pre-circulation is to minimise the time required for all parties to be present at the hearing itself. This expedited process will not, however, be at the expense of any party's ability to fully participate in the process.

Site and Locality Visits

15. I am familiar with the site and general locality affected by the Plan Change.
16. I expect that subsequent and more detailed site and locality visits may be necessary following the presentations at the hearing from the Council and submitters. Also, if any particular party has a desire for the Panel to visit particular sites/localities associated with the plan change then they should advise Gayle Brown of that as soon as practicable. We would suggest that this could be done at the same time that they respond to the Council regarding the list of individuals that will be presenting evidence to be called in support of their submission(s) (i.e. by 14 March).

Next Steps

17. As indicated by the proposed timetable above, I now invite all parties to provide a list of evidence authors / witnesses appearing on their behalf before 14 March.
18. If any party wishes to seek further clarification around the hearing process or the proposed timetable, please contact Ms Brown in the first instance. Her contact details

Gayle Brown – Policy and Planning Administrator
ddi: 03 5460257
Gayle.brown@ncc.govt.nz

DATED this 24th day of February 2014



DJ McMahon
Independent Commissioner
Chair of Hearing Panel

NELSON CITY COUNCIL
PROPOSED PLAN CHANGE 16
INNER CITY NOISE

MINUTE 2 OF COMMISSIONERS

Introduction

1. This panel – comprising Councillor Ian Barker, Councillor Eric Davy and myself - has been appointed by the Nelson City Council (**NCC** or **the Council**) to make a decision on Proposed Plan Change 16 (**PC16**) and the submissions to it. The hearing of submissions on PC16 commenced at 10.30am on Friday 2 May 2014 and was adjourned later that afternoon.
2. At the time of the adjournment we had heard from Council Officers (initially in a factual capacity and subsequently in an evaluative sense), and from several submitters to the proposal. We signalled before the adjournment that we would leave the proceedings open to receive further information from the Council and to undertake additional site visits (which we completed late pm on 2 May / early am on 3 May).
3. The purpose of this minute is to set out an inventory of the information we have requested of the Council to assist our deliberations. We also wish to give all parties a preliminary indication as to the steps from here.
4. It is possible that there will be further correspondence issued by us – either by way of additional minute(s) or through Council Officers.

Further information sought

5. Though we verbally confirmed our information requirements to Council staff at the close of proceedings, we wanted to formalise an inventory of that information here. We have done so both to assist Officers and to provide clarity for all parties who were not present when the information was sought.
6. Specifically, we have sought the following:
 - a) a copy of an **email from Mr Peter Mayes** (Submission 3) to Mr Peterson, referred to by Mr Peterson in his opening factual presentation;
 - b) a copy of the **monitoring report undertaken by Malcolm Hunt Associates (July 2009)**, referred to (indirectly) in the s42A report, and (directly) during questioning of Mr Peterson;
 - c) **data requested of Mr Askew** in respect of enforcement action, abatement notices, and complaints relating to inner city noise since 2006 – this is to include (as a minimum) detailed descriptions of the nature of the complaint/action, parties involved and spatial data (mapped if possible) about the complaint/action;

- d) the most recent **s35(RMA) report** produced by NCC (as referred to by Mr Heale during questioning);
- e) clarification in respect of **the application of clauses (a) & (b) under proposed Rule ICr.42A.1**;
- f) further **evaluative feedback from Officers** in respect of:
 - i. proposed Appendix 13.2 and its **relationship to, and effectiveness in implementing**, s327 of the RMA;
 - ii. whether there were any **advantages to be gained**, and/or **complications that may arise**, from utilising elements of **both** the operative Rule 42 and proposed Rule 42A approaches (i.e. prescribed limit at generator site boundary +/- Noise Generating Activity approach +/- s16 & s327 provisions); and
- g) **Mr Ballagh's report(s)**, particularly in reference to the management of **low frequency noise**.

Process from here

- 7. We have set out an indicative timetable below for the collection and distribution of further information, and for the formal closing of the hearing proceedings. We note that this process is not an open invitation for parties to provide us with additional information over-and-above original submissions and/or information presented at the hearing. Once we have received the further information sought above, we will decide what course of action is required, including whether or not it is necessary to formally reconvene proceedings and/or provide additional channels for parties to further participate. At this stage, we consider such action is unlikely, but will make that call in due course.
- 8. The proposed timetable for implementing the above matters is as follows:

No later than (2014)	Action
9 May	NCC Officers to provide all information sought in para 6 above to Commissioners ^[1] .
12 May	Submitters to indicate to NCC if they seek a copy of any information sought above .
14May	NCC to provide any information sought under para 6 above to submitters as requested .
16 May	Commissioners to indicate whether the hearing is closed, or whether further action is required.

^[1] We are mindful that the monitoring data sought from Mr Askew may not be readily "at hand," and so we understand if it takes an additional day or two to compile this data.

9. The above timetable, in our view, allows ample time for information to be collated and distributed. Notwithstanding this, where any party is unable to make the above timetable, other arrangements can be made. It is our strong preference, however, that every effort be made to follow the prescribed schedule. Again, Ms Brown should be contacted in the first instance if any party wishes to contact us in relation to the above matters.

Closing points

10. As a final matter, we wish to thank the parties for their constructive presentations at the hearing, and for their continued efforts in assisting us.
11. We will advise if we require any further assistance from any party.

DATED this 5th day of May 2014

Signed on behalf of

DJ McMahon (Independent Commissioner)
I Barker (Councillor)
E Davy (Councillor)



DJ McMahon
Chair of Hearing Panel

NELSON CITY COUNCIL
PROPOSED PLAN CHANGE 16
INNER CITY NOISE

MINUTE 3 OF COMMISSIONERS

Introduction

1. Following our previous Minute from 5 May, we are now in receipt of the material we requested following the adjournment of the Hearing on PC16.
2. The purpose of this Minute is to record what material we have received and to set out some further directions, of both an administrative and substantive nature.
3. Though we consider this will likely be our final formal correspondence in relation to the hearing (apart from our eventual decision) it is again possible that there will be further directions issued by us – either by way of additional minute(s) or through Council Officers.

Further information received

4. We wish to first thank the Council Officers for responding promptly and comprehensively to our call for additional information. We confirm that we are now in receipt of the following:
 - a) a copy of an **email from Mr Peter Mayes** (Submission 3) to Mr Peterson, referred to by Mr Peterson in his opening factual presentation;
 - b) a copy of the **monitoring report undertaken by Malcolm Hunt Associates (July 2009)**, referred to (indirectly) in the s42A report, and (directly) during our questioning of Mr Peterson;
 - c) **data requested of Mr Askew** in respect of enforcement action, abatement notices, and complaints relating to inner city noise since 2006 – this is to include (as a minimum) detailed descriptions of the nature of the complaint/action, parties involved and spatial data (mapped if possible) about the complaint/action;
 - d) the most recent **s35(RMA) report** produced by NCC (as referred to by Mr Heale during questioning);
 - e) clarification in respect of **the application of clauses (a) & (b) under proposed Rule ICr.42A.1**;
 - f) further **evaluative feedback from Officers** in respect of:
 - i. proposed Appendix 13.2 and its **relationship to, and effectiveness in implementing**, s327 of the RMA;

- ii. whether there were any **advantages to be gained**, and/or **complications that may arise**, from utilising elements of **both** the operative Rule 42 and proposed Rule 42A approaches (i.e. prescribed limit at generator site boundary +/- Noise Generating Activity approach +/- s16 & s327 provisions); and
- g) **Mr Ballagh's report(s)**, particularly in reference to the management of **low frequency (bass) noise**.

Additional clarification from Mr Ballagh and Mr Peterson

- 5. We have reviewed the above information in detail, and consider it is all in order. However, we seek some more in-depth evaluative feedback from Mr Ballagh in relation to matter 'g' above. Specifically, we would like Mr Ballagh to give his expert view (in writing) on the following matters:
 - a) Some submitters expressed confusion as to why the Council changed approach between the draft plan change released for comment and the notified plan change, particularly in relation to a low frequency noise standard that was contained in the former and abandoned in the latter. It is our understanding that the low frequency control was initially included (at least in part) in response to the Malcolm Hunt Associates report from 2009 which identified "significant" levels of low frequency noise at certain times, which may create a nuisance for both Inner City residents and adjoining Residential Zone residents. We are beginning to form an understanding as to why the Council has not retained the draft low frequency control from the responses we received in questioning, and on the various written exchanges between Mr Ballagh and Mr Peterson (from 2012 & 2013) provided pursuant to our previous Minute – however, we consider **it would be to the benefit of all parties (including ourselves) if Mr Ballagh could clearly explain why (from a technical acoustic engineering perspective) the notified approach is superior to the draft approach.**
 - b) in Mr Ballagh's letter to Mr Peterson dated 25 May 2012, Mr Ballagh outlined his view of appropriate low frequency noise limits for daytime and night time hours should low frequency levels be adopted as a method for the plan change – **we would like further clarification as to where those standards were intended to be measured from (i.e. site boundary of generator, site boundary of receiver, zone boundary etc).** To be clear, we have not decided either way whether a specific low frequency control is required; however, *if* we do decide that is the most appropriate method to adopt, we want to be clear on Mr Ballagh's expert view as to what that figure should be, where it should be applied/measured from and why.
- 6. We anticipate that Mr Peterson may also wish to comment on Mr Ballagh's findings on the above, and to codify them into 'planning speak.' To that end, we would appreciate Mr Peterson's view on the following:
 - a) We are aware of the planning rationale provided for the abandoning of the low frequency noise control set out in the s42A report (at p.16 & p.51) and the s32 report (at pp.23-24); however, we invite Mr Peterson to add to Mr Ballagh's statement if he considers it will assist our further analysis under s32. In particular it would be helpful to understand **why (in his view) the inclusion of a low-frequency control will not improve the NRMP's ability to implement the Objectives and Policies (in particular Objectives RE2 & IC5, and Policies IC4.3,**

IC5.1 & IC5.2) when compared to the notified approach. Put differently, why wouldn't a low frequency noise control assist in the aims for inner city activities to "not detract from," "not...significantly diminish," or "prevent...any deterioration of" amenity values of the adjacent Residential Zone.

- b) We also expect Mr Peterson to compliment Mr Ballagh's technical view on an appropriate low frequency rule *if* we were of a mind to include one (notwithstanding that Mr Peterson's express preference is that such a rule is not required).

Proposed Timetable

7. The proposed timetable for implementing the above matters is as follows:

No later than (2014)	Action
21 May	NCC Officers to provide all information sought in paras 5 & 6 above to Commissioners.
21 May	Submitters to indicate to NCC if they seek a copy of any information sought above.
22 May	NCC to provide any information sought to submitters as requested.
23 May	Commissioners to indicate whether the hearing is closed, or whether further action is required.

8. The above timetable allows for a one week turnaround for the substantive information, which should be ample for the parties. Again, Ms Brown should be contacted in the first instance if any party wishes to contact us in relation to the above matters.

9. We will advise if we require any further assistance from any party.

DATED this 14th day of May 2014

Signed on behalf of

DJ McMahon (Independent Commissioner)
I Barker (Councillor)
E Davy (Councillor)



DJ McMahon
Chair of Hearing Panel

APPENDIX 3
Summary of decisions on submissions received

**Proposed Plan Change 16
Inner City Noise**

**APPENDIX 3
Commissioners' decisions by submitter**

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PROPOSED PLAN CHANGE 16 – INNER CITY NOISE

COMMISSIONERS' RECOMMENDATIONS ON DECISIONS SOUGHT AND FURTHER SUBMISSIONS

1 Inglis, Kent Thomas				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
1.1	Amendment 1 Acoustic Insulation	Oppose	Delete acoustic insulation of inner city residential units	Reject

2 McGuire, Dan				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
2.1	General Submission	Support	Retain the proposal as a whole	Accept in part

3 Mayes, Peter				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
3.1	General Submission	Support in part	Consider a device that is connected to the electricity supply to amplifiers, at a set noise level it trips the power and cannot be reset for a set time. This is mandatory for use in clubs, pubs in the UK.	Accept in part

4 Purves, James Mackay				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
4.1	Amendment 1 Acoustic Insulation	Oppose	Delete. Deal with the polluter/pollutant at the source, not the results of the problem. This creates work and fees for Council. Let developers/accommodation providers decide what is appropriate in the inner city and if they get it wrong the market will punish them	Reject

5 Port Nelson Noise Liaison Committee				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
5.1	Amendment 1 Acoustic Insulation	Support	Retain section AP19.2.iii	Accept

6 Shaw, Charles and Rosemary				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
6.1	General Submission	Support	Retain the proposal as a whole. It will go some way to improving the enjoyment of people who have chosen to live permanently close to the centre and those who are staying for a short time.	Accept in part

7 Port Nelson Limited				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
7.1	Amendment 1 Acoustic Insulation	Support	Retain section AP19.2.iii	Accept

8 Downing, Graham and Trevana, Stephanie				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
8.1	Amendment 1 Acoustic Insulation	Support	Retain rule ICr.43.A acoustic insulation of accommodation in Inner City Zone	Accept in part
8.2	Amendment 2 Noise Generating Activity	Oppose	Amend Noise Generating Activity definition as follows: First bullet point, delete the words "from a sound system with greater than 100w output".	Reject
8.3	Amendment 2 Noise Generating Activity	Oppose	Amend Noise Generating Activity definition as follows: First and second bullet points replace "11.00pm" and "1.00am" respectively with 10.00pm	Accept in part
8.4	Amendment 2 Noise Generating Activity	Oppose	Amend ICr.42A.1 as follows: Add new sub clause "or d) Results in any increase in the hours amplified music is played or any increase in the volume the amplified music is played at"	Reject
8.5	Amendment 2 Noise Generating Activity	Oppose	Amend AP13.1.2 as follows: Add new sub clause "and c) The provision of a Monitoring Report to the Council at least once a year."	Reject
8.6	Amendment 2 Noise Generating Activity	Oppose	Delete AP13.2	Reject
8.7	Amendment 5 Enforce noise using provisions of the RMA	Oppose	Oppose deletion of ICr.42. Amend by updating the noise measures to equivalent 2008 NZS Standards as per the parallel proposed amendments to	Accept in part

			rule ICr.43 and add to the noise levels in rule ICr.42 to deal with bass frequencies at night time "63Hz Octave Band: 70dBL10"	
8.8	Amendment 5 Enforce noise using provisions of the RMA	Oppose	Delete ICr.42B	Accept
8.9	Amendment 4 ICr.43 Noise received at sites in the Residential Zone		Amend ICr.43 as follows: Add a night time low frequency noise limit	Reject
8.10	Changes to Policy	Support	Retain IC5.1	Accept
Further Submissions				
Further Submitter		Original Submission Reference		Support/ Oppose
X1.1 thru X1.9	McGuire, Dan	8.2 thru 8.10		Support
				Accept in Part

9 McLean Michelle				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
9.1	General Submission	Oppose	Would like inner city noise to be prevented from intruding into residential areas, after 9pm at the latest during the week.	Accept in part

10 McDonalds Restaurant (NZ) Ltd				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
10.1	Amendment 2 Noise Generating Activity	Oppose	ICr.42A insert the following exclusion "subpoint (a) above does not apply to internal (unlicensed) restaurant or dining space that would otherwise not fall to be considered a noise generating activity."	Reject

11 Nelson Marlborough District Health Board				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
11.1	Amendment 1 Acoustic Insulation	Support	Retain ICr.43A.1 permitted column with consequential addition. Add to Chapter 2 Definitions, a definition for the acoustical descriptor "D2m,nT+ Ctr" which is undefined in the Proposed Plan, or the Operative Plan or NZS6801:2008 or	Accept in part

			NZS6802:2008 and will otherwise be incomprehensible to readers of the Plan. See Amendment 2, submitter 2, Statement 8.	
11.2	Amendment 1 Acoustic Insulation	Support	Amend ICr.43A.4 as follows: Add new items e) The effectiveness of any noise barriers" and d) Any balconies" and in b) delete the words "of exposure".	Accept in part
11.3	Amendment 1 Acoustic Insulation	Support	Retain ICr.43A.4 Explanation	Accept
11.4	Amendment 1 Acoustic Insulation		Amend AP19.2 clauses AP19.2.i and AP19.2.ii as follows: Replace bullet points with numeration. In six places delete the terms "dBA Leq (15min)" and substitute "dB LAeq(15min)". Replace "design noise level" with "design sound level". In 19.2.ii b) last sentence delete the word "levels".	Accept
11.5	Amendment 1 Acoustic Insulation	Support in part	Amend AP19.3 and AP19.3.i as follows: In the second line replace "Insulations" with "Insulation". Replace "design noise level" with "design sound level".	Accept
11.6	Amendment 1 Acoustic Insulation	Support in part	Amend AP19.3 and AP19.3.ii as follows: In sub clauses a) and b) in two places delete the terms "dBA Leq(15min)" and substitute "dB LAeq(15min)". Replace "design noise level" with "design sound level". In 19.3.ii a) and in 19.3.ii b) in the last sentence of each sub clause, replace "noise levels" with "sound levels".	Accept
11.7	Amendment 1 Acoustic Insulation	Support in part	Retain AP19.3.iv and table 3 and notes	Accept
11.8	Amendment 2 Noise Generating Activity	Support in part	Amend Noise Generating Activity definition as follows: Replace Chapter 2 definition for term "Lmax" with "Lmax includes LAFmax and is the maximum A frequency weighted, F-time-weighted sound pressure level during a time period as defined in NZS6801:2008." Add new definition - "D2m,nT+Ctr, (enlarged for clarity) is a standardised single number in decibel as a measure of facade performance. It is the difference between the outdoor sound level measured 2 metres from the facade (including the effects of reflection from the facade) and the spatial average sound level inside the receiving room. It includes a spectrum adaption term to take into account lower frequency	Accept in part

			sound. See ISO 140-5 (1998) Acoustics - Measurement of sound insulation in buildings and of building elements - Part 5: Field measurements of airborne sound insulation of facade elements and facades. The single number is evaluated according to the method given in ISO 717-1:2013 Acoustics - Rating of sound insulation in buildings and building elements - Part 1: Airborne sound insulation".	
11.9	Amendment 2 Noise Generating Activity	Support	Retain rule ICr.42A	Accept
11.10	Amendment 2 Noise Generating Activity	Support	Retain Appendix 13	Accept
11.11	Amendment 2 Noise Generating Activity	Support in part	Amend AP13.1 as follows: a) Replace "design noise level" with "design sound level". b) After "acoustic insulation" add, "or noise barrier" b) Replace "noise levels and meet the design noise level" with "noise and comply with the design sound level" g) Replace "govern the maximum noise output" with "limit sound emissions"	Accept in part
11.12	Amendment 2 Noise Generating Activity	Support	Retain AP13.2	Accept
11.13	Amendment 2 Noise Generating Activity	Support in part	Amend AP13.1.3 as follows: Amend title to "Measurement and assessment of Noise" After the word "and" insert "assessed in accordance with"	Accept
11.14	Amendment 2 Noise Generating Activity	Support in part	Amend AP13.2.1 as follows: Delete "or in forming an opinion under 327(1)" Delete the last two words in sub-clause AP13.2.1.ii e "or excessive"	Accept in part
11.15	Amendment 2 Noise Generating Activity	Support in part	Amend AP13.2.1.ii as follows: In b) Replace "noise level" with "sound level" and Replace b) "noise meter to determine actual noise level" with "sound level meter".	Accept
11.16	Amendment 2 Noise Generating Activity	Support	Retain AP13.2.2	Accept
11.17	Amendment 3 Maximum Noise Level (LAFmax)	Support in part	Amend ICr.42 and ICr.42.1 as follows: Amend heading to "Night time noise limits". Replace "noise measured" with "The sound level assessed". Replace	Accept in part

			"facade" with "side". Replace "maximum noise levels" with "noise limit". Replace Chapter 2 definition for Lmax with "Lmax includes LAFmax and is the maximum A frequency weighted, F-time-weighted sound pressure level during a time period, and is defined in NZS6801:2008".	
11.18	Amendment 3 Maximum Noise Level (LAFmax)	Support	Retain ICr.42.4 and ICr.42.5	Accept in part
11.19	Amendment 3 Maximum Noise Level (LAFmax)	Support in part	Amend heading in contents page to "Night time noise limits"	Accept
11.20	Amendment 4 ICr.43 Noise received at sites in the Residential Zone	Support in part	Amend ICr.43 as follows: Replace two occurrences of LAeq with LAeq(15min)	Accept in part
11.21	Amendment 4 ICr.43 Noise received at sites in the Residential Zone	Support in part	Amend ICr.43 as follows: Replace "ambient noise levels" with "ambient sound level".	Accept
11.22	Amendment 5 Enforce noise using provisions of the RMA	Oppose	Delete ICr.42B and ICr.42B.5	Accept
11.23	Changes to Policy	Support	Retain IC4.2, IC4.2.ii and IC4.2.iv	Accept
11.24	Changes to Policy	Support in part	Amend as follows - IC4.2.v use of sections 316, 320 and 322 of the Resource Management Act 1991 for enforcement of unreasonable noise, and section 327 of the Act to control excessive noise.	Reject
11.25	Changes to Policy	Support in part	Amend IC4.3.v by replacing "or" with "and"	Accept
11.26	Changes to Policy	Support in part	Amend IC5.1.ii by replacing "or" with "and"	Accept
11.27	General Submission	Support	Retain the proposal as a whole as it incorporates amendments to rules to avoid, mitigate and reduce adverse effects of noise on environmental health, and to promote the health of the people and communities in the District in a sustainable manner.	Accept in part

12 Hospitality NZ				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
12.1	Amendment 1 Acoustic Insulation	Support	Retain acoustic insulation of inner city residential units and short term living accommodation	Accept in part
12.2	Amendment 2 Noise Generating Activity	Oppose	Delete. The new Sale and Supply of Alcohol Act together with noise control provisions of the Resource Management Act a robust and sufficient way to address noise generating activities without the need to require noise generating activities to apply for a resource consent to allow for consideration of noise issues.	Reject
12.3	Amendment 4 ICr.43 Noise received at sites in the Residential Zone	Support	Retain ICr.43	Accept
12.4	Amendment 5 Enforce noise using provisions of the RMA	Support in part	Council should develop and implement guidelines to control officers to help with anomalies	Accept in part
12.5	Amendment 6 Ongoing education	Support	Retain, support non regulatory approaches	Accept in part
12.6	General Submission	Support	Retain, broadly supportive of the proposed plan change.	Accept

13 Noonan, Gaile					
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision	
13.1	Amendment 4 ICr.43 Noise received at sites in the Residential Zone	Oppose	Properties within say 150 metres of any proposed new development emitting noise on a regular basis should have their properties noise protected at the cost of the applicant not the home owner	Reject	
Further Submissions					
Further Submitter		Original Submission Reference		Support/ Oppose	Decision
X1.10	McGuire, Dan	13.1		Support	Reject
X2.1	Nelson Grey Power	13.1		Support	Reject

14 Riddell, Barbara				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
14.1	Amendment 2 Noise Generating Activity	Support in part	Decrease noise levels	Accept in part
14.2	Amendment 3 Maximum Noise Level (LAFmax)	Oppose	Enforce drum limits. Music, singing are fine. Throbbing from drums is over the top	Accept in part

15 C Sharp Family Trust				
Sub. Ref.	Amendment & Provision	Support/ Oppose	Decision/Relief Sought	Decision
1	General Submission	Support	Retain. Excellent proposal to enhance inner city living. Higher density residential is essential if the city is to become a better place to live.	Accept in part

APPENDIX 4
Plan Change Provisions

APPENDIX 4

PLAN CHANGE PROVISIONS

Format of the Plan Change provisions

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

Within this section:

- 'Normal' text applies to operative provisions and text which is to remain unchanged.
- 'Underline' text applies to proposed PC16 provisions at notification.
- '~~Strikethrough~~' text applies to operative provisions proposed to be deleted or amended by PC16 at notification.
- Double underline is text recommended to be added by Officers Report.
- ~~Double Strikethrough~~ is text recommended to be removed by Officers Report.
- '*Italic*' text applies to instructions (therefore are non statutory).
- Amendments shown as **highlighted** are those included by the Commissioners as a result of the hearing of submissions.

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

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

Submission #4.1

<u>Item</u>	<u>Permitted</u>	<u>Controlled</u>	<u>Discretionary/Non-complying</u>
ICr.43A Acoustic Insulation of Buildings	<p>ICr.43A.1 Construction of any new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units is permitted if:</p> <p>a) the new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units are is acoustically insulated in accordance with Appendix 19 (AP19.3 Inner City Zone, Table 3), or</p> <p>b) the new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units are is acoustically insulated to achieve a façade sound level difference of not less than 30dB $D_{2m,nT}+C_{TR}$, and has either ventilating windows open or minimum ventilation requirements as set down in Appendix 19 (AP19.3 Inner City Zone), and</p> <p>c) If option b) is used then prior to commencement of any construction or site works a certificate is obtained from a suitably qualified acoustic engineer to demonstrate that the building design complies with option b) above.</p> <p>For the purposes of this rule, the 'construction of any new Bedroom' shall also include the conversion of any existing room to a Bedroom. Note: Bedroom is defined in Chapter 2, Meanings of Words.</p>	<p>ICr.43A.2 Not applicable</p>	<p>ICr.43A.3 Activities that contravene a permitted condition are a restricted discretionary activity.</p> <p>Discretion restricted to:</p> <p>i) Location and orientation of Bedrooms in relation to noise sources, and</p> <p>ii) Insulation or other measures required for noise mitigation purposes for Bedrooms, and</p> <p>iii) Health and well-being effects for residents, and</p> <p>iv) Potential reverse sensitivity effects on other activities</p>

<u>Assessment Criteria</u>	<u>Explanation</u>
ICr.43A.4 a) The location and orientation of the new Bedrooms or rooms intended to be used for	ICr.43A.5 This rule proactively ensures that the new Bedrooms or rooms intended to be used for

Submission #4.1

~~sleeping in Short Term Living Accommodation Units in relation to noise sources.~~

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

c) ~~The time of day or night the noise is likely to be experienced.~~

d) ~~The measures proposed to be undertaken to ensure an appropriate sleeping noise environment is achieved.~~

e) ~~The effectiveness of any noise barriers.~~

f) ~~The presence of any balconies.~~

Submission #11.2

~~sleeping in Short Term Living Accommodation Units in the Inner City Zone have acoustic insulation features designed into the building from the start to create reasonable sleeping environments. The rule operates in conjunction with other rules to manage noise in the city centre. It recognises that new Bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units in the Inner City Zone, which is inherently a noisier environment than that generally experienced in the Residential Zone, should undertake some measures to protect against the adverse effects of noise.~~

Two methods of achieving compliance with the rule are possible; one allows a developer or owner to select from a list of specified materials, and construction methods to use, whilst the second allows any material or construction style to be used (subject to the Building Code) but it must be certified by a suitably qualified acoustic engineer to achieve a specified level of noise reduction.

Amendments to contents page of Inner City Zone rule tables

Add

ICr.43A Acoustic Insulation of Buildings

Add to Chapter Two 'Meanings of Words'

Submission #11.1

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

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

AP19.2 Port Effects Control Overlay

AP19.2.i Acoustic insulation requirements for the Port Effects Control Overlay area included in the rules for the respective zones. However, no minimum construction requirements for habitable spaces (~~MW71A~~) are specified for the Port Effects Control Overlay. Instead the rules require certification from an acoustic engineer

Submission #11.4

that the building design will achieve the required design ~~noise~~ sound level for that zone and, certification on completion of the works.

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

- a) A mechanical system or mechanical ventilation system capable of:
- providing at least 15 air changes of outdoor air per hour in the principal living room of each building and give 5 air changes of outdoor air per hour in the other habitable spaces of each building, in each case with all external doors and windows of the building closed with the exception of such windows in non-habitable spaces that need to be ajar to provide air relief paths;
 - enabling the rate of airflow to be controlled across the range, from the maximum airflow capacity down to 0.5 air changes (plus or minus .01) of outdoor air per hour in all habitable spaces;
 - limiting internal air pressure to not more than 30 Pascals above ambient air pressure;
 - being individually switched on and off by the building occupants, in the case of each system; and
 - creating no more than 40 dBA $L_{Aeq(15 \text{ min})}$ in the principal living room, no more than 30 dBA $L_{Aeq(15 \text{ min})}$ in the other habitable spaces, and no more than 50 dBA $L_{Aeq(15 \text{ min})}$ in any hallway, in each building. ~~Noise~~ Sound levels from the mechanical system(s) shall be measured at least one meter away from any diffuser.

Submission #11.4

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

or:

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

and:

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

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

AP19.3 Inner City Zone

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

Submission #11.5

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

Submission #4.1

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

Submission #4.1

Submission #11.6

or:

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

Submission #4.1

Submission #11.6

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

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

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

<u>Building Element</u>	<u>Required Construction</u>	Submission #4.1
<u>Walls</u>	<p><u>Exterior:</u> 20mm timber weatherboards or 2 x 6mm fibre cement or 1 x 9mm compressed fibre cement</p> <p><u>Frame:</u> nominal 100mm with acoustic blanket</p> <p><u>Interior:</u> 3 x 13mm high density gypsum plasterboard for top floor Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units 2 x 13mm high density gypsum plasterboard for mid-level Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units</p> <p><u>Or:</u> 190 series concrete blocks (minimum every 4th core filled) <u>Or:</u> 100mm thick pre cast concrete slabs <u>Or:</u> Solid clay brick veneer (minimum 70mm thick) with standard internal framing and plasterboard lining.</p>	
<u>Windows</u>	<p>Minimum 17mm thick laminated glass for top floor Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units</p> <p>Minimum 13mm thick laminated glass for mid-level Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units</p> <p><u>Or:</u> Double glazed unit with 10mm and 6mm panes, separated by a minimum 50mm air gap.</p>	
<u>Roof</u>	<p>Top floor only, not needed for mid-level Bedrooms and rooms intended to be used for sleeping in Short Term Living Accommodation Units</p> <p><u>Cladding:</u> 0.5mm profiled steel or tiles or 6mm corrugated fibre cement</p> <p><u>Frame:</u> Timber truss with acoustic blanket</p> <p><u>Ceiling:</u> 3 x 13mm high density gypsum plasterboard</p>	
<u>External Door</u>	<u>Hinged solid core door of at least 40kg/m² with airtight seals (or if glazed, as per window requirements). Sliding doors are not suitable.</u>	
<u>Internal Door</u>	<u>Internal doors to new bedrooms or rooms intended to be used for sleeping in Short Term Living Accommodation Units shall be hinged solid core of at least 16kg/m².</u>	
<u>Ventilation</u>	<u>The indoor design sound level shall be achieved with windows and doors shut. This requires the use of minimum ventilation requirements as set out in Appendix 19.3 Inner City Zone.</u>	

Submission #4.1

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

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

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

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

Noise Generating Activity

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

- the assembly of people within a building for a commercial activity involving the playing of amplified sound (from a sound system with greater than 100W output) between the hours of:
 - 11:00pm and 7:00am Sunday to Thursday nights, and for the nights of Friday, Saturday, Christmas Eve and New Year's Eve 1:00am and 7:00am where the activity is located within the Inner City Zone - City Centre; and
 - 10:00pm and 7:00am seven days a week where the activity is located within the Inner City Zone - City Fringe;

or

- the assembly of people in an outdoor area (i.e. an area that is outside of the main part of the building such as garden bars, outdoor dining and smoking areas) associated with a commercial activity between the hours of:
 - 11:00pm and 7:00am Sunday to Thursday nights, and for the nights of Friday, Saturday, Christmas Eve and New Year's Eve 1:00am and 7:00am where the activity is located within the Inner City Zone - City Centre; and
 - 10:00pm and 7:00am seven days a week where the activity is located within the Inner City Zone - City Fringe.

For the avoidance of doubt, temporary events occurring no more than once per year in any one site or building are excluded from this definition.

Note: Noise from these events is still required to take account of Section 16 and 327 of the RMA, ~~and rule 42B~~ and Appendix 13 of this Plan.

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

<u>Item</u>	<u>Permitted</u>	<u>Controlled</u>	<u>Discretionary/Non-complying</u>
<p><u>ICr.42A</u> <u>Noise Generating Activities</u></p>	<p><u>ICr.42A.1</u> The establishment or extension of a 'noise generating activity' is not a permitted activity. For the purposes of this rule 'extension' is defined as any alteration or change which: a) results in a 10% or greater increase in permitted patrons, or b) any increase in operating hours or hours amplified music is played at, or c) results in an outdoor area accessible to patrons which is new, has a different location, or is increased in size by 10% or more.</p>	<p><u>ICr.42A.2</u> Not applicable</p> <div data-bbox="884 667 1152 725" style="border: 1px solid black; padding: 2px; width: fit-content; margin: 10px auto;"> <p>Submission #8.4</p> </div>	<p><u>ICr.42A.3</u> The establishment or extension of a 'noise generating activity' is a restricted discretionary activity, provided that the following condition is met: a) a noise management plan is shall be provided in accordance with the provisions of Appendix 13.1 Noise Generating Activities. Discretion restricted to: i) Noise effects, and ii) Mitigation measures, including any Noise Management Plan, and iii) hours of operation iv) proposed location of activity v) volume and type of noise expected to be generated vi) cumulative effects Any activity subject to this rule that does not comply with condition ICr.42A.3a) shall be a Non-Complying activity</p>

**Submission
#8.4**

<u>Assessment Criteria</u>	<u>Explanation</u>
<p>ICr.42A.4</p> <p>a) <u>the suitability of the site, the activity on the site and in any outdoor areas, having regard to its location, and the proximity of residential or other noise-sensitive activities.</u></p> <p>b) <u>expected hours of operation, volume and type of noise expected to be generated.</u></p> <p>c) <u>the adequacy of measures to manage or reduce noise at source, including the provisions of a Noise Management Plan in accordance with Appendix 13.</u></p> <p>d) <u>the effectiveness of measures proposed to avoid or mitigate nuisance effects, including from low frequency noise.</u></p>	<p>ICr.42A.5</p> <p><u>Before a Noise Generating Activity establishes or extends in the Inner City Zone Centre a resource consent is required to assess the suitability of the site and specific proposal in terms of management and reduction of noise at source. Conditions can be imposed as appropriate to maintain an acceptable level of noise generation for the Inner City (see policies IC4.2, IC4.3 and IC5.2 in particular). In addition to this rule, rules ICr.42, ICr.42B and the relevant sections of the Resource Management Act 1991 apply to the ongoing operation of the activity and to existing activities already established.</u></p> <p><u>The permitted activity standard includes a definition of extension based on there being a 10% or greater increase in permitted patrons. The number of permitted patrons in a building is determined through the Building Codes fire safety provisions (Clause 'C'). Any changes which will result in a 'change of use' must be advised to the Territorial Authority for consideration under the Building Code.</u></p>

Amendments to contents page of Inner City Zone rule tables

Add

ICr.42A Noise Generating Activities

Add new paragraph to ICr.46.5 Explanation

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

Add a new appendix to the Nelson Resource Management Plan

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

AP13 Overview

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

Submission #8.8

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

AP13.1 Noise Generating Activities

AP13.1.1 Minimum Noise Management Plan Provisions

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

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

Submission #11.11

AP13.1.2 Minimum Monitoring and Reporting Requirements

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

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

AP13.1.3 Measurement and Assessment of Noise

Submission #11.13

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

AP13.2 Assessment of unreasonable and excessive noise

AP13.2.1 Noise assessment criteria

Submission #11.14
and #8.8

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

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

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

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

Submission #11.15

Submission #8.8

AP13.2.2 Construction Noise

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

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

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

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

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

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

Amendments to contents page of Inner City Zone rule tables

Submission #11.19

Add

ICr.42 Maximum Night time Noise Night Time Noise Limits

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

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

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

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

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

Amend

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

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

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

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

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

Submission #8.8

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

~~Explanation~~

~~ICr.42B.5~~

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

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

~~This approach allows Council Enforcement Officer's to determine if unreasonable or excessive noise is being produced utilising sections 16, 326 and 327 of the Resource Management Act 1991. In making this assessment the matters in Appendix 13.2 Assessment of Unreasonable and Excessive Noise will generally be taken into account when determining whether or not noise is unreasonable or excessive.~~

Amendments to contents page of Inner City Zone rule tables

Delete

~~ICr.42 Noise~~

Add

~~ICr.42B General Noise Emission~~

Submission #8.8

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

Amendment 6 – Ongoing education, negotiation and mediation

No specific changes to the Nelson Resource Management Plan

Supporting changes to Policy, Explanation and Reasons

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

policy

IC4.2 **adverse effects**

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

Explanation and Reasons

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

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

Methods

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

Submission #11.25

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

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

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

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

Submission #8.8

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

policy

IC4.3 **residential amenity**

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

Explanation and Reasons

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

Methods

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

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

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

Submission #4.1

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

Submission #11.25

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

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

policy

IC5.1 amenity of neighbouring areas

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

Explanation and Reasons

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

Method

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

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

Submission #11.26