

# **Commissioner Recommendation**

## **07/01 (Port Noise Variation)**

Report and Recommendation of J.G. Matthews, D.J. McMahon and S.G. Chiles, acting as Commissioners appointed by the Nelson City Council pursuant to section 34 of the Resource Management Act 1991

**January 2009**



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## 1. INTRODUCTION

### Context

- 1.1 We have been appointed by the Nelson City Council as commissioners to hear submissions on, and to consider and make a recommendation on Proposed Variation 07/01 (“the Variation”) to the Proposed Nelson Resource Management Plan (PNRMP) by which the Nelson City Council (“the Council”) seeks to address the management of port noise and the mitigation of the adverse effects of such in the vicinity of Port Nelson. Variation 07/01 addresses not only the effects of noise originating from the operation of the Port but also noise from other activities within the associated port industrial area, which is adjacent to and encompasses the operational area of the Port.
- 1.2 The specific details of the Variation will be outlined in further detail in this report but in summary the following two points characterise the main thrust of the Variation:
  - (a) The Variation requires that the Port Operator is responsible for the appropriate management of activities giving rise to noise as well as for the mitigation of the adverse effects of noise in the adjacent residential areas. In other words, whilst there will be a continuing obligation on the Port Operator to minimise the amount of port noise at source, it will now also be required to provide acoustic insulation, and in some cases offer to purchase the most affected houses in order to mitigate the effects of port noise during night-time hours.
  - (b) The Variation also places obligations on residential property owners to comply with a defined maximum noise standard within habitable spaces when undertaking building work in the areas affected by the Variation.
- 1.3 Whilst the latter theme builds on (and modifies) an existing provision in the PNRMP, the former initiative represents a substantial departure from the regulatory approach in the PNRMP. The Variation has a reasonably wide background, which we will canvas in due course, and has been the subject of a Council “section 32” report, wide consultation with land owners and occupiers, and of course the public notification and hearing of which this recommendation is the culmination.
- 1.4 Before discussing the details of the Variation and the submissions to it, there are some administrative issues that are addressed.

## **Role of Commissioners**

- 1.5 Our role as commissioners is to consider all the material relating to the Variation to the PNRMP including the section 32 analysis and report, the materials produced by the Council and its officers in support of the Variation, the submissions filed, and all submissions presented at public hearings over which we presided. It is then our task to make a recommendation to the Council on whether the Variation should be accepted in its entirety, or should be amended, or should be declined in its entirety. Our recommendation is not binding on the Council, whose role it is to make a final determination.
- 1.6 We have considered all the written material provided to us including the Variation and all background reports, read all the submissions which were filed, conducted public hearings and heard from Port Nelson Limited (“PNL”) and a number of other submitters together with appointed Council staff and consultants. We visited the port area at Nelson, and surrounding affected areas on two occasions. In addition, we also visited Dunedin and Port Chalmers, and spoke to representatives of the Dunedin City Council, Port Otago Limited and four residents of Port Chalmers who sit on the Port Noise Liaison Committee which is set up under the Port Otago Management Plan.
- 1.7 We record our appreciation of the manner in which the hearing was conducted by all parties who participated and we express our appreciation of the skilfully prepared and presented material, including both evidence and submissions, which have assisted us in undertaking our task. All matters which we have taken into account were presented in the public forums with the exception of our own observations on site visits. In relation to our visit to Dunedin, we have recorded the matters we learned in a Minute issued on 13<sup>th</sup> August 2008 and have taken the material there recorded into account also.
- 1.8 During the hearings, which took place in Nelson on two separate occasions, witnesses, counsel and reporting officers readily engaged in debate with us, and with each other, and this process assisted us considerably in coming to grips with, and determining, the very complex issues which are before us.

## **Report Outline**

- 1.9 This recommendation is generally divided into the following parts:

- (a) Background/Variation Outline

These sections include an outline of the background to, and overview of, the Variation, including the sequence of events leading to this recommendation. It also outlines the main components of the Variation including an overview of the Port and residential environs. This background section provides a relevant context to considering each of the main issues raised by submissions to the Variation.

(b) Assessment of Submissions:

In this section, we record the various submissions received to the Variation, outline the concerns of the submitters to the Variation, and, where relevant, amplify on the evidence/statements presented at the hearing. We then undertake an assessment of the submissions lodged to the Variation and conclude with a recommendation on each one.

## 2. BACKGROUND

### Procedural Sequence prior to Proposed Variation

- 2.1 The Variation flows from two unresolved references to the Environment Court from PNL and from P. & M. Win who were Port Hills residents at the time. These references relate to the decision issued by the Council on submissions filed in relation to the PNRMP in December 1998. The decision of the Council at that time was to adopt the draft New Zealand Port Noise Standard (DZ 6809) and this resulted in noise control lines being set for the hillside adjacent to the Port. In brief, an inner noise control line fixed at 65 dBA Ldn served to control the noise emanating from the Port, and the area between that line and a further line imposed at 55 dBA Ldn was known as an advisory area, set aside in order to alert the owners of affected properties that port noise is a factor in those areas.
- 2.2 In its reference PNL sought to amend the noise control lines which had been set by the Council decision. This would have resulted in a movement of the control lines away from the Port. Mr and Mrs Win opposed the adoption of the Port Noise Standard as a means of controlling noise on the grounds that they believed the criteria in the NZ Standard would permit higher levels of noise to emanate from the Port than were already being experienced. A number of other parties joined in the reference proceedings.
- 2.3 Although a number of meetings of the parties to the references took place between 1999 and 2003, including Environment Court assisted mediation, a solution acceptable to all parties was not found.
- 2.4 During this time PNL carried out its own review of the issues, and in 2003 it formed the view that it was desirable to seek a variation to the PNRMP, rather than to proceed with its reference. At the same time, in other parts of the Country, the Environment Court was dealing with similar issues. On 7<sup>th</sup> November 2003, it delivered its decision in *Careys Bay Association Incorporated v. Dunedin City Council* (which we refer to as the Port Chalmers decision). It is not necessary to canvas the genesis of that decision, beyond noting that after a similar impasse between Dunedin City Council, the port operator (Port Otago), and local residents, which was also the subject of a number of meetings and mediations, the Court finally endorsed a change to the Dunedin City District Plan which had the effect of setting in place a non regulatory regime for management and mitigation of the effects of noise on a scale ranging from

compulsory purchase of properties on request, to advice in relation to noise mitigation, depending on where affected properties were located relative to modelled noise lines. A plan for mitigation of noise generated by the Port was an integral part of the regime. We will refer to this decision later in this recommendation.

- 2.5 In September 2003, a pre-hearing conference on the outstanding references to the PNRMP was held in the Environment Court. PNL had, by then, applied to the Court to adjourn the references sine die, partly on the basis that it would be seeking a variation to the PNRMP in terms which would properly accommodate its operational imperatives, as it saw them. Judge Jackson directed that the application by PNL to have its reference adjourned sine die should be heard as soon as possible. The matter came on for hearing before Judge Kenderdine sitting alone on 2<sup>nd</sup> December. As mentioned earlier, shortly before this the decision of the Court on Port Chalmers had been released. In her decision on PNL's adjournment application, the Judge made reference to the recently released Port Chalmers decision. The Judge observed that the decision identified issues which had *"plagued the residents, the Port Company and the Courts for years"* which were not dissimilar to those applying in Nelson. The Judge suggested that the parties should read the judgement of the Court in the Port Chalmers case *"...because there are a number of measures which might be introduced to promptly ease the parties through the forthcoming months"*. The references were adjourned sine die, and the process which has ultimately led to the Variation on which we are reporting, was then put in place. The references remain adjourned.
- 2.6 As a consequence of the consultation processes which were then initiated, six options for dealing with port noise were identified. Those options were canvassed in further consultation. Resulting from this the Council ultimately decided to proceed with a variation to the PNRMP generally along the lines of the Port Chalmers management, mitigation and liaison approach, and that is the Variation which is before us. It is not necessary for us to set out in further detail the consultation processes which were followed. They are comprehensively described in Volume two of the Variation documents, being the section 32 Evaluation prepared under the Resource Management Act ("the Act"). For completeness we note that Volume one of the Variation documents contains the Amendments to the PNRMP per se. Volume two includes a description and analysis of each of the options, as required by section 32. In the next section of this recommendation we will describe the Variation in more detail.

### **Variation 07/01 Notification, Submissions and Hearing**

- 2.7 We were advised that Proposed Variation 07/01 was first publicly notified on 16 June 2007, and due to some errors it was withdrawn on 23 June 2007, and re-notified on 14 July 2007. The period for submissions closed on 7 September 2007, and further submissions closed on 14 December 2007. The Variation generated 16 submissions and 10 further submissions.



2.8 The hearing was initially convened on the 26<sup>th</sup> to 30<sup>th</sup> May 2008 at Fairfield House. It was reconvened on Thursday 3 July in Meeting Room 1, at Nelson City Council. Between the adjournment of the first sitting and the reconvening of the hearing, we issued two minutes dealing with procedural matters as follows:

- Minute dated 4 June 2008, recorded the position at the close of initial sitting and provided directions to Council Officers and submitters for responding to issues raised by us during the hearing and to be spelt out in a subsequent Minute.
- Minute dated 11 June 2008; outlined the various issues that we required further information upon and gave a timetable for the receipt of such information.

2.9 We heard from the following people during the course of the two sittings of the hearing:

*Submitters*

- Port Nelson Ltd (PNL) represented by Pru Steven (Counsel); Martin Byrne (CEO PNL), Frances Woodhead (Environment Officer PNL); Neville Hegley (Acoustic Consultant); Stuart Hughes (Port Operations Consultant); Dick Carter (Infrastructure Manager PNL); Janice Carter (Consultant Planner)
- Nelson Waterfront Protection Association (“the Association”) represented by Lauren Semple (Counsel); David Hogg (Resident Member) and Christine Vining (Resident Member)
- Gibbons Holdings Ltd represented by Graeme Downing (Counsel), Nigel McFadden (Counsel), Dr Jeremy Trevathan (Acoustic Consultant) and Roger Gibbons
- Ian Northrop
- Suzanne Bateup
- Residents’ Representatives of the Port Noise Liaison Committee (“the Residents’ Representatives”) - Sue Thomas and Albert Hutterd
- Nelson Pine Industries represented by Philip Wilson (Environmental Manager)
- David Ward (on behalf of D and J Ward)
- William Evans

*Council*

- Gary Rae (Consultant Planner)
- Keith Ballagh (Acoustic Consultant)
- Julian Ironside (Counsel)
- Paul Harrington (Planning Assistant and acting Committee Secretary)

- 2.10 In addition to the above, the submission forms from the following remaining submitters unable to attend the hearing were also tabled at the hearing:
- Jim Sinner (plus tabled additional written comments supporting submission)
  - Arthur and Dorothy Matthews
  - Burke Hunter
  - Austin and Belinda Davies
  - Susan Hawthorne
  - Belinda Strickland
  - Alliance Group Ltd
  - Ross Newnham
  - Auckland Point School
  - Nelson Forests Ltd (formerly Weyerhaeuser NZ Inc)
  - ENZA Ltd
  - Annabel Norman
  - Bruce Robertson
- 2.11 Following the adjournment of the second sitting we decided to undertake a site visit to Dunedin to discuss the experiences of the Dunedin City Council, the Port Operator (Port Otago Ltd) and the residents in respect to port noise and the effectiveness of the management, mitigation and liaison solution endorsed by the Court for Port Chalmers. The decision to undertake the visit and the reasons for doing so were recorded in a third Minute issued by us on 7 July 2008. Essentially, the rationale for the visit was to get a ‘feel’ for the environment at Port Chalmers in comparison with the environment at Port Nelson and to hear from the main players as to the manner in which the management, mitigation and liaison regime is working in practice since it was implemented approximately four years ago. The Minute was circulated to all submitters and no opposition was recorded to the approach outlined by us.
- 2.12 Because we obtained a certain amount of information from the Dunedin experience which was useful to us in our deliberations we decided to record that information in a fourth Minute circulated to all submitters on 13 August 2008. That Minute recorded the outcome of the visit, whom Commissioners met with and the substance of discussions. Again, and for the record, we received comments from PNL, the Residents’ Representatives, and Gibbons Holdings on the content of the Minute but we also note that no person took exception to the observations outlined in that Minute.
- 2.13 At that point, having satisfied ourselves that we had sufficient information on all the issues raised during the course of the hearing, we closed the hearing and undertook our deliberations.
- 2.14 Attached to this report (as Appendix A) is a schedule of submitters and further submitters on Variation 07/01 together with our recommendation as to whether, in our view, these submissions should be accepted or rejected and what specific wording should be amended in the Variation.

### **3. OVERVIEW OF THE PORT AT NELSON, AND VARIATION 07/01**

#### **Port History and Trends**

- 3.1 Port Nelson was established at its present location in 1841. Since that time it has operated as a gateway port for the Nelson region. It currently receives approximately 1,000 ship calls per annum and handles 2.6 million tonnes of cargo per annum. For the last 20 years the Port has operated on a 24 hour basis, in common with all ports in Australia and New Zealand. Because of the high cost of charter rates for international container shipping, shipping lines will not accept delays to their schedules which might be imposed by limitations on working time during a 24 hour period. We were told that the consequence of imposing such limitations would be that the shipping company concerned would choose to cease calling at that port. The view of PNL is that this would prove highly detrimental to the importers and exporters of the region and would lead inevitably to an increase in trade rates as the choice of available services consequently diminished.
- 3.2 International shipping lines typically call at a number of New Zealand ports during a voyage to this country and work to tight schedules, resulting in berthing “windows” in each port. Nelson operates under operational limitations caused by several factors including:
- The fact that it is a tidal port, as ships can only arrive and depart during a limited number of hours on each side of high tide, depending on the size of the ship concerned; and
  - Part of the cargo base of the Port is the export of fruit which is a major export commodity from the Nelson region. This results in peak operational demands at certain times of the year.
- 3.3 As would be expected, the type and size of ships calling at the Port has changed over recent years; the trend being towards larger ships. Larger ships, such as the 6000TEU class, are too large to visit Nelson. So, if these are introduced to New Zealand routes this will result in feeder shipping from Nelson to the larger ports which would handle this class of ship. We learnt in evidence that the operational requirements of the Port are constantly evolving and this, together with the physical limitations imposed by the size of the Port and its tidal nature, requires a flexible operating environment if the imperatives of operating an efficient and economically sustainable port are to be met.
- 3.4 On that basis, we were told that PNL strongly supports the principles of the Port Chalmers decision and Variation 07/01, which would not impose absolute limits on its operations but would instead require it to respond materially to the consequences of its actions. To place this in context we now describe the physical environment in which issues from noise generation at the Port arise.

## **Port Setting and Environs**

- 3.5 In Nelson, as in other parts of the Country, the Port lies beneath and very close to a range of hills that skirt the edge of the water. A popular residential area is located to the south of the Port. The inner city area of Nelson lies generally on the more gently sloping land generally east/southeast of the Port. Noise from the Port does not appear to be a problem in that area and this Variation therefore relates to the land in the Residential Zone at the base of, and running up, the Port Hills which is generally, though not entirely, in residential use.
- 3.6 State Highway 6 runs between the base of the hills and the harbour, and at the northern most point of the hills it skirts around their base between the hills and the Port Industrial Area. Adjacent to the State Highway, along the base of the hills in this vicinity, is a Suburban Commercial Zone. There are some residences in this Zone including blocks of relatively new apartments, but properties within this Zone are expressly excluded from the mitigation aspect of this Variation. The Residential Zone on the hill abuts the Suburban Commercial Zone, and it is residences in the Residential Zone to which this Variation primarily relates.

## **Overview of Variation Approach**

- 3.7 Put in broad terms, the Variation implements a two part approach to noise issues. First, the production of noise in the Port Industrial Area, which includes the Port Operational Area itself, is to be governed by a Port Noise Management Plan to which we will refer in greater detail. Secondly, the effects of noise are to be the subject of a mitigation approach with three levels of involvement by the Port Operator (PNL) as follows:
- (a) First, properties which receive noise levels 65 dBA Ldn and above are to be acoustically treated to a certain level with 100% of the cost of that process met by the Port Operator, or are to be purchased (at the owner's option) by the Port Operator;
  - (b) Secondly, properties which receive noise 60 dBA Ldn and above but less than 65 dBA Ldn are to receive a contribution of 50% to the cost of defined acoustic treatment; and
  - (c) Thirdly, properties which receive noise 55 dBA Ldn and above but less than 60 dBA Ldn may be the subject of requests for assistance with acoustic treatment, which will be dealt with by the Port Operator on a case by case basis.
- 3.8 Wherever acoustic treatment is to be provided in the above three levels of mitigation, limitations are proposed on the parts of the house to be treated, and on the cost of work to be undertaken, which for the 65 dBA Ldn and above category is not to exceed 50% of the value of improvements on the property.

- 3.9 The two-part approach embodied in the Variation is generally similar to the approach endorsed by the Environment Court in relation to Port Chalmers, though differs from it in some respects to allow for the differences between the two ports and their respective nearby residential areas.
- 3.10 The underlying intent of the Variation is that noise issues will be dealt with by the Port conducting its operations in such a way that noise is minimised to the extent which is reasonably practicable. In other words, having regard to the nature and extent of its operations. Explicit in this approach is a theme that the owners of nearby properties accept a level of noise, with the impact of that noise being mitigated in key living parts of their houses by acoustic treatment. It is not intended that there be an enforcement line; that is, a line on the hill depicting a level of received sound, which port noise cannot exceed. In fact, the way the Variation is drafted, there is such an unintentional line in the Variation, and this is an issue which we will deal with specifically later in this recommendation.
- 3.11 Because the Variation is intended to deal with the conflicts between the interests of the Port, on one hand, and the interests of residents on the other, it is a key part of the proposal that there is established a Port Noise Liaison Committee comprising representatives of both the Port and of noise affected residents. The Committee is to have certain roles and powers. We will refer to the Committee in more detail later. It is quite clear, and as we gather accepted by all concerned, that the protocol proposed to be set in place by this Variation is founded on a co-operative approach to noise management by the Port Operator, and noise tolerance by the residents. The Port Noise Liaison Committee is at the interface of this readily apparent tension. In our view, the importance of the Committee's role cannot be overstated.

#### **4. THE VARIATION**

- 4.1 In this part we describe in more detail the Variation under consideration. This description is intended to be a summary. Full details of the Variation as proposed are set out in the section 32 report which is in the public domain and has been widely circulated.
- 4.2 Although, as we have said, the approach to control and acceptance of noise from Port Nelson is based on the protocol approved by the Environment Court for Port Chalmers, it differs from that protocol in material respects reflecting the differences between Port Nelson and Port Chalmers. A similar protocol has also been approved by the Environment Court for Port Lyttelton.

##### **Existing Regime**

- 4.3 The starting point for our description is the existing Rule INr.40 for the Industrial Zone. This requires that the rolling 5 day noise level generated from activities in Port Nelson does not exceed 65 dBA Ldn at or beyond the Port Noise Limit Line as shown on relevant planning maps. In addition, short term daytime noise levels of 70 dBA Leq and night time levels of 65 dBA Leq (and 85 dBA Lmax) are not to be exceeded at the Port Noise Limit Line. Such lines are often referred to as enforcement lines because on the occasions when noise exceeds these limits a prosecution may ensue so as to enforce the noise limits.
- 4.4 The intention of this Variation is to substitute a different approach to noise issues from that which is reflected in INr.40. Under this approach, activities that generate noise in the Port Operational Area are permitted, without there being a noise enforcement line. Rather, a protocol is introduced which has three key elements, a Port Noise Management Plan, a Port Noise Mitigation Plan and a Port Noise Liaison Committee.

##### **Port Noise Management Plan**

- 4.5 The Port Noise Management Plan was tabled in draft format. It is a plan to be developed and adopted by the Port Operator to include such matters as procedures for achieving noise reduction through operations, staff and contractor training, noise modelling and monitoring, auditing and reporting procedures, and complaint handling procedures. Noise levels emanating from the Port have been measured and notional lines of noise levels have been modelled and placed on plans of the residential area. The Port Noise Management Plan embodies these notational lines onto a Port Noise Contour Map.

##### **Port Noise Mitigation Plan**

- 4.6 The Port Noise Mitigation Plan will provide mitigation for dwellings in the residential zone which we have described, on a three tier basis as follows:

- The inner most contour line models received noise at 65 dBA Ldn. Properties within this line are obviously the most affected by noise, and the Mitigation Plan requires the Port Operator to offer to purchase, or provide acoustic insulation and ventilation, as appropriate, at its own cost, to all existing dwellings which do not currently meet an Indoor Design Level in living areas and bedrooms (“habitable spaces”) of 40 dBA Ldn. If acoustic treatment is chosen the Port Operator is not required to spend more on effecting that option than 50% of the value of the house concerned in the 65 dB Ldn and above category. If a compulsory purchase is elected by the property owner, the purchase price is to be market value as established by an independent valuation process.
  - For properties located outside the 65 dBA Ldn line, but within the second line which is modelled at 60 dBA Ldn, the Port Operator must offer to contribute up to 50% of the cost of acoustic insulation and ventilation, as appropriate, of all existing dwellings which do not already meet the Indoor Design Level in habitable spaces (40 dBA Ldn).
  - Properties outside the 60 dBA Ldn line, but within a third line modelled at 55 dBA Ldn, are not the subject of a compulsory insulation and ventilation protocol. However, the Port Noise Liaison Committee is to provide technical advice to the owners of these properties within this area on noise levels and possible noise mitigation including acoustic insulation and ventilation. The Port Operator may offer to contribute up to 50% of the cost of acoustic treatment, assessed on a case by case basis, on the recommendation of the Port Noise Liaison Committee.
- 4.7 The Mitigation Plan is required to include details on the staging of the programme for purchase and mitigation of affected properties.
- 4.8 As we have said, the received noise levels have been modelled, and verified, by monitoring. The resulting contour lines settle the level of mitigation applicable. To deal with a situation where actual noise received is recorded at levels above the modelled levels for the point at which a residence is located, there is provision in the Variation for those properties most affected to receive the mitigation package appropriate to a higher level of received noise if the actual recorded noise level exceeds 65 dBA Leq on three occasions at night. In any event, the entire Port Noise Contour Map is always reviewed on an annual basis.
- 4.9 It is also proposed that the Port Operator will engage a suitably qualified acoustic engineer to assess the work that is required to acoustically insulate properties in accordance with the Port Noise Mitigation Plan, and that person will liaise with the owners of the properties concerned in relation to carrying out the necessary work. It is proposed that the Port Operator will engage contractors but the proposed work will be the subject of agreement with owners before it is undertaken.

### **Port Noise Liaison Committee**

- 4.10 We have referred to the role of the Port Noise Liaison Committee earlier in this decision. The proposal in the Variation is that the Committee comprise representatives of the Port Operator, Nelson City Council, residents living in the Port Hills area, Port Industrial Area users and cargo users. The role of the Committee is to consider all noise issues arising from the Port operation and to carry out various functions which are listed in the Port Noise Management Plan and in a new appendix (AP29.C) to the PNRMP referenced by the proposed revision to the rule INr.40. It is intended that the Committee ensure the involvement of the community and is in a position to advise the Port Operator on port noise issues.

### **Other aspects of the Variation**

- 4.11 In the view of the Nelson City Council and PNL, it is a principal benefit of the proposal that there is no enforcement line. This means that PNL, as Port Operator, will not be under threat of enforcement action or possible imposition of curfews on its operations. It is said that a strong incentive to manage the noise environment of the Port Industrial Area is provided by the ongoing financial commitment of having to either purchase or provide acoustic insulation and ventilation, in some cases, to properties within the various noise level categories which we have described. The statutory duty to avoid unreasonable noise, which is contained in section 16 of the Act, also remains.
- 4.12 We were told that this approach has found a level of favour with residents during the consultation process. On the other hand, it became clear to us at the hearing, and from reading a number of other submissions, that a regime which does not have at least a fallback position in the form of an enforcement line, does not find universal favour with all residents. The position of the **Nelson Waterfront Protection Association** (“the Association”) is testament to this as we discuss in our assessment of the submissions.
- 4.13 The financial cost of the proposal falls principally on the Port Operator. There are eleven properties in the Residential Zone within the 65 dBA Ldn contour and substantially more in the outer bands described above. The overall cost of implementing the proposal, should the Variation be approved, will run to several million dollars.
- 4.14 It will be noted that we made reference to the acoustic modifications of homes affecting living areas. It is clear from the Port Chalmers decision that the thrust of the protocol is to protect sleeping and principal living environments within homes, and not ancillary areas of homes (such as bathrooms, laundries etc) or outdoor areas. Thus there is a definition of “*habitable space*” in the Variation which relates to the areas within a dwelling which are to receive acoustic treatment.



- 4.15 We have referred to noise from the Port Industrial Area. We record that in the Variation the definition of port noise excludes noise from ships which are not at berth, as well as noise from construction works, emergency situations and from vehicles on public roads. The first and last of these exceptions are important. Larger vessels, in particular, are a potential source of noise as they move to and from their berths through the inner harbour area, and because there is noise received in the residential area from the significant traffic volumes on the State Highway below, which we have described earlier. This is a major arterial route, and one of the principal access ways into Nelson. There is no equivalent source of significant noise at Port Chalmers.

## 5. OVERVIEW OF SUBMISSIONS TO VARIATION 07/01

### Categories

- 5.1 The submissions and further submissions to the Variation are readily categorised in the following topics:
- (a) Topic A - Submissions in general support or opposition to the Variation
  - (b) Topic B - Submissions opposing fundamental details of the Variation
  - (c) Topic C - Ongoing Administration of the Variation
  - (d) Topic D - Objectives and Policies
  - (e) Topic E - Rules
  - (f) Topic F - Appendices
  - (g) Topic G - Meanings of Words (definitions)
  - (h) Topic H - Miscellaneous
- 5.2 We have used these categories as the basis for the assessment that follows.

### Assessment of submissions

- 5.3 In terms of the above, we note that rather than deal with each submission in isolation we have grouped the submissions into a number of topic categories ranging from overall support and opposition to the Variation *per se* through to specific alterations sought. This has avoided unnecessary repetition associated with dealing with each submission in isolation to others but it has also enabled our assessment to follow a logical sequence of generic issues through to specific relief sought.

**6. TOPIC A: SUBMISSIONS IN GENERAL SUPPORT OR OPPOSITION**

6.1 This group of submissions relates to the Variation in its entirety. The relief sought by these submitters is reasonably generic in that the submissions either support the Variation (generally either without modification or with some minor alterations) and ask that it be adopted or (in the instance of two submitters) oppose the Variation in total and request that the Variation be withdrawn.

6.2 The details are as follows:

**Submissions opposing the Variation in its entirety**

Submitter	Submission No.	Request	Decision Sought
Alliance Group Ltd – Nelson Plant	S4	Oppose	Delete the Variation entirely
	Further Submission		Support/oppose
	X1 Ward, David and Jocelyn		Oppose
Nelson Waterfront Protection Association (NWPA)	S10(1)	Oppose	Withdraw the Variation and recommence extensive consultation before re-notifying a new variation, or
	S10(2)	Oppose	Decline the Variation, or
	S10(3)	Oppose	Amend it so as to impose enforceable noise limits on port activities, implement effective noise monitoring and measurement, provide a compensation package, establish a Port Noise Liaison Committee with equal representation, and any other measures to ensure health and wellbeing of the local community
	Further Submission		Support/oppose
	X1 Ward, David and Josephine		Support S10(3)
	X3 Residents’ Reps of PNLC X4 PNL		Support S10(3)  Oppose S10(1-3)
Alliance Group Ltd –	S4	Oppose	Delete the Variation entirely

Nelson Plant	Further Submission		Support/oppose
	X1 Ward, David and Jocelyn		Oppose
Robertson, Bruce	S15(2)	Oppose	Curfew between 12pm and 6am
	Further Submission		Support/oppose
	X3 Residents' Reps of PNLC X4 PNL		Support Oppose

### General Submissions in Support

Submitter	Submission No.	Request	Decision Sought
Weyerhaeuser New Zealand Inc	S7(1)	Support	Retain Variation to exclude noise from vehicles on roads
	S7(2)	Support	Retain Variation so that Port Operator is responsible for management of activities giving rise to noise including mitigation of adverse effects
	Further Submission		Support/oppose
	X4 PNL		Support S7(1)
	ENZA Ltd	S8	Support
	Further Submission		Support/oppose
	X10 NFL (formerly Weyerhaeuser)		Support
Nelson Pine Industries Ltd	S18	Support	Adopt Variation as notified
	Further Submission		Support/oppose
	X10 NFL (formerly Weyerhaeuser)		Support
Port Nelson Ltd (PNL)	S12(3.1)	Support	Retain the overall approach in the Variation
	Further Submission		Support/oppose
	X2 NWPA X10 NFL (formerly Weyerhaeuser)		Oppose Support

## Overview of Opposition and Support

- 6.3 This grouping of submissions represents a polarisation of two extreme views presented to us regarding the perceived merits (or otherwise) of Variation 07/01. On one hand, submitters such as **PNL** and **Nelson Pine Industries Ltd** support the Variation largely as notified and request that it be retained subject to some modification to the detail. On the other hand, submitters such as the **Nelson Waterfront Protection Association** (“the Association”) and the **Alliance Group**, whilst identifying some specific alterations they would like pursued, generally oppose the Variation in its current form and request that it be withdrawn leaving the option open for re-notification of a new variation to address many of their concerns.

## The case for Opposition to the Variation

- 6.4 Implicit in the submission from the opponents of the Variation, particularly the submission from the **Association** and the **Alliance Group Ltd**, is the theme that, notwithstanding the longevity of the issue of port noise in Nelson, the level of evaluation undertaken by both PNL and the Council to address this matter has been inadequate. This claim disputes the adequacy of the section 32 (s32) assessment where the Council has a duty before adopting a particular policy or method to consider alternatives and to assess their respective benefits and costs, and having done so to select the most appropriate mechanism having regard to matters of efficiency and effectiveness. In this respect, the Association argues that the evaluation of the 6 identified options in the s32 assessment report (and the selection of Option 3 – the Port Chalmers model) is to some extent flawed and that a careful re-examination of options would suggest that Option 2 better serves the purpose of the Act.
- 6.5 In support of this argument the Association suggested that the Port Chalmers circumstances are quite different from the prevailing circumstances at Nelson and that this has not been ‘factored’ into the consideration of appropriateness. In particular, the Association suggested that the following two factors are significant reasons why the Court adopted the management approach at Port Chalmers and that these circumstances are not replicated at Port Nelson
- Firstly, while the Dunedin City Plan contained noise limits for the Port, the Coastal Plan (administered by the Otago Regional Council) does not contain any provision relating to noise within the coastal marine area. Accordingly, a key difficulty in implementing an enforceable limit in the Port Chalmers situation was in identifying whether noise was emanating from the landward or seaward side of a vessel. The Association noted that this jurisdictional issue does not apply in Nelson as both the Coastal Plan and the District Plan (in fact the combined Resource Management Plan) contain rules on port noise. Also, as a unitary authority, the NCC has jurisdiction over both land and water.

- Secondly, and adding to the complexity in the Port Chalmers case, was the fact that a significant part of the Port operates within a designation and that some activities hold existing use rights. In this respect the Association said that the Court was influenced by these statutory rights in that it did not want to institute a regime whereby the Port Operator became over anxious to protect its existing use rights leading to a fortress approach to noise issues.
- 6.6 The Association concluded that the existence of these two factors clearly distinguish the Nelson situation from its Otago counterpart and noted that the Court had been of the view that had there been a Resource Management Act plan *“that gave jurisdiction over all noise in this area there would be merit in considering limits relating to the Port related activities at an appropriate noise boundary”*.
- 6.7 On the above basis, the Association argued strongly for the inclusion of an enforcement line into a mix of both management and regulatory approaches which Option 2 in the s32 assessment best equates with. It is their view that such an approach would provide some surety to the residents that noise limits will not increase unacceptably over time and it would provide an additional tool over and above the incentives of the Port Operator to work towards the minimisation and, where possible, reduction of port noise. Accordingly the Association’s preference was that Variation 07/01 be withdrawn and a re-assessment of options undertaken.
- 6.8 An alternative viewpoint, submitted on by **Mr Robertson** – a Mt Pleasant Avenue resident – is that curfews at the Port are the only solution for noise control. The option of curfews was considered and rejected as Option 5 in the s32 analysis. While Mr Robertson did not appear at the hearing, we understand that the main concern of residents is sleep disturbance from short duration impact noises. By imposing a curfew this noise source could be completely eliminated at night. Mr Robertson proposed a curfew from 12pm to 6am. We assume this was actually intended to be 12am (0000h) to 6am (0600h).

### **The case for Support of the Variation**

- 6.9 The key proponents supporting the Variation were **PNL, Weyerhaeuser New Zealand Inc, ENZA Ltd and Nelson Pine Industries Ltd**. These submitters supported the Variation on the basis that it deals appropriately with the management of port noise in the vicinity of Port Nelson and the effects of noise associated with the operation of the Port and the activities within the associated Port Industrial Area.
- 6.10 Representative of these submitters was the case advanced by **PNL**. Its position is that the Variation provides a workable solution and points also to the Environments Court’s decision on the Port Chalmers’ case. PNL submits that the Court’s 2003 decision on the adjournment of the appeals to the PNRMP gave direction to the parties to look at a solution modelled on the then recently approved Port Chalmers’ regime. PNL believes that the solution is not only one

that works for the Port but is one that works in the best interests of the wider community in that it makes the Port Operator accountable to the community for unreasonable emissions of noise. Whilst it acknowledges that the Port Operator is not able to be brought to account through the weight of regulation (through an enforcement line approach), that does not mean the solution will not work. Rather the case for the Port Operator is that a solution based on enforcement by regulation will be inefficient and ineffective and will do little to foster a move away from a confrontational approach to resolving issues.

- 6.11 In order to best serve the interests of the Nelson-Tasman region as a whole, PNL concluded that it is important to ensure that there is an appropriate balance between the aspirations of the Port Operator and the welfare of residents. Whilst they acknowledge that the approach taken by the Variation is not an original one, they do note that it has been modified to take account of the particular characteristics of the Nelson situation.
- 6.12 On the above basis PNL supported the three aspects of the Variation; namely the Port Noise Management Plan, the Port Noise Mitigation Plan and the Port Noise Liaison Committee. PNL argued that the Variation be retained and approved with some amendments to the policy and objectives, the meanings of words and the content of some of the rules and the appendices to be introduced into the PNRMP.

### **Evaluation**

- 6.13 As the above demonstrates, there clearly are polarised views on whether the Port Chalmers' model is the best solution for Port Nelson or whether an alternative mixed regime should be considered further. These issues touch directly on the section 32 assessment conducted by the Council to which we need to have regard in terms of its adequacy and appropriateness.
- 6.14 Accordingly, in this evaluation section we outline and assess the options before us in relation to the Variation, in principle. We spent considerable time discussing this pivotal matter as the implications of our decision on this for the remainder of the submissions is critical. By this we mean that if we were to find that the Variation did not pose the best option for giving effect to the Act then we would be obliged to reject the Variation and the consideration of some of the other submissions would become redundant. Conversely, if we were to conclude that the Variation is indeed the most appropriate solution, then we would need to clarify and assess the remaining detailed submissions.
- 6.15 Our starting point is the background to the Variation. During the evolution of this Variation, numerous consultation meetings were held with residents affected by noise from the Port, PNL, industry groups and other interested organisations as well as Council staff. Consultants were engaged, and participated, on behalf of both the Council and PNL. In 2004 an Issues and Options paper was prepared, which identified six potential options for resolving issues arising from the adverse effects of noise from the Port. After circulation of the Issues and

Options paper, further rounds of consultation took place as the Council moved towards the preparation of a draft variation to the PNRMP.

- 6.16 The section 32 evaluation of the Variation details the options, and discusses the benefits, advantages, costs and disadvantages of each. It is not necessary for us to canvas all the options, as the Variation provides for the adoption of the process which was then described as Option 3: a mitigation approach based on the Port Chalmers' model.
- 6.17 We must now decide whether we support the management/mitigation/liaison approach in principle, or reject that approach in favour of the status quo, which as we have said imposes enforceable noise limits (although references on the provisions in the PNRMP which would consider these remain adjourned by the Environment Court). Another option open to us, and strongly promoted by some submitters, is to support a management and control approach which, at the time of the consultation process, was described as Option 2. Alternatively, there are submissions requesting that we support a radically different solution and recommend curfews as described in Option 5.
- 6.18 As context for this part of our evaluation we record specific mandates which apply in this area.
- a) Section 16 of the Act provides that *“every occupier of land (including any premises and any coastal marine area) and every person carrying out an activity in, on, or under a water body or the coastal marine area, shall adopt the best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level.”* This is a clear statutory duty imposed on the Port Operator. It is a boundary on the way it carries out its operations.
  - b) Section 31(1)(d) provides that every territorial authority shall have, as a function for the purpose of giving effect to the Act in its district, *“the control of the emission of noise and the mitigation of the effects of noise.”* This is a statutory function of the Nelson City Council requiring it to control the emission of noise and to mitigate the effects of noise in the Nelson City area.
  - c) The Nelson Regional Policy Statement lists principal reasons for adopting certain objectives, policies and methods. One of them is set out in paragraph CO1.6.4 *“The existence and future operation of Port facilities is vital to the economy and future development of Nelson and Tasman Bay, especially given the lack of viable alternative transport modes linking the region with other parts of the country and the world. It is important that Council recognises the importance of Port facilities and makes adequate provision in its resource management documents.”* (See page 93 NRPS).
  - d) Chapter 11 of the NRPS contains issues, objectives, policies and methods in relation to noise. Whilst the entire suite of noise policies is relevant, in the present context we note objective DA2.2.1 which requires *“an environment in which unreasonable noise is avoided, remedied or mitigated”*, and supporting policy DA2.3.3 which provides *“to acknowledge that there are noise sensitive activities which*

*may not be compatible with existing facilities which are sources of noise". At the same time we note policy DA2.3.1 which the Council "to the extent that it is within Council's statutory power to do so, to protect existing and proposed residences and other noise sensitive land-users from the adverse effects of excessive and unreasonable noise from industrial, commercial, transportation (including land, sea and air), community or recreational activities".*

- e) Method DA2.4.2 provides "*Council will liaise with operators of Ports and Airports, Civil Aviation Authorities and the wider community in order to establish appropriate noise standards, having regard to the time of day, ways of meeting these standards having regard to operational requirements, and ways of mitigating noise arising from activities on areas administered by these authorities particularly during hours of darkness".*

- 6.19 There are a number of other objectives, policies and provisions that we will canvas in a separate part of this recommendation report. We record the above at this point to demonstrate that the statutory instruments recognise the status and importance of the Port to the entire region, and the interests of residents who may be affected by noise from its operations.
- 6.20 The above statutory references serve to demonstrate that we must strike a balance, and recommend an appropriate outcome to the City. In other words, or as the Court in the Port Chalmers' case so clearly put it: *How does the City Council reach a reasonable accommodation between the needs of a busy and vital Port and the amenity requirements of the nearby residents?"*
- 6.21 Of the options generated earlier and discussed in detail in the section 32 report, the principle ones are the present one, known as Option 3, and Option 2 which included an enforcement regime in addition to the management/mitigation regime. We have also considered a regime of curfews which is referred to as Option 5.
- 6.22 Having considered all of the arguments for options 2, 3 and 5, and the polarised relief sought by the Port Operator on the one hand and the Association and other submitters on the other, we have concluded that the adoption of the principles of the management/mitigation/liaison regime (Option 3) is preferable either to Option 2 and/or Option 5. It is also preferable to rejecting the Variation in its entirety which would result in the maintenance of the status quo (Option 1). Our reasons for this follow below.
- First, the management/mitigation/liaison regime allows flexibility for the Port Operator in its operations, which is a substantial benefit for the wider community. There are existing constraints on the Port operations provided by the fact that the Port is tidal, but further limitations on times of operation (curfews – Option 5) would be so inconsistent with the established operating methods of shipping lines that there would be a real risk of the Port being bypassed in favour of more flexible ports, necessitating the movement of freight by road or rail at significant cost and risk, particularly to sensitive



export cargos such as fruit. In our judgment, the benefits to the Port of the proposal before us are benefits economically and socially to Nelson City and the entire greater Nelson/Tasman region. They are section 5 benefits under the Act that contribute to the sustainable management of natural and physical resources.

- Secondly, there are substantial difficulties with the regulatory approach, even the opponents of the Variation acknowledge that. One of the principal problems with enforcement of a noise exposure line is in obtaining sound measurements to the required evidentiary standard for enforcement procedures. This means that noise control by enforcement measures is inherently difficult to effect, as well as being costly and time consuming. Further, there are no benefits to the community from the Port Operator being fined for breach of noise rules, and there are identified disadvantages to the community from operational constraints being imposed by the Court by way of enforcement orders for breach of noise limitations. We consider that the resources associated with dealing with enforcement procedures are more wisely appropriated to the areas of port noise management, mitigation and liaison.
- Thirdly, enacting a regime involving the imposition of a mitigation obligation, with a partial enforcement regime imposed in conjunction with it, places the Port Operator in a position of double jeopardy. PNL is a community owned company, carrying out a function which brings benefits to the entire community, directly or indirectly. By engaging in a management and mitigation protocol, the community as a whole, through the Port Operator, contributes to the compensation of those members of the community who bear the brunt of the adverse effects of the Port operations. There is an economic balance in a broad sense. To then impose fines on top of this contribution of the community, through the Port Operator, is to require the community to pay twice.
- Fourthly, there was evidence before us that the status quo – an enforcement regime – is simply not working. This was a position similarly experienced in other Ports such as Port Chalmers and Port Lyttelton. There was also evidence presented to us that the current system also engendered a situation of mistrust between the Port Operator and the residents (an adversarial or combative approach to noise problems rather than a conciliatory approach) reflecting the very real interests of the Port Operator (for which read the broader community) and nearby residents.

6.23 That is not to ignore the views of submitters who have difficulty accepting that the Port Operator will control its own noise in good faith without the threat of enforcement hanging over its head. We can understand how those views have come to be held. They are mirrored in the situation which prevailed at Port Chalmers in Otago, before the bold step was taken of entrusting resolution of noise issues to a management/mitigation/liaison approach. Now the concerns at

Port Chalmers have been largely swept away. We are satisfied that this is due in no small measure to the dedicated and conciliatory approach taken at that southern port town to ensuring that this form of noise control does in fact work. All involved must be so minded. This includes residents, industrial users, the Port Operator and all those involved in the operation of the greater Port Industrial Area. In current jargon, it requires 'buy-in' from all. Failing that, it cannot work the way it should, but there is no reason why this buy-in should not be present. We have already touched upon the importance of the role of the Port Noise Liaison Committee (and will elaborate upon this later in this recommendation), but it should not be thought that the entire success of this protocol rests on its shoulders.

- 6.24 As mentioned at the inception of this issue, Counsel for the Association sought to distinguish the Port Chalmers' decision from the position at Nelson. This was on the basis that a fundamental driver of the Court's decision was the lack of a unitary authority in Otago, leading to the Dunedin City Council, with jurisdiction over land based activities of the Port, being unable to exercise any control over activities in the coastal marine area, which includes the loading and unloading of ships, a matter within the province of the Otago Regional Council. The Association argued that this jurisdiction issue at Port Chalmers was exacerbated by the presence of the designation and existing use rights which frustrated the enforcement of previous noise rules in the Dunedin City District Plan and that again this factor is not present at Port Nelson.
- 6.25 We have considered these arguments and do not come to the same finding. It is true here that the Nelson City Council is a unitary authority and has control over both the relevant areas of land and the coastal marine area. Also there is no fudging of rules through existing use rights or any designation. In our view however, this was not the sole or even the principal basis for the outcome favoured by the Court. Rather, in our view, it was the balancing of the respective interests of the Port (the wider community) and the residents in a manner which reflects a requirement that they co-exist, that led to the outcome. Some support to this is lent by the decision of Judge Kenderdine on the Port Nelson references, discussed earlier. That is not to say that we should infer any mandate for the Variation from Judge Kenderdine's decision. At best it could only be regarded as a practical suggestion in the circumstances which then prevailed. Rigorous consideration of options for resolution of noise issues at Port Nelson was required and has been undertaken. In our opinion, that rigorous assessment has correctly pointed to an outcome based on the Port Chalmers' principles.
- 6.26 For the above reasons, we have concluded that Option 3 is in fact the most appropriate option in terms of efficiency and effectiveness to implement the purposes of the Act and the PNRMP in respect to the management of noise. We believe it achieves the balance that the Court referred to in the Port Chalmers' case, in that it adopts a practical standpoint that not only recognises that the Port is a vital part of the local and regional economy and requires ongoing protection, but that it must continually manage the levels of port noise and subsequent impacts on its neighbours' amenity and wellbeing.

- 6.27 Accordingly we have unanimously resolved to recommend that the Variation be approved, subject to any modifications that we identify later in this recommendation relating to policies and objectives, meaning of words, rules and technical appendices.

***RECOMMENDATION 1:***

*That the submissions by **Weyerhaeuser New Zealand Inc (S7(1) S7(2)), ENZA Ltd (S8), and Port Nelson Ltd (S12(3.1))** be accepted, and the associated further submissions by **Port Nelson Ltd (X4)** and **Nelson Forests Ltd (X10)** be accepted and further submission by **Nelson Waterfront Protection Association (X2)** be rejected.*

*That the submission by **Nelson Pine Industries Ltd (S18)** and the associated further submission by **Nelson Forests Ltd (X10)** be accepted insofar as they support the variation, subject to those amendments made in response to other submissions.*

*That the submission by the **Alliance Group Ltd – Nelson Plant (S4)** be rejected, and the associated further submission by **David and Jocelyn Ward (X1)** be accepted. That the submissions by the **Nelson Waterfront Protection Association (S10(1) S10(2) S10(3))**, and **Bruce Robertson (S15(2))** be rejected, and the associated further submission by **Port Nelson Ltd (X4)** be accepted; and that the related further submissions by **David and Jocelyn Ward (X1)** and the **Residents’ Representatives of the Port Noise Liaison Committee (X3)** be rejected.*

7. **TOPIC B: SUBMISSIONS OPPOSING FUNDAMENTAL ASPECTS OF THE VARIATION**

7.1 In addition to those submissions discussed in Topic A opposing the Variation in its entirety, a number of submissions oppose parts of the Variation which are fundamental to the approach we have recommended.

7.2 The details are as follows:

Submitter	Submission No.	Request	Decision Sought
Bateup, Suzanne Elizabeth	S3	Oppose	Introduce controls and monitoring amended to reduce noise below current levels
	Further Submission		Support/oppose
	X1 Ward, David and Josephine X5 Matthews, A and D X6 Hunter, Burke X7 Davies, A and B X8 Hawthorne, S L X9 Strickland, B R		Support Support Support Support Support
Evans, William PP	S17	Oppose	Contours do not accurately reflect the noise environment. Delete the requirement for acoustic treatment unless Port Operator provides guaranteed financial assistance
Northrop, Ian Richard	S9(2)	Oppose	Assurance that extension to noise line will not enable the Port Operator to build and work extension to MWS without proper consultation.
	Further Submission		Support/oppose
	X3 Residents' Reps of PNLC		Support

7.3 In her written and oral submissions **Ms Bateup (S3)** – a Cleveland Terrace resident – advised that even though she lives in Nelson East she is aware of port noise particularly at night time. She suggested it would be *“a lot worse for people living near the Port”*. She advocated that the Variation should be amended so that the Port Operator would be required to reduce port noise levels below current levels. In other words, the submitter was advocating for the continuation of a noise control line which would be monitored and enforced by the Council but presumably at an even lower level than the noise exposure line that exists in the

current PNRMP. We have already explained in our commentary on Topic A the difficulty of applying and enforcing the current regime, and the benefits of finding a balance between flexibility for Port operations and the management and mitigation of port noise. Whilst we agree that it would be desirable for port noise to decrease, we consider that to require this would be incompatible with the overall approach we have recommended, which includes flexibility for the Port Operator, as well as the commitment by that operator to a graduated mitigation package through the management regime introduced by the Variation.

- 7.4 **Mr Evans (S17)**, a Victoria Heights resident, occupies a 1920s dwelling which is situated just below the ridgeline and faces east towards the Nelson tidal haven. In his written submission he said that although he is just within the inner control boundary of the 55 dBA line, he has not been troubled by Port noise “*since the removal the wood chip piles when dozers worked on them several years ago*”. On this basis, when he presented his submission at the hearing, **Mr Evans** explained that he considered residents in the Port Effects Control Overlay should not be burdened with the cost of acoustic treatment when it is not essential; in particular, for houses that might be screened from port noise or parts of houses which are not noise sensitive.
- 7.5 In assessing this submission from **Mr Evans**, we note that as the acoustic treatment is determined by a performance standard (rule) in the PNRMP, houses partly screened from port noise would only require minimal or reduced treatment for any additions and even then only for additions that relate to a “*habitable space*” as defined in the rules. Additions or alterations to the submitter’s house which do not affect habitable spaces would not be subject to the rule and thus there would be no need for acoustic treatment. We do note however that there would still be some expense in obtaining an Acoustic Certificate where additions or alterations do relate to a habitable space. On balance, we consider that as the Port Operator is required to acoustically treat existing houses within a certain area, then for consistency and integrity of the Variation, new or altered houses in that area should also be acoustically treated to the same standard. Given that the Port Operator is substantially contributing to the cost of acoustically treating existing houses, we consider it appropriate that residents should be responsible for acoustically treating any new and altered houses.
- 7.6 **Mr Northrop’s** submission (**S9(2)**) relates to a specific project at the Port to extend one of the wharfs: “Main Wharf South” (MWS). **Mr Northrop** is a resident in, and Accommodation Manager for, the Latitude 41 Apartment complex fronting onto Haven Road and located approximately 100m from MWS. The apartment is situated within the Suburban Commercial Zone. **Mr Northrop’s** concern is that the Variation should not circumvent proper consultation for the project involving the MWS extension.
- 7.7 We understand that the MWS extension has been a significant project that PNL previously considered, but is not currently pursuing. Notwithstanding this, and should the project be reactivated, we note that in his report Mr Rae advises that a project such as MWS would require a resource consent which would probably be

publicly notified. We suggest that it may provide some comfort to the submitter that there would be a future process by which his concerns could be considered. That aside, one of the reasons we have recommended the overall approach of this Variation is to provide the Port Operator with flexibility, to be balanced with the management, mitigation and liaison obligations.

- 7.8 On the basis of the history of previous infrastructure changes at the Port we expect that in future the Port Operator will continue to need to develop facilities to accommodate changing shipping practices/types and different types of freight. The Variation is intended to allow for development of the Port. However, we do note that **Mr Northrop's** concerns relate to noise within the Suburban Commercial Zone, which as we will discuss later under Topic H (Miscellaneous Matters) has a peculiar situation in this Variation, which may need to be addressed by a future alteration to the Plan.

***RECOMMENDATION 2:***

*That the submissions by **Suzanne Bateup (S3), William Evans (S17), and Ian Northrop (S9(2))** and the associated further submissions by **David and Jocelyn Ward (X1), A. and D. Matthews (X5), Burke Hunter (X6), A. and B. Davies (X7), S. L. Hawthorne (X8), B. R. Strickland (X9)** and the **Residents' Representatives of the Port Noise Liaison Committee (X3)** be rejected.*

## 8. TOPIC C: ONGOING ADMINISTRATION OF THE VARIATION

8.1 In this group of submissions, and notwithstanding their support of, or opposition to, the Variation in total, several submitters have requested that if the Variation is to be confirmed then certain alterations should be made. The range of alterations requested by various submitters is reasonably diverse and includes changes to the following notified parts of the Variation:

- Objectives and Policies
- Meanings of Words (definitions)
- Rules
- Appendices

8.2 These four groupings of submissions are comprehensively analysed later in this recommendation report. In the meantime, there were a number of issues that arose from the submissions which do not fit precisely into that framework, and which relate to the ongoing administration of the port noise rules and management regime that we have recommended be adopted. In particular, there are three issues that we wish to particularly highlight in this section. These issues are:

- Maximum noise limits – L<sub>max</sub>
- Error with notified Variation re INr.38 and CMr.55
- Post operative administration of the Variation

### **Maximum noise limits – L<sub>max</sub>**

8.3 Before describing and assessing this particular issue, we wish to make a preliminary point regarding terminology. During the hearing submitters appeared to use the term ‘maximum noise level’ with two separate meanings. It was used both to describe the acoustic descriptor L<sub>max</sub>, and also to describe an enforcement limit to prevent L<sub>dn</sub> noise contours from expanding. Some submitters would like there to be limits of both definitions. In our discussion the term maximum noise level relates solely to the L<sub>max</sub> acoustic descriptor.

8.4 All of the residents living near the Port, whom we heard from during the hearing, were unanimous in considering that the most disturbing noise from the Port is short duration impact noises (‘clangs and bangs’). For example, these noises are sometimes generated when a crane’s spreader bars make contact with a container or some apparatus is accidentally dropped. We understand that generally the noise from these impacts is only problematic if staff at the Port deviate from normal good practice working procedures.

8.5 Residents told us that excessive impact noises wake them during the night. Most residents we heard from find that the continuous port noise, such as from cooling units on refrigerated containers, is generally not disturbing. However,

some residents told us that, once woken in the night by an impact noise, the continuous port noise can hinder them getting back to sleep.

8.6 It was on this basis of sleep disturbance, due to short term loud noise impacts, that many submitters advocated for the use of maximum noise limits. Aside from individual resident submitters who presented at the hearing, this theme of imposing maximum noise limits was particularly canvassed by the **Association** and the **Residents' Representatives** as follows:

- The **Association** considered that the proposed management system which will trigger mitigation measures in the management regime is inadequate. It was particularly concerned with the 5 day rolling average measurement as in its view this will enable the Port Operator to maximise noise. Similarly it felt that the Leq measurement provided for at night will not capture the unacceptable one off noises that currently occur (such as the dropped equipment). Essentially, the Association was most concerned that there was no link between Lmax and mitigation.
- The **Residents' Representatives** advanced similar arguments for contending that Lmax values must be incorporated into the Variation. The Residents' Representatives argued that the averaging approach was “nonsense” and an Lmax rule should be applied at all times and should be 10 dBA lower at night-time. They suggested that for the Variation to be effective it must contain the Lmax approach and a breach of the Lmax must have instant consequences. In advocating this approach the Residents' Representatives cited examples of police acting on a single incident of maximum speed being breached, and noise control agencies acting on single incidents of noise emission from a night club. In their view the same approach needs to be incorporated in the Variation.

8.7 Given that impact noises are clearly the primary concern of residents living near the Port, we explored this issue in considerable depth both during the hearing and also in our deliberations. As the submitters have noted, the noise limits in the Variation are in terms of the time-average level (Leq) and day/night level (Ldn). We heard from Mr Ballagh that while impact noises do influence Leq and Ldn values, because of the averaging in these measures, a single disturbing impact could still result in Leq and Ldn values being in compliance with the proposed limits. We understand that all the noise experts (including Mr Hegley and Dr Trevathan) presenting before us agreed that impact noises are better reflected by measurements of the maximum noise level (Lmax). To this extent, the generic concerns raised by the submitters in respect to the absence of Lmax levels are acknowledged and are not disputed.

8.8 In considering whether or not to impose an Lmax level in the Variation rules, we do note that an Lmax limit is included in the guideline values in New Zealand Standard 6809:1999 *Acoustics – Port noise management and land use planning*. We understand from Mr Ballagh that Lmax noise limits are also a normal provision



in most District Plans and other New Zealand Acoustic Standards. However, both Mr Ballagh and Mr Hegley expressed the firm opinion that Lmax noise limits are currently not, and will continue not to be, practical or effective at Port Nelson. Mr Ballagh also questioned Lmax noise limits in most other situations, stating that he could not recall any enforcement actions that had ever been made on the basis of an Lmax, due to the difficulty in obtaining Lmax measurements to an evidential standard. We note this and also record that both the **Association** and the **Residents' Representatives** did acknowledge that limitation regarding enforcing Lmax values.

- 8.9 Whilst we acknowledge that an Lmax noise limit would relate to exactly the types of impact noises which residents find most disturbing, we do have significant reservations about how practical such a measurement would be in the regime that we have endorsed in principle. Our basis for this reservation largely revolves around the fundamental problem identified by both Mr Ballagh and Mr Hegley (and to a certain extent Dr Trevathan also) that the source of any unattended Lmax measurement could not be identified with a sufficient degree of certainty. Both experts agreed that the source should ideally be identified from manual observation. Unfortunately, when an impact occurs it is already too late to call the Council's noise monitoring officer. We understand that alternatives, such as using remote noise monitoring correlated with video evidence of port operations or multiple microphones within the Port, are unlikely to be practicable. We heard that attended measurements and observations might be possible if there was a series of repeated impacts occurring throughout the night, such as could arise if there were poorly trained/supervised staff creating excessive impacts for an entire shift. However, we understand that the most common complaints relate to one-off events.
- 8.10 Mr Ballagh expressed the view that a noise liaison committee and management plan approach is an effective mechanism to deal with impact noises. At the hearing Mr Ballagh tabled results from the Port Chalmers' noise monitoring station which include Lmax results. From our discussions with the staff at Port Chalmers we understand these results are checked on a daily basis as part of the noise management programme, and any high Lmax events are investigated. Mr Ballagh stressed that dealing with impact noises is exactly the type of issue that noise liaison committees and management plans are designed to address. **Ms Thomas** for the **Residents' Representatives** discussed a past example of impact noise from log trucks at the port where simple management measures effectively controlled driver behaviour and eliminated the impact noises. We did hear of some examples of impact noises which required physical adjustment, such as sections of a loading ramp that impacted as trucks drove across. However, most examples of impact noise discussed at the hearing were matters which can be directly controlled by the actions and behaviour of staff working at the Port.
- 8.11 We accept that residents are disturbed by impact noises from the Port and we understand their reasons for requesting an enforceable Lmax noise limit. While we acknowledge the significance of this issue for residents, we accept the views

of the acoustic experts, Mr Hegley and Mr Ballagh, and consequently we do not recommend that an L<sub>max</sub> limit be introduced, preferring that impact noises be addressed through the Port Noise Liaison Committee and Port Noise Management Plan.

#### **Error with notified Variation re INr.38 and CMr.55**

- 8.12 During the course of the hearing it emerged from our questioning of Mr Rae and Mr Ballagh that there was a mistake in the changes proposed to rules INr.38 and CMr.55. These rules set noise limits for general activities in Industrial Zones and the Coastal Marine Area respectively throughout Nelson City. We understand that the changes proposed to these rules in the Variation were intended to provide an exemption for noise generated within the Port Operational Area, which is in both an Industrial Zone and the Coastal Marine Area in the PNRMP. The clear intention of the Variation was that noise from the Port Operational Area would now instead be controlled only by the new text in rule INr.40, which as previously explained permits activities which emit noise so long as the noise is managed through the use of the management/mitigation plans and community liaison regimes outlined in Appendix AP29. However, the drafting of the Variation does not give effect to this intention as the following explanation illustrates:
- The rules are correctly drafted to achieve the separate intention of noise from the Port Industrial Area outside the Port Operational Area always being subject to both INr.38 and INr.40.
  - However, (as we understand it) the changes to INr.38 and CMr.55 erroneously include a reference to the Port Effects Control Overlay. The effect of this error is that outside of the Port Effects Control Overlay, all port noise is now subject to both INr.40 and INr.38/CMr.55. As noted above, we understand that the intention was for noise generated in the Port Operational Area to be subject only to INr.40, which would have been consistent with the section 32 evaluation.
- 8.13 As already discussed, INr.40 requires an integrated system of a liaison, management, and mitigation approach with no fixed noise limits. This system utilises a set of modelled day/night level (L<sub>dn</sub>) noise contours ranging from 70 dBA near to the Port to 55 dBA furthest away from the Port. The port noise contours are permitted to move over time as Port activities change.
- 8.14 The landward boundary of the Port Effects Control Overlay has been drawn following the nearest cadastral boundaries outside the 55 dBA port noise contour in the Variation. As currently drafted in the Variation, INr.38 and CMr.55 require port noise at this boundary to comply with specified noise limits defined using the L<sub>10</sub> acoustic descriptor (daytime 55 dBA, night-time 45 dBA).

- 8.15 We heard from Mr Ballagh and Mr Hegley about the relationship between Ldn and L10 acoustic descriptors, which do not have a simple correlation. Mr Ballagh informed us that the current location of the modelled noise contours (INr.40) could mean that port noise is breaching the INr.38/CMr.55 noise limits by up to approximately 3 dB. Thus, when the Variation was notified there might have been an immediate breach of the PNRMP rules. Mr Hegley acknowledged the problem but described how, with certain restrictions and allowing for prediction tolerances, port noise could be managed to comply with INr.38/CMr.55 in the short-term. Mr Hegley informed us that PNL had confirmed it was prepared to operate under such restrictions, but would require the issue to be addressed within the next few years.
- 8.16 We note that the unintended consequence of the changes to INr.38 and CMr.55 is that the Variation does in fact currently provide enforceable noise limits for port noise. Such a limit was requested in the submission by the **Association (S10(21))**. We have already discussed the overall approach to this Variation and given the reasons why we consider that Option 3 from the section 32 evaluation is the best approach. We consider that enforceable limits would be contrary to the approach of Option 3. Nevertheless, the Variation does unavoidably include enforceable limits in INr.38/CMr.55.
- 8.17 There were no submissions relating to this aspect of INr.38 and CMr.55, and it is therefore outside the scope of our powers for us to recommend any changes. The alteration required to bring the provision in line with the intention is probably also outside our powers set out under clause 16 of the First Schedule to the Act: *“A local authority may make an amendment, without further formality, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.”*
- 8.18 Given these procedural limitations and for the substantive reasons discussed above (particularly the difference between the intent of the Variation and one aspect of delivery), we consider that the current drafting of INr.38 and CMr.55 is potentially a significant flaw in the Variation. However, we consider that the only party adversely affected by this flaw is PNL, and indeed the flaw may provide some short-term reassurance for residents (by providing, albeit inadvertently, their requested bottom line enforceable noise limits) while a level of trust develops between all parties as the liaison, management and mitigation approach settles in. As PNL is the only party potentially adversely affected by this quirk in the drafting, and because that party has indicated that it can operate within the INr.38/CMr.55 noise limits in the short-term, we do not recommend rejecting the Variation because of this flaw.
- 8.19 It is our unanimous view that to reject the Variation on this technicality would unnecessarily delay the benefits of the liaison, management and mitigation approach. However, we do consider it important that the flaw is addressed. Therefore if our recommendation to accept the Variation with modifications is agreed by Council, we also recommend a further subsequent alteration to the NRMP under the First Schedule to the Act (either via a plan change or a

variation depending on the stage the NRMP is at the time) to exclude noise generated in the Port Operational Area from INr.38 and CMr.55. We discuss the possible timing of such an alteration later in Topic H (Miscellaneous Matters) of this report.

**RECOMMENDATION 3:**

*That the Council direct Officers to initiate a further amendment to the Nelson Resource Management Plan within two years of notification of decision on Variation 07/01, to exclude noise generated in the Port Operational Area from INr.38 and CMr.55.*

**Post operative administration of the Variation**

8.20 In this group of submissions certain submitters have sought clarification and alterations to the way in which the Variation will be administered once it becomes operative. In particular two submitters, **Mr Sinner** and **Auckland Point School**, submitted that the definition of the Port Effects Control Overlay at AD11.3.14 should be amended to state that the boundaries of the Port Effects Control Overlay will be adjusted when the contours in the Port Noise Management Plan are updated. Another submitter (**PNL**) sought an amendment to AD11.3.14 to make it clear that other activities sensitive to noise will also be required to provide acoustic insulation if they are within the Port Effects Control Overlay, regardless of zoning. These initial submissions also attracted further submissions in opposition.

8.21 The details of these submissions are as follows:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(4)	Oppose	Amend the definition of Port Effects Control Overlay at AD11.3.14 to state that the boundaries of the overlays will be adjusted when contours are updated.
Auckland Point School	S6(4)	Oppose	Amend the definition of Port Effects Control Overlay at AD11.3.14 to state that the boundaries of the overlays will be adjusted when contours are updated.
	Further Submission		Support/oppose
	X4 PNL		Opposes S1 and S6

Submitter	Submission No.	Request	Decision Sought
Port Nelson Ltd (PNL)	S12(4.3)	Oppose	Amend AD11.3.14 to make it clear other activities sensitive to noise will also be required to provide acoustic insulation if they are within the port effects control overlay regardless of zoning.
	Further Submission		Support/oppose
	X2 NWPA		Oppose

- 8.22 Before specifically addressing this group of submissions it is useful to understand the proposed function and operation of the Port Effects Control Overlay.
- 8.23 The first point of note is that the Port Effects Control Overlay is directed not at the Port Operator but at the owners of properties, and sets out the requirements on them when undertaking building works within the area identified by the overlay. Therefore, the Port Effects Control Overlay is quite different from the Port Noise Contour Map - which affects the Port Operator's responsibilities in terms of mitigation and which largely sits outside the PNRMP. In other words, although it is not intended that there be noise limits imposed upon the Port, which would lead to enforcement action or prosecution if those noise levels were exceeded at designated points, it is nonetheless intended that there be a Port Effects Control Overlay in the PNRMP which will approximately identify modelled noise levels, and be used for determining other matters such as acoustic insulation obligations on property owners when they elect to build or alter residences. In this respect, Appendix AP19 of the PNRMP contains acoustic insulation requirements for both the Airport Effects Control Overlay and the Port Effects Control Overlay.
- 8.24 This Variation includes new Planning Maps 6 and 9 for the zones adjacent to the Port which are most affected by noise. Three rules are proposed to implement the Port Effects Control Overlay identified in those planning maps. They are:
- New proposed rule REr.65A.1 (for the residential zone) sets acoustic insulation requirements for new residential buildings and alterations to existing residential buildings in that zone. An internal design level of 40 dBA Ldn is set. This alters the 45 dBA Ldn indoor design level required by the PNRMP at present.
  - Rule REr.65A.1 would also require ventilation to be provided for habitable spaces as detailed in Appendix AP19.2. The rule also requires that in the Port Effects Control Overlay an acoustic engineer must certify that the building design will achieve the required indoor design level for the zone.

Appendix AP19.2 also requires that a mechanical system of ventilation, or air-conditioning plus mechanical ventilation, be installed to meet the requirements set out in the rule. This is in recognition of the fact that in warmer summer months it may be common practice for residents to leave windows open thereby negating the effectiveness of standard acoustic insulation.

- Finally it is proposed to amend the subdivision rule REr.107 to impose a 600 square metre minimum site area within the Port Effects Control Overlay. This is to provide consistency with the current density requirement for dwellings in the Port Effects Control Overlay in the residential zone (rule REr.64a) which requires a minimum site area of 600 square metres for any dwelling to be erected on a site.

8.25 As noted, the Port Effects Control Overlay is shown on new Planning Maps 6 and 9. Any alteration to these maps which might be warranted as a consequence of a change in activities at the Port, altering the received sound levels in this zone, would require an alteration to the PNRMP. On the other hand, the Port Noise Contour Map which sets out the modelled sound level contours, which form the basis of the mitigation plan, are contained in the Port Noise Management Plan, which is a separate document referred to in, but not part of, the PNRMP. It is intended, in the Variation before us, that the Port Noise Contour Map be updated annually so that it reflect as accurately as possible the noise levels currently being emitted from the Port.

8.26 It will be seen, therefore, that there is a prospect of the Port Effects Control Overlay in the PNRMP rapidly becoming unsynchronised from the Port Noise Contour Map which sits outside of the PNRMP. Even if it were proposed to promote an alteration to the NRMP every year, that is a process of some complexity under the Act and it is not unrealistic to assess that it could take in the order of a year or possibly more for such an alteration to be completed. Even if the alteration were promoted at the same time that the Port Noise Contour Map in the Port Noise Management Plan is varied, the NRMP will always be a year or so behind the Port Noise Contour Map.

8.27 We note that based on experience with similar provisions in the Dunedin City District Plan, the Dunedin City Council is of a mind that the Port Noise Contour Map in the Port Noise Management Plan should be updated every two years. It seems that there is no way of ensuring that the two sets of noise level lines are the same at any given time.

8.28 Returning to the submissions, we noted at the outset of this section that two submitters, **Mr Sinner** and **Auckland Point School**, requested that the definition of the Port Effects Control Overlay at AD11.3.14 should be amended to state that the boundaries of the Port Effects Control Overlay will be adjusted when the contours in the Port Noise Management Plan are updated. As we have noted the Overlay can only be changed by way of the alteration procedures under

the First Schedule to the Act and it is not proposed that those procedures should be followed every time the Port Noise Contour Map changes, be it annually (as proposed) or less frequently (as suggested by the Dunedin City Council based on its experience).

- 8.29 In our view, the two documents – Control Overlay and Contour Map - serve different purposes, and for that reason it is not necessary to ensure that they are precisely synchronised. Whilst we accept that a lack of synchronisation could lead to an element of uncertainty in the community, it is important to realise that the levels set in the Port Noise Management Plan form the basis of the mitigation package, whereas the levels set in the PNRMP Port Effects Control Overlay trigger the requirements of the PNRMP relating to acoustic insulation in new dwellings, and alterations to dwellings. To our mind, this is a crucial distinction and at the end of the day forms a practical basis for keeping the procedures separate.
- 8.30 **PNL** by submission **S12(4.3)** separately sought an amendment to AD11.3.14 to make it clear that other activities sensitive to noise will also be required to provide acoustic insulation if they are within the Port Effects Control Overlay, regardless of zoning.
- 8.31 It is provided in that clause that any non-residential activities requiring resource consent will be assessed for noise effects, and therefore any change may not strictly be necessary. We do not consider it necessary to further amend AD11.3.14 to refer to the suburban commercial and industrial zones as the provisions relate to all properties within the Port Effects Control Overlay regardless of the zone in which they are located.

***RECOMMENDATION 4:***

*That the submissions by **Mr Sinner (S1(4))**, and **Auckland Point School (S6(4))** be rejected, and the associated further submissions by **Port Nelson Ltd (X4)** be accepted.*

*That the submission by **Port Nelson Ltd (S12(4.3))** be rejected, and the associated further submission by **Nelson Waterfront Protection Association (X2)** be accepted.*

## 9. TOPIC D: OBJECTIVES AND POLICIES

### Context

- 9.1 Although objectives and policies are usually the starting point for establishing methods in a Resource Management Plan, there were only four submitters to the altered Objectives and Policies resulting from Variation 07/01. Of these, **PNL** was the dominant initial submitter with the **Association** being one of only two further submitters (the other being **Nelson Forests Ltd (formerly Weyerhaeuser)**). **Gibbons Holdings Ltd** also lodged an initial submission to Industrial Zone Objectives and Policies.
- 9.2 This low number of submitters reflects one of two things – either that the altered policy and objectives are generally accepted by most parties, or alternatively the importance of ensuring the policy and objective framework is compatible with the resultant methods (rules, appendices etc) is not well understood by most submitters. We suspect it is the latter although we do note that the alterations to the policy and objective framework are more consistent with fine-tuning the existing provisions than any wholesale changes, which may also explain the absence of a wide number of submissions to them.
- 9.3 In any event, the submissions we considered related to the following Objectives and Policies:
- General Submissions - Objectives and Policy framework
  - District Wide Objectives and Policies - DO12.1.2 , DO12.1.3, DO12.1.4, DO12.1.5
  - Objectives and Policies - Residential Zone
  - Objectives and Policies - Industrial Zone
  - Objectives and Policies - Coastal Marine Area
- 9.4 We note that many of the issues raised by the submissions to the Policies and Objectives have been captured in more detail by submissions to the Rules, Appendices and Meanings of Words (definitions) sections of the Variation. Accordingly, in this section we have provided an overview of the issues raised by the various submissions and, where appropriate, have referred to the relevant topic where the issue is developed further. We have also relied on the extensive discussion in Topic A which provides a useful basis for considering the policy and objective issues.



## Objectives and Policies – General

9.5 The submitters to these provisions are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(3.2)	Oppose	Strengthen the objectives and policies to provide framework necessary to support the approach and methods proposed, including reverse sensitivity issues for PNL.
	S12(3.3)	Oppose	Include an exception mechanism to relieve the Port Operator or house owner of all or part of their obligations to acoustically insulate a building based on heritage aspects.
	S12(3.4)	Oppose	Provide further objectives, policy statements and explanations on how outdoor living environments are to be dealt with.
	Further Submission		Support/Oppose
	X2 NWPA		Oppose

9.6 **PNL (S12(3.2))** requested a strengthening of the objectives and policies to provide a framework necessary to support the approach and methods proposed, including reverse sensitivity issues.

9.7 Having assessed the proposed framework, we agree with the Reporting Officer, Mr Rae, that the objectives and policies provide a fair balance and in general no further change is considered necessary (note: some minor changes are recommended in relation to more specific submissions from **PNL**). In arriving at this position we note that:

- The importance of the Port has actually been strengthened in places (including DO12.1.1), and
- there are existing reverse sensitivity issues mentioned in DO12.1.3.i, the introduction of the mitigation approach is described in DO12.1.3.ii, DO12.2.3v describes the noise management plan and noise mitigation plan approach, the restrictions on subdivision are explained in the new DO12.1.4.v, and DO12.1.5 introduces the concept of minimisation of noise (in addition to reduction of noise).

9.8 **PNL (S12(3.3))** also suggested the use of an exception mechanism to relieve the Port Operator, or the house owner, of all or part of their obligations to insulate a building based on any heritage aspects it may have, together with some

amendment to the objectives and policies to reflect this. While an amendment to the existing policy framework is not considered to be appropriate in this instance, we record that submitter’s concern has been addressed in the discussion of the Port Noise Mitigation Plan under Topic F (Appendices) in this recommendation report.

- 9.9 **PNL (S12(3.4))** also requested the provision of further objectives, policy statements and explanations on how outdoor living environments are to be dealt with. Whilst the effects of noise on outdoor living are not specifically mentioned in the objectives and policies, it is anticipated that, from the implementation of the Variation, residential owners will receive some reduction, or at least no worsening of the situation, in respect to noise in outdoor living areas through successful management of activities at the source. It is not a principal focus of the Variation to address outdoor noise as outlined in the section 32 report, and therefore inclusion of specific policies in the Variation on this issue is not supported.

***RECOMMENDATION 5:***

*That the submissions by **Port Nelson Ltd (S12(3.2-3.4))** be rejected, and the associated further submissions by **Nelson Waterfront Protection Association (X2)** be accepted.*

**District Wide Objectives and Policies – DO12.1.2**

- 9.10 This policy concerns the future expansion of the Port Industrial Area. The submitters to this provision are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.4)	Oppose	i. Re-instate the word ‘generally’ to Policy 12.1.2
			ii. Amend DO12.1.2 to include water way leases.
		iii. Amend explanation accordingly.	
		iv. Or provide alternative words as appropriate.	
	Further Submission		Support/Oppose
	X2 NWPA		Oppose

- 9.11 **PNL (S12(4.4))** sought to specify the areas to which this policy applies to. Specifically, **PNL** sought to refer to the areas to which it has responsibilities as opposed to the Port Industrial Area generally. We agree with the submitter that the proposed deletion of references to the areas defined within the Coastal Permit

and Waterways Lease goes beyond the scope of the Variation as notified. This appears to have been a ‘tidy up’ editing change, but it has the effect of restricting port activities to the Port Industrial Area only, and it is our opinion that this is not the intent of the Variation. Accordingly, we recommend an alteration to this Policy provision.

**RECOMMENDATION 6:**

*That the submission by **Port Nelson Ltd (S12(4.4))** be accepted, and the associated further submission by **Nelson Waterfront Protection Association (X2)** be rejected.*

**AMENDMENTS TO VARIATION 07/01:**

DO12.1.2:

*Amend to read:*

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

DO12.1.2.i:

*Amend the last sentence to read:*

*“Minor reclamations to enable better use of existing resources are generally less of an issue, although cumulative effects of a number of such reclamations could be significant.”*

**District Wide Objectives and Policies - DO12.1.3**

9.12 This policy deals with noise effects arising from Port related activities. The submitters to this provision are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.5)	Oppose	i. Amend DO12.1.3 to acknowledge the port and surrounding residential area co-exist and compatibility difficult to achieve. ii. Amend DO12.1.3 to address reverse sensitivity effects on Port. iii. Or alternative words. iv. Include amended versions of DO12.1.3 and Explanation and Reasons (see detailed submission).
	Further Submission		Support/Oppose
	X2 NWPA X10 NFL (formerly Weyerhaeuser)		Oppose Support

- 9.13 The submitter, **PNL (S12(4.5))**, sought alterations to this policy and its explanation and reasons so as to acknowledge the Port and surrounding residential area co-exist and that compatibility is difficult to achieve. Mr Rae noted that the word ‘compatible’ in Policy DO12.1.3 may create a false impression of the standard of amenity that can reasonably be expected to arise in the noise-affected areas of the Residential Zone. We agree that a more appropriate description, in accordance with the explanation that follows the policy, is to include reference to providing a reasonable standard of residential amenity, including an environment where reasonable sleep can occur.
- 9.14 But for the amendment suggested in 9.13 above, Policy DO12.1.3 and its accompanying explanation are considered adequate to address the issue of reverse sensitivity. The policy is concerned with managing noise effects, and we consider it unnecessary to change the scope to introduce the issue of reverse sensitivity. We note that in her evidence Ms Carter disagreed that reverse sensitivity is currently addressed by DO12.1.3 and she proposed an alternative approach of an adding a sentence to DO12.1.4.i to specifically raise reverse sensitivity. Having considered these Policies and Explanations and the proposed amendments, we do not believe that any further amendment is required to address reverse sensitivity.
- 9.15 PNL’s submission on DO12.1.3 also suggested wording to address outdoor living which was raised in relation to other parts of the Variation. In his report, Mr. Rae stated:

*“If this policy was to be amended as requested by the submitter (PNL) to focus specifically on the indoor living environment, and the Explanation and Reasons section amended to exclude the control of noise in the outdoor environment, the Policy will in my view then be too narrowly focused. I agree with the concerns of NWPA in this regard, and this has been a consistent matter raised during consultation. Whilst the variation does not contain specific controls to protect amenity in outdoor areas, it is nevertheless an expectation that the overall effective management of noise may have indirect benefits in terms of reduced exposure to outdoor noise, and this should not therefore be exempted from the Policy as being unattainable. Having said that I do agree with the suggested wording in the final sentence of the Explanation and Reasons DO12.1.3.i that states: “...to address effects, particularly on the indoor living environment of areas adjacent to the port”. This in my view provides a better balance, and does not exclude the issue of outdoor noise altogether”.*

- 9.16 We agree with Mr Rae’s assessment and recommend that the proposed amendment be adopted.

**RECOMMENDATION 7:**

*That the submission by **Port Nelson Ltd (S12(4.5))** and associated further submissions from **Nelson Waterfront Protection Association (X2)** and*

*Nelson Forests Ltd (X10) be accepted in part insofar as they accord with the following amendments:*

***AMENDMENTS TO VARIATION 07/01:***

*DO12.1.3:*

*Amend to read:*

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

*DO12.1.3i:*

*Amend the last sentence to read:*

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

**District Wide Objectives and Policies – DO12.1.4**

9.17 This policy deals with the management of the noise receiving environment affected by the Port Industrial Area. The submitters to this provision are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.6)	Oppose	<ul style="list-style-type: none"> <li>i. Amend to limit the potential number of new residential units/apartments in Suburban Commercial Zone in Port Effects Control Overlay.</li> <li>ii. Amend to require affected party approval from the Port for any resource consents.</li> <li>iii. Or alternative words.</li> </ul>
	S12(4.7)	Oppose	<ul style="list-style-type: none"> <li>i. Amend DO12.1.4.iv to mention in the method other types of buildings required to provide acoustic insulation under the policy and rules for the Port Effects Control Overlay (and clarify whether schools to be included).</li> <li>ii. Delete the words ‘noise affected properties’ and replace with appropriate words.</li> </ul>

	Further Submission	Support/Oppose
	X2 NWPA X10 NFL (formerly Weyerhaeuser)	Oppose Supports S12(4.6)

9.18 The **PNL** submissions **S12(4.6,4.7)** seek to alter the policy, its explanation and reasons and proposed methods so as to:

- (a) Reduce the potential for new residential units and apartments that could occur in the noise-affected parts of the Suburban Commercial Zone (SCZ) and Residential Zone.
- (b) Alter the description of the type of buildings to which rules requiring acoustic insulation will apply (i.e. include other buildings, not just residential).

9.19 In terms of (a) we note that whilst the SCZ is not primarily set up to provide for residential accommodation, it does nevertheless permit residential accommodation. We note that it was suggested by Mr Rae that the standard of amenity in the SCZ is different to the Residential Zone and therefore developers and owners need to be aware that effects such as noise arising from within this commercial zone, and from adjacent activities, may be at higher levels than for a residential zone. Notwithstanding Mr Rae's observations, we are not necessarily convinced that the issue of port noise nuisance is significantly different in the SCZ as compared to the residential zone. Regardless of this, we are conscious that the prospect of further restricting residential development within the SCZ has not been part of the development of this Variation, and is therefore not supported at this point in time.

9.20 For the above reasons, it is considered that as the Variation stands (as shaped by the section 32 report) Policy DO12.1.4.i and ii adequately describe the need to restrict the potential for people and noise sensitive activities to be exposed to noise effects. However, we do return to the issue of the SCZ in Topic H (Miscellaneous Matters) of this recommendation report where we recommend certain issues that the Council may wish to research further with a view to promulgating a further alteration to the PNRMP. The relationship between the SCZ and the Port is such an issue and it may be appropriate at the time of a future alteration to the NRMP for some provision for sleep protection for residents in the SCZ to be explored. This is covered in further detail in Topic H (Miscellaneous Matters).

9.21 Continuing with (a) above, **PNL** also submitted that changes should be made to DO12.1.4.iii and associated rules such that affected party approval would be required from the Port Operator for applications for resource consent which exceed the permitted residential density in both the SCZ and Residential Zone. Mr Rae noted that affected party approval would in all probability be required, but the need should be determined on an individual basis having regard to the relevant sections of the Act (rather than being predetermined in the PNRMP). We

agree that while affected party approval from the Port Operator would normally be expected it would not be appropriate for this to be mandated in the PNRMP.

- 9.22 In terms of (b) above, it is accepted that premises affected by port noise which are used either for living purposes or other noise sensitive activities such as education should have appropriate acoustic insulation. Proposals for new or expanded non-residential noise sensitive buildings such as educational facilities will generally require resource consent and precise noise requirements can be determined at that time without the need for any specific reference to such other activities at this point. However, we agree that there is merit in amending Method DO12.1.4.iv to exclude specific reference to strictly residential units. We recommend accordingly below.
- 9.23 Also under (b) above, the submitter (PNL) has also requested that the words ‘noise affected properties’ be replaced in Method DO12.1.4.iv. We note that the term ‘noise-affected properties’ has specific meaning in the PNRMP and describes only those properties within the 55 dBA Ldn contour which have not already received acoustic treatment. We agree with Ms Carter in her evidence that this specific definition does not adequately describe the intended meaning of the Method. Ms Carter suggested in her evidence using the Port Effects Control Overlay as an appropriate reference and we agree this would give effect to the apparent intention of the Method. Again, a modification to the relevant provision is recommended below.

***RECOMMENDATION 8:***

*That the submissions by Port Nelson Ltd (S12(4.6,4.7)) and associated further submissions from Nelson Waterfront Protection Association (X2) and Nelson Forests Ltd (X10) be accepted in part insofar as they accord with the following amendments:*

***AMENDMENTS TO VARIATION 07/01:***

*DO12.1.4.iv:*

*Amend to read:*

*“Rules requiring acoustic insulation for new building work within the Port Effects Control Overlay involving the creation of new habitable spaces or spaces for other activities sensitive to noise within existing or new properties.”*

**District Wide Objectives and Policies – DO12.1.5**

- 9.24 Policy DO12.1.5 deals with disturbances from operations at the Port and in particular the potential for adverse effects on the adjacent residential zone. The submitters to this provision are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.8)	Oppose	i. Amend DO12.1.5.i to include other adverse effects contemplated by the policy, or delete the words “in particular through noise reduction practices and technologies”. ii. Delete DO12.1.5.iii and DO12.1.5.iv or insert a cross reference to Policy 12.1.3.v. iii. Amend DO12.1.5.i to add the words “in conjunction with the lessees in the Port Industrial Area”. iv. Or alternative appropriate words.
	Further Submission		Support/Oppose
	X2 NWPA		Oppose

9.25 In submission **S12(4.8) PNL** sought a variety of changes to the Policy and its attendant explanations and methods as follows:

- PNL submitted that there is a potential duplication in Policy DO12.1.3 (Noise effects), and Policy DO12.1.5 (Reduce noise from port operations) in regards to the management of operations at the Port to reduce or minimise noise. We agree. However, as Mr Rae noted in his report, the feedback from consultation consistently showed that affected residents wished to see genuine measures in place, and further developed, to actively reduce or minimise noise at source, and not to rely solely on the mitigation methods. We agree that this is an appropriate expectation, and recommend that DO12.1.5i is retained in its proposed form to provide this emphasis on noise reduction or minimisation. No change is therefore recommended.
- PNL also requested that reference to a Port Noise Liaison Committee and a Port Noise Management Plan be deleted from method DO12.1.5iii and iv. As we have already discussed in Topic A and develop further in Topics E (Rules) and Topic F (Appendices) we consider that both methods (Management Plan and Liaison Committee) will serve an important role in identifying ways to reduce or minimise noise. Accordingly, this relief is not considered appropriate.
- The final change requested by PNL was to add a statement that other users of the Port Industrial Area, in addition to the Port Operator, should be added to DO12.1.5.i as being “*encouraged to continue its commitment to environmental*”



*management...". As we have already expressed, looking forward, the management of noise should be a collaborative effort by all concerned, and therefore we agree with the sentiment of this submission. However, this particular sentence specifically refers to "continue" and also relates to general environmental effects and the Environmental Consultative Committee and Environmental Management Plan. As existing effort has been primarily by PNL, the word "continue" restricts addition of other parties to this clause, and also as noise is no longer addressed under these general environmental systems it would be inappropriate for us to recommend changes to them while specifically considering port noise.*

**RECOMMENDATION 9:**

*That the submission by **Port Nelson Ltd (S12(4.8))** be rejected and the associated further submission from **Nelson Waterfront Protection Association (X2)** be accepted.*

**Objectives and Policies - Residential Zone**

9.26 The submitter to these provisions was again limited to PNL as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.9)	Oppose	i. RE2.1 - Delete method RE2.1.viii and RE2.1.ix. ii Include a method stating adoption of noise minimisation techniques where practicable.
	Further Submission		Support/oppose
	X2 NWPA		Oppose

9.27 RE2.1 viii and ix establish that the policy on noise levels in the residential environment affected by noise from the Port Industrial Area will be implemented, inter alia, by methods (rules) requiring acoustic insulation for new residential units and additions to existing units, and by rules requiring a minimum site size for subdivision. The submitter sought the deletion of these methods.

9.28 We agree with Mr Rae that there is no need to delete these two methods (RE2.1.viii and ix) proposed to be added to Policy RE2.1. The **PNL** submission (**S12(4.9)**) states that these methods, describing rules requiring acoustic insulation and minimum areas for subdivision, will not achieve a reduction in noise levels from the port at adjacent site boundaries. The concern being that this would make the methods inconsistent with the policy they are giving effect to. However, we note that the Explanation/Reason RE2.1.i of the Policy explains that *"This policy*

*aims to ensure noise received on or from an adjacent site is reasonable for a residential zone”*. Accordingly, we consider that this indicates that the Policy should be interpreted in broad terms which would include acoustic treatment so as to ensure noise received within residential units is reasonable. In this context the last method is also considered appropriate as it supports the rule restricting subdivision in the zone, and thus reducing the overall exposure of people to noise effects.

- 9.29 As requested by **PNL**, we consider that a new method would be appropriate to require the adoption of noise minimisation techniques to reduce noise effects.

**RECOMMENDATION 10:**

*That the submission by **Port Nelson Ltd (S12(4.9))** and associated further submission from **Nelson Waterfront Protection Association (X2)** be accepted in part insofar as they accord with the following amendments:*

**AMENDMENTS TO VARIATION 07/01:**

Policy RE2.1:

*Add a new method as follows:*

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

**Objectives and Policies - Industrial Zone**

- 9.30 The submitters to these provisions concerning Industrial Zone Objectives and Policies are as follows:

Submitter	Submission No.	Request	Decision Sought
Gibbons Holdings Ltd	S2(c)	Oppose	IN1.3 Port Industrial Area. Delete the clause in its entirety.
PNL	S12(4.11)	Oppose	INd and INd.3 – Amend to include reference to reverse sensitivity effects on the Port Industrial Area from activities nearby in the Residential and Suburban Commercial zones.
	Further Submission		Support/oppose
	X2 NWPA		Oppose

PNL	S12(4.12)	Oppose	i. Policy IN2.2 – Amend so it includes reference to unreasonable levels of adverse effects and reference to whether the adverse effects are able to be reasonably mitigated. ii. IN2.2.xii – amend to use habitable space, or revert to bedroom and lining areas approach as per Draft Variation (July 2005).
	Further Submission		Support/oppose
	X2 NWPA		Oppose

- 9.31 IN1.3 deals with non-industrial activities in the Port Industrial Area. Generally only those non-industrial activities that are related to the Coastal Marine Area, the marina or the Port are provided for. The amendment proposed by **Gibbons Holdings Ltd (S2(c))** to IN1.3 seeks to delete the provision in its entirety. It is our view that that these amendments are not appropriate. Deleting the policy will not significantly change the existing emphasis on permitted activities needing to be related to the Port area. A key component of the Variation is to consider the noise generated by activities at the Port, and it is therefore appropriate to describe the types of activity that could be located at the Port. No alterations are recommended.
- 9.32 The first of two submissions to the Industrial polices by **PNL (S12(4.11))** relate to Policy INd and INd.3. These collectively describe the nature of the Port Industrial Area and the prevailing reverse sensitivity issues. PNL’s submission requests that these policies be amended to include specific reference to reverse sensitivity effects on the Port Industrial Area from activities nearby in the Residential and Suburban Commercial Zones. As was recommended by Mr Rae, we agree that a change would be useful to this set of policies and believe that an amendment to INd.3 would be appropriate to include mention of reverse sensitivity effects. We have recommended accordingly and the wording is set out below. We note that whilst in her evidence Ms Carter requested further refinement of the wording we have proposed based on Mr Rae’s recommendation, no alternative was provided.
- 9.33 The second submission by **PNL (S12 (4.12))** to the industrial polices concerns Policy IN2.2. Having considered these requests we agree with both **PNL** and Mr Rae that Policy IN2.2 (Nuisances) requires amendment to provide the appropriate balance between avoidance and mitigation of adverse effects, and IN2.2xii requires amendment to refer to ‘habitable space’. Again the wording changes are outlined below.

**RECOMMENDATION 11:**

*That the submission by **Gibbons Holdings Ltd (S2(c))** be rejected.*

*That the submissions by **Port Nelson Ltd (S12(4.11-4.12))** be accepted and the associated further submissions from **Nelson Waterfront Protection Association (X2)** be rejected.*

**AMENDMENTS TO VARIATION 07/01:**

INd.3:

*Add a new sentence at the end of the existing text:*

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

IN2.2:

*Amend as follows:*

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

IN2.2xii:

*Amend as follows:*

*“Rules requiring acoustic insulation for habitable spaces in buildings within and adjacent to the Port Industrial Area”.*

**Objectives and Policies – Coastal Marine Area**

9.34 The submitters for these provisions are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.14)	Oppose	CM3.1.i – Amend to include acknowledgement of highly modified nature of the Port Industrial Area.
	Further Submission		Support/oppose
	X2 NWPA		Oppose

- 9.35 The Coastal Marine Area policy, which is the subject of this submission, provides a description of the CMA and its environs before outlining some of the issues and methods to deal with that environment. The submitter seeks an amendment to the description of the CMA to include acknowledgement of the highly modified nature of the Port Industrial Area within the CMA.
- 9.36 Having considered the submission in light of the CMA policies we do not think the amendment is warranted or necessary for two reasons. Firstly, the content of **PNL's** submission in this instance is considered beyond the scope of this exercise as the Variation relates to noise issues and not the modified nature of the CMA. In this respect, we note that the Variation only makes very minor alterations to the description and does not attempt to change the exiting descriptions in any substantive way. Secondly, we note that Chapter 5 of the PNRMP, DO12 already contains specific objectives and policies for the Port Industrial Area which adequately recognises the nature of the Port Industrial Area and its impact on the CMA. Accordingly, we do not recommend in favour of this submission.

***RECOMMENDATION 12:***

*That the submission by **Port Nelson Ltd (S12(4.14))** be rejected and the associated further submission from **Nelson Waterfront Protection Association (X2)** be accepted.*

## 10. TOPIC E: RULES

### Overview

- 10.1 Following on the heels of submissions dealing with the Policy and Objectives framework associated with port noise and sustainability of physical and natural resources of the Port and residential communities, are a group of submissions focusing on that part of the Variation which introduces the methods for implementing the altered objective/policy framework. In this respect the two key methods promulgated by the Variation are:
- a) Alterations to the various zone **Rules** to implement the Port Effects Control Overlay, Port Noise Management Plan, Port Noise Mitigation Plan and Port Noise Liaison Committee; and
  - b) Alterations and additions to **Appendices** (cross-referenced by the rules).
- 10.2 This section of our recommendation focuses on our assessment of the submissions to the former matter (Rules) whereas the following section (Topic F) focuses on the Appendices to the PNRMP.
- 10.3 The zones rules affected are as follows:
- REr.64
  - REr.65A, SCr.69A, INr.71A (and AP19.2)
  - INr.23
  - INr.38 and CMr.55
  - INr.40
- 10.4 As will become apparent in the following discussion, there is a close relationship between not only the zone rules and the appendices but also the zone rules and the definitions of terms used in both the rules and appendices. This is reflected in the similarity of issues raised in submissions to all three matters and is mirrored in our discussion of the issues in this Topic (Rules) and in Topic F (Appendices) and Topic G (Meanings of Words).

**Residential Zone Rules: REr.64**

10.5 The submitters to this provision are as follows:

Submitter	Submission No.	Request	Decision Sought
Ward, David and Jocelyn	S13(1)	Oppose	In REr.64.1 delete the reference to “Port Effects Overlay”.
	Further Submission		Support/oppose
	X3 Residents’ Reps on PNLC X4 PNL		Support  Oppose

10.6 In their written submission **David and Jocelyn Ward (S13(1))** – residents of Queens Road - requested that the proposed requirement for 600m<sup>2</sup> minimum lot sizes for new dwellings in the Port Effects Control Overlay should be removed. The reason given in the written submission was that “*the issue is noise not the number of dwellings and that if acoustic insulation is required [as it is in the Port Effects Control Overlay] that should be sufficient*”.

10.7 Mr Rae clarified for us that the 600m<sup>2</sup> site area restriction for new dwellings in Rule REr.64 already exists in the PNRMP, and is not being changed. He further advised that REr.107, the subdivision rule, is proposed to be amended to reflect the 600m<sup>2</sup> restriction in REr.64.1.

10.8 When questioned at the hearing **Mr Ward**, speaking on behalf of Ms Ward and himself, noted that this part of their submission had resulted from a misunderstanding, as they had not appreciated that the restriction already existed prior to the Variation. Therefore, **Mr Ward** verbally withdrew this part of their submission.

10.9 As an aside, and in relation to the submitter’s reasons for initially opposing the 600m<sup>2</sup> site area rule for dwellings, we disagree with the proposition put forward by the submitter. It is our view that the solution to port noise in Nelson is not limited to one element (namely acoustic insulation); it is a combination of factors including insulation but also involving controlling the density of dwellings in the affected area (*Port Effects Control Overlay*) as well as the implementation of the proposed management, mitigation and liaison approach.

***RECOMMENDATION 13:***

*That the submission by **David and Jocelyn Ward (S13(1))** and the associated further submission by the **Residents’ Representatives of the Port Noise Liaison Committee (X3)** be rejected. As a consequence, the associated further submission by **Port Nelson Ltd (X4)** be accepted.*

**Rule REr.65A (and associated Rules SCr.69A, INr.71A and Appendix AP19.2)**

10.10 This group of rules concerns the application of methods dealing with the Port Effects Control Overlay. Before assessing these and subsequent submissions in both this topic and the next topic on Appendices it is useful to outline the function of this overlay. The Port Effects Control Overlay sits over the zoning maps within the District Plan. It currently has two roles:

- Firstly, it identifies the properties for which owners are required to provide acoustic insulation for construction or alterations to buildings (by way of Rules REr.65A, SCr.69A and INr.71A); and
- Secondly, it identifies the area that is excluded from Rules INr.38 and CMr.55 for port noise, i.e. the rules that normally apply ‘noise at boundary’ controls to activities in all Industrial Zones and the Coastal Marine Area. The reason for this exclusion is that properties within the Port Effects Control Overlay are protected from port noise by Rule INr.40, this being the rule that requires implementation of a Port Noise Management Plan, Port Noise Mitigation Plan, and a Port Noise Liaison Committee. However, as discussed in Topic C, these mechanisms apply to all areas and therefore the Port Effects Control Overlay should not have been used for this purpose.

10.11 The submitters to **REr.65A (and associated Rules SCr.69A, INr.71A and Appendix AP19.2)** are as follows

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(9)	Oppose	Amend Rule REr.65A in the Permitted column by replacing the words "the building is" with the words "any new sleeping areas are".
	Further Submission		Support/oppose
	X1 Ward, David and Jocelyn		Oppose
PNL	S12(4.10)	Oppose	i. Amend REr.65A and associated rules in other zones (e.g. SCr.69A and INr.71A and AP19) to remove ambiguity and clarify that internal noise level standard can be achieved with windows open. ii. Make any necessary amendments to ensure that all activities intended to be captured by this rule are included.
	Further Submission		Support/oppose
	X2 NWPA		Oppose



- 10.12 **Mr Sinner (S1(9))** submitted to REr.65A which requires that for building to be permitted in the Port Effects Control Overlay the building must be “*acoustically insulated to reduce noise levels to no greater than 40 dBA Ldn inside any new or altered habitable space and has minimum ventilation requirements as set down in Appendix 19*” The specific submission of **Mr Sinner** was that an internal noise level of 40 dBA Ldn should only be a criterion in REr.65A for sleeping areas and not all parts of a building.
- 10.13 We questioned Mr Rae on this matter at the hearing and he advised that while this criterion had originated for sleeping environments, he and Mr Ballagh considered it appropriate to extend this to all habitable spaces as had been the case at Port Chalmers for example. We agree that the 40 dBA Ldn standard should apply to all habitable parts of a residential building, not just the sleeping areas, in order to reflect the desired residential amenity in the zone. Accordingly, we have not recommended any changes to Rule REr.65A.
- 10.14 As mentioned above, Rule REr.65A (and indeed so do Rules SCr.69A, INr.71A) refer to Appendix AP19.2 for details on the acoustic insulation requirements. That Appendix sets out the minimum ventilation requirements for habitable spaces and lists three methods for achieving such ventilation. **PNL (S12(4.10))** submitted that it should be made explicit in REr.65A, SCr.69A, INr.71A and AP19.2 that mechanical ventilation is not required if noise criteria can be achieved while ventilating windows are open. Mr Rae supported this view. We believe that it would not be appropriate to install mechanical ventilation if it was not required to achieve the acoustic criteria. Accordingly, we agree with Mr Ballagh that in some circumstances opening windows may be sufficient to provide ventilation and still achieve desired acoustic insulation (e.g. windows at the back of a house, screened from port noise). As such we support the submission and agree with Mr Rae that the wording of these rules could be improved to avoid any ambiguity. We have recommended a suitable wording.
- 10.15 A second issue raised by **PNL (S12(4.10))** in relation to these rules is that the wording of SCr.69A is inconsistent with REr.65A and INr.71A. There does not appear to be any reason for inconsistent wording and we therefore consider that changes are required to provide consistent wording in relation to the activities required to be acoustically treated from port noise. As an aside, we note that SCr.69A would then be inconsistent with the equivalent rule relating to airport noise, SCr.69. There is not scope within this Variation to address the rule relating to airport noise, and we consider the priority to be for all provisions relating to port noise to be consistent.

***RECOMMENDATION 14:***

*That the submission by **Mr Sinner (S1(9))** be rejected and the associated further submission by **David and Jocelyn Ward (X1)** be accepted.*

*That the submission by **Port Nelson Ltd (S12(4.10))** be accepted, and the associated further submission by **Nelson Waterfront Protection Association (X2)** be rejected.*

**AMENDMENTS TO VARIATION 07/01**

SCr.69A.1:

*Replace “Within the Port Effects Control Overlay, construction, or alteration of a residential unit, or any building used for sleeping accommodation, is permitted if:” with “Within the Port Effects Control Overlay, construction, or alteration of a building is permitted if:”*

REr.65A.1 a), SCr.69A.1 a), and INr.71A.1 a):

*Add words as shown underlined “... habitable space and has either ventilating windows open or minimum ventilation requirements...”*

Ap19.2.ii

*Add words as shown underlined “In addition, where the indoor design level cannot be achieved with ventilating windows open, the minimum ventilation requirements for habitable spaces require either:”*

**Rule INr.23**

10.16 This rule prescribes permitted activity and associated performance standards/conditions that apply to the Port Industrial Area which includes all the industrial land on the seaward side of Haven Road and Wakefield Quay. Essentially, the rule as currently worded permits office, recreational, and other facilities (other than commercial accommodation) provided that “*such activities relate directly to or serve activities in the port area and are essentially ancillary activities.*” The underlined words had been inserted by Plan Change 05/02 (previously the term had been “*in the Coastal Marine Area*”)

10.17 The submissions to this rule are as follows:

Submitter	Submission No.	Request	Decision Sought
Gibbons Holdings Ltd	S2(d)	Oppose	INr.23. Delete the words "Port area and are essential ancillary activities" from Variation 7.

10.18 **Gibbons Holdings Ltd (S2(d))** requested that the words which had been inserted by Plan Change 05/02 be deleted from INr.23. At the hearing Mr Gibbons noted that he had not realised that these words had been inserted as part of a separate process, rather than part of this Variation.

- 10.19 In any event, Mr Rae advised that the proposed amendments to INr.23 will not significantly change the existing emphasis on activities needing to be related to activities in the Port area. The changes proposed by the earlier plan change clarify the intent of this provision. Moreover, the changes are considered relevant to the Variation in that it is considering the noise generated by activities at the Port, which is adjacent to noise sensitive activities, and it is therefore relevant to clarify the types of activities that are appropriately located at the Port.
- 10.20 Overall, Mr Rae considered the current wording to be appropriate to maintain emphasis on activities needing to be related to the Port. We agree with Mr Rae and no alterations to Rule INr.23 are recommended.

***RECOMMENDATION 15:***

*That the submission by **Gibbons Holdings Ltd (S2(d))** be rejected.*

**Rules INr.38 and CMr.55**

- 10.21 As mentioned earlier in this topic the relevance of **Rule INr.38** is that in combination with the Port Effects Control Overlay, it identifies the area that is excluded from the industrial zone rule for noise from the Port Operational Area. **Rule CMr.55** does the same thing in the Coastal Marine Area. The reason for both these exclusions is that properties within the Port Effects Control Overlay are protected from port noise by Rule INr.40, this being the rule that requires implementation of a Port Noise Management Plan, Port Noise Mitigation Plan, and Port Noise Liaison Committee. Again, we note that the Port Effect Control Overlay should not have been used for this purpose as the INr.40 controls apply to all areas.
- 10.22 For the record (and completeness) we also record that the map that determines the eligibility of properties for mitigation is the Port Noise Contour Map, and not the Port Effects Control Overlay. The Port Noise Contour Map is included in the Port Noise Management Plan, and does not form part of the District Plan.
- 10.23 The submissions to rules INr.38 and CMr.55 are as follows:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(1)	Oppose	INr.38 Amend Rule INr.38 to replace the second to last sentence in the Permitted column with the following: "This rule does not apply to (a) noise generated by the Airport and

			received within the Airport Effects Control Lines, or to (b) noise generated within the Port Operation Area and received within the Port Effects Control Overlays”.
Auckland Point School	S6(1)	Oppose	INr.38 Amend Rule INr.38 to replace the second to last sentence in the Permitted column with the following: “This rule does not apply to (a) noise generated by the Airport and received within the Airport Effects Control Lines, or to (b) noise generated within the Port Operation Area and received within the Port Effects Control Overlays”.
	Further Submission		Support/oppose
	X4 Port Nelson Ltd		Supports both S1 and S6

10.24 **Mr Sinner (S1(1))** and **Auckland Point School (S6(1))** requested changes to clarify the wording in INr.38. The further submission by **Port Nelson Ltd (X4)** supported this change with a minor amendment. Essentially, these submissions simply attempt to deal with some imprecise drafting in the Variation by helpfully clarifying the circumstances where this rule does not apply. In other words an alteration is required to ensure the intent of the rule is matched by the actual wording. However, and as noted by Mr Rae the suggested wording from the submitters needs modification to include reference to the Airport Effects Control Overlay. We agree with the wording proposed by Mr Rae which addresses the issues raised by all the submitters.

10.25 For the record, we also note that the following three points regarding INr.38 and CMr.55:

- The same wording that these submissions relate to in INr.38 exists in the same context in rule CMr.55, and therefore we consider that any change to INr.38 should also result in a consequential change to CMr.55.
- We note that this same text contains the significant flaw in the Variation that cannot be changed due to restricted scope, which we have previously discussed in Topic C (Ongoing Administration of the Variation).
- The required amendments to INr.38.1 and CMr.55.1 are incorporated in the following recommended amendments to these rules (Recommendation 16)

addressing the wider issues surrounding Auckland Point School which we will now discuss.

- 10.26 **Mr Sinner** and **Auckland Point School** raise the issue that students at Auckland Point School are not protected from port noise by the Variation. They make various suggestions how this could be addressed in the following submissions:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1	Oppose	Various decisions sought to address the concern that "...the proposed rules provide no protection for students at Auckland Point School from Port Noise that could impact adversely on teaching and learning"
Auckland Point School	S6	Oppose	Various decisions sought to address the concern that "...the proposal does not include adequate protection for the school"
	Further submission		Support/oppose
	X3 Residents' Reps on PNLC		Support

- 10.27 Submissions by **Mr Sinner (S1)** and **Auckland Point School (S6)** specifically raise the question of how port noise is controlled at Auckland Point School. We were advised that the School is left in an unusual situation by the Variation whereby if port noise significantly increases the INr.38/CMr.55 noise limits for port noise would not be applicable at the School, yet unlike residences the School would not receive mitigation under INr.40. The submissions request that the School should be covered by the mitigation package. (For the record, we note that PNL were not a further submitter to these particular submissions by Auckland Point School and Mr Sinner, but nevertheless Ms Carter for PNL did helpfully provide some useful commentary on the issue that has ultimately assisted us in giving effect to the relief sought by these two submitters.)

- 10.28 In response to these submissions, and rather than supporting the exact decisions sought, **PNL** and Mr Rae both suggested that INr.38 should be amended to ensure it provides ongoing protection for the School from port noise. While CMr.55 was not mentioned by PNL or Mr Rae, it is identical to INr.38 in this context and therefore any changes to INr.38 would also be required to CMr.55. Mr Rae noted that the alternative of including the School in INr.40 would require substantial consequential changes that would be contrary to the structure of INr.40, which is designed primarily for the protection of night-time sleep and residential amenity.

- 10.29 Subsequently, in his supplementary report Mr Rae proposed an alternative solution which did include the school in INr.40, as on reflection he considered that changes to INr.38 were beyond the scope of the original submissions. However, in her supplementary evidence Ms Carter for PNL asserted that the original submissions by **Mr Sinner** and **Auckland Point School** should be read in the round to determine an appropriate remedy. Ms Carter considered the scope of these submissions could include modification to INr.38. We agree with Ms Carter's assessment that these submissions do provide scope for us to recommend modification of INr.38/CMr.55 if we consider it appropriate.
- 10.30 It appears from the above discussion that this particular concern of Auckland Point School can be addressed in either INr.38/CMr.55 or INr.40. The changes required to INr.38/CMr.55 involve no consequential changes. Changes required to INr.40 would have significant consequential changes, but these could be used to create a more generic rule rather than a specific exception for this one particular school.
- 10.31 We understand that if, for example, a pre-school established in the residential zone just outside the Port Effects Control Overlay and outside the modelled Port Noise Contour Map, it would require resource consent, but port noise might not be a factor considered in determining that consent. However, if the Port Noise Contour Map then expanded to encompass that pre-school it would eventually find itself in a similar position to Auckland Point School, with limited protection from port noise. By amending INr.40 rather than INr.38/CMr.55 this eventuality could be catered for.
- 10.32 We have found this is a difficult issue as to whether the concerns of **Mr Sinner** and **Auckland Point School** are best addressed through INr.38/CMr.55 or INr.40, as neither appears to provide an ideal solution. As the submissions relate specifically to Auckland Point School we consider that a generic rule is not required. Therefore on balance we consider that modification to INr.38/CMr.55 is the better solution as it is less disruptive to other parts of the Variation. We consider that the proposed additional wording to INr.38, given in paragraph 39 of Ms Carter's supplementary evidence, suitably addresses the submissions relating to Auckland Point School.

***RECOMMENDATION 16:***

*That the submissions by **Mr Sinner (S1, S1(1))** and **Auckland Point School (S6, S6(1))** and the associated further submission by **Port Nelson Ltd (X4)** and **Residents' Representatives of the Port Noise Liaison Committee (X3)** be accepted in part insofar as they accord with the amendments below.*

***AMENDMENT TO VARIATION 07/01***

INr.38.1 and CMr.55.1:

Replace last paragraph with:

“This rule does not apply to:

- (i) noise generated by the Airport and received within the Airport Effects Control Overlay;
- (ii) noise generated within the Port Operational Area and received within the Port Effects Control Overlay, with the exception of noise received from the Port Operational Area at Auckland Point School where it will continue to apply unless the Port Operator has provided entirely at its cost, acoustic treatment to the classrooms at the school as though the school were to be treated as a noise affected property. For the purposes of this rule, the noise limit to be applied at or within the boundary of Auckland Point School in respect to noise from the Port Operational Area shall be 55 dBA  $L_{eq(15\ min)}$  between 8.30am to 3.30pm Monday to Friday excluding school holidays for as long as the noise limit continues to apply. In the event the above noise levels are exceeded then the classrooms shall be upgraded where necessary to achieve a level of 40 dBA  $L_{eq(15\ min, 8.30am-3.30pm)}$  inside from noise from the Port Operational Area with ventilating windows open. Where windows must be closed to achieve 40 dBA  $L_{eq(15\ min, 8.30am-3.30pm)}$  an alternative ventilation system shall be provided.”

**Rule INr.40**

- 10.33 As outlined in the preceding submission, Rule INr.40 requires implementation of a Port Noise Management Plan, Port Noise Mitigation Plan, and a Port Noise Liaison Committee.
- 10.34 The submissions to this rule are as follows:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(2)	Oppose	Amend Rule INr.40 to include the following words at the bottom of the Permitted column: “Noise from activities in the Port Industrial Area must also comply with the conditions of Rule INr.38, except within the Port Effects Control Overlays”.
	S1(5)	Oppose	Amend the rule to ensure that noisy activities within the Port Industrial Area are still subject to controls as necessary to protect workers and other activities within the Port Industrial Area.

Auckland Point School	S6(2)	Oppose	Amend Rule INr.40 to include the following words at the bottom of the Permitted column: “Noise from activities in the Port Industrial Area must also comply with the conditions of Rule INr.38, except within the Port Effects Control Overlays”.
	S6(5)	Oppose	Amend the rule to ensure that noisy activities within the Port Industrial Area are still subject to controls as necessary to protect workers and other activities within the Port Industrial Area.
	Further Submission		Support/oppose
	X4 PNL		Oppose S1(2), S1(5), S6(2), S6(5)
PNL	S12(4.13)	Oppose	i. Amend INr.40.1(a) to relax the timeframes for production of the Port Noise Management Plan. ii. Amend INr.40.1(b) to relax time requirements for Mitigation Plan. iii. Amend INr.40.1(c) to allow for establishment of an interim Port Noise Liaison Committee.
	Further Submission		Support/oppose
	X2 NWPA		Oppose

- 10.35 Identical submissions by **Mr Sinner (S1(2))** and **Auckland Point School (S6(2))** sought to introduce a paragraph at the bottom of INr.40 essentially providing the reciprocal of a paragraph at the bottom of INr.38, explaining the relationship between the two rules.
- 10.36 Mr Rae recommended that the changes already suggested to INr.38 would provide sufficient clarity on how these rules work together as Rules INr.38 and INr.40 are clear and discrete. We agree that the relationship of INr.38 and INr.40 is sufficiently clear from the amended wording we have recommended to INr.38. Accordingly, we recommend that the suggested wording from these two submitters is not required.
- 10.37 **Mr Sinner (S1(5))** and **Auckland Point School (S6(5))** also submitted that INr.40 should be extended to protect workers and activities in the Port Industrial Area from noise generated in the Port Industrial Area. Mr Rae noted that both the noise source and receiver would be under the control of the Port, and therefore this was an issue best addressed by management rather than rules. While Ms Carter noted that the Port Operator did not have direct control in all



instances, we agree that to introduce such a rule would be contrary to the overall management approach that we have recommended.

- 10.38 **PNL (S12(4.13))** submitted that the timeframe in INr.40 for the management, mitigation and liaison systems should be relaxed. The requirement was for these systems to be in place within six months from the date of notification of Variation 07/01. The Variation was notified on 14 July 2007.
- 10.39 Whilst most parties generally supported the timeframes in INr.40, we do accept that there are some matters that are under contention by **PNL** (including continuous noise monitoring provisions) and it would be unreasonable to require the implementation of such provisions until they have been resolved (3 months has been suggested, but may not be sufficient to allow for any appeal periods etc). We note that the Port Noise Liaison Committee was formed within the specified timeframe and therefore no amendments should be required to that provision. However, we understood from **PNL** at the hearing that there had been a delay in the overall management and mitigation plans due to uncertainty over some provisions. We consider that the timeframes for contested issues should be extended to three months after this Variation becomes operative.

***RECOMMENDATION 17:***

*That the submissions by **Mr Sinner (S1(2,5))** and **Auckland Point School (S6(2,5))** be rejected and the associated further submission by the **Port Nelson Ltd (X4)** be accepted.*

*That the submission by **Port Nelson Ltd (S12(4.13))** be accepted in part, and the associated further submission by **Nelson Waterfront Protection Association (X2)** be accepted in part insofar as they accord with the amendment below.*

***AMENDMENTS TO VARIATION 07/01***

*INr.40.1*

*Add a new paragraph at the end:*

*“Any provisions in Variation 07/01 contested by Port Nelson Ltd shall not be required to be implemented until 3 months after Variation 07/01 becomes operative.”*

## 11. TOPIC F: APPENDICES

### Overview

- 11.1 Having assessed the submissions to the various zone rules it is now appropriate to consider the Appendices to the PNRMP which are cross-referenced to rules.
- 11.2 The particular Appendices affected by submissions are as follows:
- Appendix AP29 General
  - AP29.A
  - AP29.A.1
  - AP29.A.2
  - AP29.B.1
  - AP29.B.2
  - AP29.B.4
- 11.3 As mentioned earlier, there is a close relationship between the zone rules and the appendices. In this respect we record that Appendix AP29 is the principal appendix discussed in this Topic. That Appendix prescribes the matters the Port Operator shall include in the Port Noise Management Plan and the Port Noise Mitigation Plan as well as the composition of, and other matters relating to, the Port Noise Liaison Committee. Those Plans and the Committee functions/composition are prescribed in Rule INr.40 (which has been assessed in the previous topics – Objectives and Policies (Topic D) and Rules (Topic E). Accordingly, some of the issues addressed in those previous topics have resurfaced in our discussion of the issues in this Topic.
- 11.4 For the record, we have recommended minor amendments to Appendix AP19 in Topics E (Rules) and G (Meanings of Words) as those changes related directly to submissions on the related rules and definitions respectively. We will therefore not repeat discussion of Appendix AP19 in this section.

### Appendix AP29 – General

- 11.5 The submissions to this General part of the Appendix are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.18)	Oppose	Amend the structure and phrasing of AP29 so it is clear that it contains matters to be addressed in the management and mitigation plans, and liaison committee, and are not worded as if they are rules.
	Further Submission		Support/oppose
	X2 NWPA		Oppose

- 11.6 **Port Nelson Ltd (S12(4.18))** submitted that the structure and phrasing of AP29 should be revised to make its role clear; namely that it is an outline of matters to be addressed in the management and mitigation plans, and liaison committee, and does not constitute a set of rules per se.
- 11.7 Mr Rae considered that the structure in the PNRMP was clear but invited suggestions for improved wording at the hearing. No wording specifically relating to this matter was provided by **PNL** at the hearing. We accept that AP29 is not a ‘rule’ as such. It is however given effect to through Rule INr.40. We also consider that the Appendix needs to be written in such a way that it is clear and certain for residents and the Port Operator alike, and in our view the current wording achieves this.
- 11.8 As such, we agree with Mr Rae that the purpose of AP29 is clear.

***RECOMMENDATION 18:***

*That the submission by **Port Nelson Ltd (S12(4.18))** be rejected, and the associated further submission by **Nelson Waterfront Protection Association (X2)** be accepted.*

**Appendix AP29.A**

- 11.9 Appendix AP29.A deals with the Port Noise Management Plan requirements. The submissions to this rule are as follows:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(8)	Oppose	Amend AP29.A to specify that, for the purpose of determining whether Auckland Point School is exposed to noise that exceeds the thresholds for mitigation specified in the Plan, measurement shall be based on noise levels between 8:30am and 3:30pm.
Auckland Point School	S6(8)	Oppose	Amend AP29.A to specify that, for the purpose of determining whether Auckland Point School is exposed to noise that exceeds the thresholds for mitigation specified in the Plan, measurement shall be based on noise levels between 8:30am and 3:30pm.

- 11.10 **Mr Sinner (S1(8))** and **Auckland Point School (S6(8))** both requested changes to AP29.A, specifying that noise affecting Auckland Point School should be considered on the basis of noise levels between 0830h and 1530h. We accept that this is the appropriate timeframe during which there are noise sensitive activities occurring at the school.
- 11.11 As previously discussed in Topic E (Rules), we have recommended that noise at Auckland Point School should be addressed by an alternative approach that does not involve AP29: rather it involves amendments to Rules INr.38 and CMr.55 to provide continued protection to the school even if the Port Effects Control Overlay changes. We have included the proposed timeframe of 0830h to 1530h in that alternative approach with our recommended amendments to rules INr.38 and CMr.55.

***RECOMMENDATION 19:***

*That the submissions by **Mr Sinner (S1(8))** and **Auckland Point School (S6(8))** be accepted in part insofar as they accord with the recommendation below.*

***AMENDMENTS TO VARIATION 07/01***

*INr.38 and CMr.55:*

*The 0830h to 1530h time frame has already been incorporated into recommended amendments (see recommendation 16).*

**Appendix AP29.A.1**

- 11.12 AP29.1 specifically deals with the minimum Port Noise Management Plan provisions including amongst other things the function of the Port Noise Liaison Committee. The submissions lodged to that provision are:

Submitter	Submission No.	Request	Decision Sought
Gibbons Holdings Ltd	S2(e)	Oppose	AP29.A.1.i.d) Minimum Port Noise Management Plan Provisions. The Management Plan should impose a requirement on the Port Operator to respond in writing to the Committee within 30 days, unless the parties agree a different timeframe, on how it proposes to implement any recommendations including timeframes. This would add

		transparency to the Port Operators consideration to Committee requests.
	Further Submission	Support/oppose
	X2 NWPA	Supports

- 11.13 **Gibbons Holdings Ltd (S2(e))** submitted that there should be a requirement for the Port Operator to formally respond to recommendations from the Port Noise Liaison Committee.
- 11.14 In considering this submission we acknowledged that the Committee may only make recommendations to the Port Operator and these will not be binding on the Port Operator. We also observed that the recommendations of the Committee need to be weighed for their practicalities, economic viability, and safety, and that it is unrealistic to require all recommendations to be accepted by the Port Operator. We share Mr Rae's view that a measure of goodwill is required and we note his comment that in terms of his own attendances at two of the meetings of the Committee, he saw no basis for believing that the Committee would be rendered nugatory, as claimed by the submitter.
- 11.15 The above aside we do agree with the relief sought that, to add transparency, the Port Operator should be required to respond in writing to the Port Noise Liaison Committee explaining its decision with respect to the Committee's recommendations and how it will implement those decisions
- 11.16 As such we concur with the relief sought by the submitter. We agree that it would be beneficial to add transparency around the Port Operator's decision making process.

***RECOMMENDATION 20:***

*That the submission by **Gibbons Holdings Ltd (S2(e))** and the associated further submission by **Nelson Waterfront Protection Association (X2)** be accepted in part insofar as they accord with the recommendation below.*

***AMENDMENTS TO VARIATION 07/01***

*AP29.A.1.i(d):*

*Add the following sentence after the existing sentence:*

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

## Appendix A29.A.2

- 11.17 The provisions of AP29.A.2 describe the minimum monitoring and reporting requirements for port noise. Numerous submissions were received on this section and it formed the basis for several of our enquiries at the hearing. The submissions to these provisions are as follows:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(6)	Support	Retain the requirement for the Port Operator to carry out continuous monitoring as per AP29.A.2.
Auckland Point School	S6(6)	Support	Retain the requirement for the Port Operator to carry out continuous monitoring as per AP29.A.2.
	Further Submission		Support/oppose
	X4 PNL		Opposes S1
Gibbons Holdings Ltd	S2(f)	Oppose	AP29.A.2.a) Record of Recordings. Recordings to be kept for a period of not less than 6 months.
	S2(g)	Oppose	AP29.A.2.d) Contour Map. Amend the wording to read "a Port noise contour map based on a busy 14 day operating scenario".
	S2(h)	Oppose	AP29.A.2.j) - Public Access. Extend the provision to enable public access to all reports, minutes and recommendations considered or made by the Committee and requiring all dealings between the Committee and PNL to be the subject of written record.
	Further Submission		Support/oppose
X4 PNL		Opposes S2(g)	

PNL	S12(4.15)	Oppose	i. AP29.A.2i – Amend so that continuous monitoring not required and replace with more appropriate provisions. ii. Include a statement to require recording acoustic certificate on LIMs for properties. iii. Delete monthly reporting requirements in AP29.A.2.i(b).
	Further Submission		Support/oppose
	X2 NWPA		Oppose
Northrop, Ian Richard	S9(1)	Oppose	Ensure that noise is monitored by a third party.
	Further Submission		Support/oppose
	X3 Residents' Reps of PNLC		Support
Norman, Annabel Claire	S14	Oppose	Amend Port Noise Contour Map to include more properties affected by noise
Robertson, Bruce	S15(1)	Oppose	Require 1 full year of continuous noise recording to be taken from at least 3 different locations.
	Further Submission		Support/oppose
	X3 Residents' Reps of PNLC X4 PNL		Support  Oppose

11.18 The main issue in question in this group of submissions was the extent to which the Port Operator should be obliged to conduct continuous noise monitoring. This was the one area where Mr Hegley and Mr Ballagh held different views. Mr Ballagh considered that continuous noise monitoring would be a useful tool. Conversely, Mr Hegley considered that contamination by traffic noise in particular would render monitoring results of limited value unless there was extensive post-processing. In response, Mr Ballagh believed that contamination by traffic noise could be minimised by careful positioning of the monitoring station. Indeed, during our site visit we overlooked the Port from a location off Queens Road where the traffic on State Highway 6 was not visible as it was screened by the hill. In our experience, port noise was by far the dominant noise source at this location.

11.19 Mr Ballagh noted that an appropriate location for the monitoring station would be on land not owned by the Port Operator and would therefore require an agreement to be reached with one of the Queens Road property owners. This would be a factor potentially outside of the Port Operator's control. However, we understand from PNL that they have very good relations with several of the residents and have not had any difficulty obtaining permission to access

appropriate sites for previous monitoring exercises. We therefore do not consider that access to a suitable location should be an impediment to retaining noise monitoring requirements in the Variation.

- 11.20 We accept Mr Hegley's view that if results from the proposed Port Nelson monitoring station were to be used for enforcement action, or as a basis for determining the absolute position of noise contours, then appropriate post-processing would be likely to be required. This would address any contamination by noise of traffic on State Highway 6, or other sources outside the Port Industrial Area. We also accept that this post-processing would be a time consuming exercise and it would not be practicable for this to be performed on a continuous basis. Notwithstanding this, we do accept Mr Ballagh's view that an appropriate location could be selected for the monitoring station such that contamination by noise of traffic on State Highway 6 is minimised. The provisions in AP29.A.2 form part of the requirements for the Port Noise Management Plan and are not connected to any enforceable noise limit. As the monitoring is related to management and not enforcement we consider that it would not be necessary for data from a noise monitoring station to be of an evidential standard. We therefore accept Mr Ballagh's view that the raw data from a noise monitoring station could be used as an effective management tool without post-processing.
- 11.21 The Port Chalmers situation provided a useful context upon which to consider the above issue. At Port Chalmers we observed the successful implementation of permanent noise monitoring as part of a noise management programme. The results of the noise monitoring station at Port Chalmers are continuously displayed on a dedicated computer in the office of the Port staff responsible for noise management. Results are checked every morning and any abnormal levels investigated. The results are provided to Dunedin City Council on a regular basis. There is contamination by railway noise but there is no post-processing conducted to exclude this from results.
- 11.22 For the above reasons we consider that noise monitoring should be an integral part of the liaison, management and mitigation approach being proposed. Having established our position on the issue of continuous monitoring, we now briefly address the specific submissions to AP29.A2.
- 11.23 **Mr Northrop (S9(1))** requested that noise should be monitored by a third party. We discussed this issue with Mr Northrop at the hearing and he appeared to accept that monitoring supervised by an independent expert appointed by the Port Operator would in part satisfy his concern. Mr Rae noted in his report that it is normal practice under the Resource Management Act for large operators to organise noise monitoring of their own activities. Furthermore, and as Mr Rae pointed out, the Port Noise Liaison Committee and the Council would both review the data which would validate the independence of the monitoring. While we agree that monitoring results should not be subject to any bias, we do not consider that any alterations to the Variation are required to achieve this result.



- 11.24 **Mr Robertson (S15(1))** requested that noise contours should be determined from monitoring in at least three locations for a full year. This submission spans the various issues surrounding the monitoring topic and also covers issues surrounding production of the noise contours. We questioned Mr Hegley and Mr Ballagh extensively about the methodology and limitations used to produce the predicted noise contours. From their responses, we understand that in accordance with NZS 6809, the predicted contours do not relate to a specific occurrence at the Port that could be directly measured. Even if a particular sequence of activities could be measured, we understand that contamination of measurements would prevent the data being used to directly determine the position of noise contours. We therefore consider that noise monitoring should only be used to inform and verify the noise contours rather than determine their absolute position. With regards to the number of monitoring positions used, we have already discussed in the contextual paragraphs at the beginning of this group of submissions the difficulties of monitoring and the limitations of the results. We therefore consider that the practicalities and expense of more than one permanent monitoring location is not justified.
- 11.25 **Gibbons Holdings Ltd (S2(f))** requested that the provision in AP29.A.2.i(a) that “*Recordings shall be kept for a minimum of seven days.*” should be increased to a minimum of six months. We questioned Mr Ballagh about the cost of keeping recordings for a longer period and he considered that the cost would be minimal. In his evidence Mr Hegley suggested keeping recordings for one month rather than six months, but in her supplementary evidence Ms Carter conceded that this was not a crucial issue for **PNL**. Given the level of general agreement between the witnesses we have recommended that the period be increased to a minimum of six months as requested by the submitter.
- 11.26 As an aside, we note that during the course of the hearing a discrepancy was noted between the five-year duration required for noise measurements in AP29.A.2.i(a) and the ongoing requirements for noise modelling in AP29.A.2.i(d). We heard evidence from several parties on this issue, but this was not raised in submissions and it is therefore outside the scope of the Variation for us to recommend any changes. There are no immediate or short term implications of this discrepancy but we note that this is a matter that the Council may wish to rectify by way of a future alteration to the NRMP that is likely to be required in two years time in order to allow the Port Noise Contour Map to be updated. We signalled some alterations dealing with this in Topic C (Ongoing Administration of the Variation) and we return to this matter in the last section of this recommendation report (Topic H) dealing with Miscellaneous Matters.
- 11.27 **Ms Norman (S14)** – a Stanley Street resident - submitted that the noise contour maps do not extend as far as some houses in Stanley Crescent, Beachville Crescent and Maori Road which she asserts are significantly affected by port noise. As noted above, following extensive and detailed questioning of Mr Ballagh and Mr Hegley, we are satisfied that an appropriate modelling methodology has been adopted to produce the noise contours. While Ms Norman did not attend the hearing, we understood from **Ms Thomas** that part

of the concerns at these locations relate to the ground floor of houses being screened by the terrain from port noise, while bedrooms on the first floor are exposed to greater levels, possibly above the contour thresholds.

- 11.28 We raised this matter, aired by Ms Norman (Ms Thomas), with the noise experts attending the hearing and, in his further evidence, Mr Hegley confirmed that the noise contours were only for ground level. However, he noted that they are inherently conservative as they ignore the screening effect of houses, and he considered that this would offset any increase in noise levels at the upper floor of two storey dwellings. However, he also noted that when detailed analysis is/was conducted for each specific house to determine the appropriate acoustic treatment, the noise predictions are/will be refined for that house, including taking into account levels at upper storeys. Mr Ballagh proposed additional wording to make this process described by Mr Hegley explicit in the Variation. While the relief sought by Ms Norman was to expand the contours, we consider that the approach described by Mr Hegley is a practical solution to address the issue of two storey dwellings. Accordingly, although the full relief sought by Ms Norman is not granted we have recommended some additional wording to address our understanding of her concerns.
- 11.29 **Gibbons Holdings Ltd (S2(g))** also made a request to change the basis of the noise contour maps. At the hearing Dr Trevathan addressed this issue on behalf of Gibbons Holdings Ltd, and one of his suggestions was to amend the wording of AP29.A.2.i(d) to reflect the exact phrase used in NZS 6809:1999. We questioned Mr Hegley on this issue and he agreed that the exact wording from NZS 6809:1999 would be appropriate. We accept this suggestion.
- 11.30 **PNL (S12(4.15)(ii))** requested that acoustic certificates should be recorded on Land Information Memorandum (LIM) reports. In his report Mr Rae supported this idea, but noted that a rule in the PNRMP cannot dictate internal Council procedures. Due to this jurisdictional constraint we cannot recommend accepting this submission, but we agree that it would be beneficial for the Council to include this information on LIM reports.
- 11.31 **Gibbons Holdings Ltd (S2(h))** requested that there should be public access to all reports, minutes and recommendations of the Port Noise Liaison Committee. Mr Rae agreed with this request in his report, and we also consider that the liaison, management and mitigation approach should be open and transparent.

***RECOMMENDATION 21:***

*That the submissions by **Mr Sinner (S1(6))** and **Auckland Point School (S6(6))** be accepted and the associated further submission by **Port Nelson Ltd (X4)** be rejected.*

*That the submission by **Mr Robertson (S15(1))** and the associated further submission*

by the **Residents' Representatives of the Port Noise Liaison Committee (X3)** be rejected. As a consequence, the associated further submission by **Port Nelson Ltd (X4)** be accepted.

That the submission by **Gibbons Holdings Ltd (S2(f, g, h))** be accepted in part insofar as it accords with the amendments below. As a consequence, the associated further submission by **Port Nelson Ltd (X4)** be rejected.

That the submission by **Ms Norman (S14)** be accepted in part insofar as it accords with the amendments below.

That the submission by **Port Nelson Ltd (S12(4.15))** be rejected, and the associated further submission by **Nelson Waterfront Protection Association (X2)** be accepted.

That the submission by **Mr Northrop (S9(1))** and the associated further submission by the **Residents' Representatives of the Port Noise Liaison Committee (X3)** be rejected.

Advice Note:

Although not a formal recommendation we suggest that Council may wish to institute a policy to ensure that acoustic certificates received by the Council are recorded on Land Information Memorandum (LIM) reports.

**AMENDMENTS TO VARIATION 07/01**

AP29.A.2.i(a):

Replace "seven days" with "six months".

AP29.A.2.i(d):

Replace "...a port noise contour map based on a busy 5 day operating scenario." with "...a port noise contour map based on the energy average of the daily Ldn for 5 consecutive busy days."

AP29.A.2.i:

Insert new list item between (d) and (e):

"For the purposes of determining acoustic treatment in accordance with AP29.B the noise shall be measured or predicted at 1.8 metres above the floor height of the relevant room to be treated."

AP29.A.2.i(j):

Amend to read:

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

### Appendix AP29.A.3

11.32 Appendix AP29.A.3 describes procedures for measuring port noise. A common provision when assessing noise in accordance with New Zealand Standards is to penalise noises which have “*special audible characteristics*”, by adding 5dB to the measured levels. AP29.A.3.i(a).ii states that such a penalty should not apply to noise from log and container handling activities. Mr Rae noted in his report that this provision was included on the basis of the Environment Court decision (C130/2003) in relation to Port Chalmers.

11.33 The specific submissions to this provision are as follows:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(7)	Oppose	Amend provision AP29.A.3.i(a)ii to clarify that Port Noise measurements shall not be adjusted to exclude noise from log handling activities.
Auckland Point School	S6(7)	Oppose	Amend provision AP29.A.3.i(a)ii to clarify that Port Noise measurements shall not be adjusted to exclude noise from log handling activities.
	Further Submission		Support/oppose
	X2 NWPA		Supports S1 and S6
	X4 PNL		Opposes S1 and S6
Gibbons Holdings Ltd	S2(i)	Oppose	AP29.A.3.1.b) Procedure for measuring Port Noise. Delete this subclause in its entirety.

11.34 **Mr Sinner (S1(7))** and **Auckland Point School (S6(7))** again lodged identical submissions requesting that that noise measurements should not be adjusted to exclude noise from log handling. It appears that the submitters may have misunderstood the wording of the provision, which does not exclude log handling from measurements but simply exempts it from being penalised for special audible characteristics. However, these submissions highlight the question of whether the application of the Port Chalmers provisions is appropriate in respect to this particular provision. We asked Mr Ballagh to reconsider the proposed exemption of log and container handling from the special audible characteristics penalty. While Mr Ballagh advised the exemption is generally appropriate, he suggested the possibility of inserting the word “normal” so that the exemption from special audible characteristics applies only to “*normal log and container handling activities*”.

11.35 However, in her supplementary evidence Ms Carter expressed concern about the ambiguity inherent in the use of the word normal in this context, and we share those reservations. We understand from Mr Ballagh that a situation where a

special audible characteristic penalty may be considered valid might result from faulty equipment. In this instance, we consider that the general duty to avoid unreasonable noise in section 16 of the Resource Management Act provides appropriate protection for residents. We therefore do not consider that any changes to AP29.A.3.i.(a).ii) are required.

- 11.36 **Gibbons Holdings Ltd (S2(i))** requested that AP29.A.3.i.(b) be deleted. There are two parts to this clause. Dr Trevathan and Mr Ballagh both noted that part i) of this clause does not make any sense and should be deleted. We accept these views. With regards to part ii) of this clause, Mr Rae noted in his report that the intention is that a single ‘rogue’ ship should only trigger a single ‘strike’ under AP29.B.1.i, (a rule which is discussed in a little more detail next along with the issue of the “three strikes” provision later in this section) and therefore it is important that the concept of ship visits is retained. We agree with Mr Rae. Accordingly clause i) is recommended for deletion.

***RECOMMENDATION 22:***

*That the submissions by **Mr Sinner (S1(7))** and **Auckland Point School (S6(7))** and the associated further submission by **Nelson Waterfront Protection Association (X2)** be rejected. As a consequence, the associated further submission by **Port Nelson Ltd (X4)** be accepted.*

*That the submission by **Gibbons Holdings Ltd (S2(i))** be accepted in part insofar as it accords with the amendment below.*

***AMENDMENTS TO VARIATION 07/01***

*AP29.A.3.i.(b).i):*

*Delete clause*

**Appendix AP29.B.1 and B.2**

- 11.37 Appendix AP29.B covers the requirements for producing a Port Noise Mitigation Plan and its associated content. Specifically Appendices AP29.B.1 and B.2 set out the mitigation provision for noise affected properties in the first two bands of the Port Noise Contour Map; namely noise affected properties above 65 dBA Ldn and noise affected properties between 60 dBA Ldn and 65 dBA Ldn.

- 11.38 Submissions to these provisions are as follow:

Submitter	Submission No.	Request	Decision Sought		
Ward, David and Jocelyn	S13(2)	Oppose	AP29.B.1 – include a statement to the effect that any acoustic treatment carried out will be in keeping with the existing architectural style of the house being treated.		
	Further Submission		Support/oppose		
	X2 NWPA		Supports		
	X3 Residents' Reps of PNLC		Supports		
PNL	S12(4.16)	Oppose	i.AP29.B.1.i and AP29.B.2.i – delete the three strikes provisions. ii. Amend to include exceptions to required level of acoustic treatment where for heritage or other reasons it is not practicable to achieve the required level of acoustic treatment and provide for alternative instruments. iii. Provide a mechanism enabling closure for Port if an owner does not accept the offer of treatment or purchase. iv. Amend to provide the assessed cost of acoustic treatment limited to 50% of value of property to apply to next category (60 – 65dBA Ldn). v. Include a statement indicating that noise received by the property must be established as attributable to port noise, for mitigation or purchase offers to apply.		
			Further Submission		Support/oppose
			X2 NWPA		Oppose
Robertson, Bruce	S15(3)	Oppose	Contributions from Port Operator for acoustic treatment should be on a sliding scale		

- 11.39 **Mr and Ms Ward (S13(2))** requested changes to AP29.B.1 (noise affected properties above 65dBA) to specify that acoustic treatment should be in keeping with the existing architectural style of a house. In his report Mr Rae supports this general concept, but could not envisage appropriate wording to address a subjective matter such as architectural style. During our visit to Port Chalmers we heard of several different ways in which architectural features were successfully preserved during sound insulation works. We also understand that

working with the existing architectural styles of all houses is an integral part of the mitigation programme there. Section 5.2 of the (draft) Port Noise Mitigation Plan (May 2008) indicates that PNL intends to implement mitigation in the same manner by working to retain character features. We agree with Mr Rae that addressing this matter in AP29.B.1 would not be appropriate, and the issue is better dealt with in the Port Noise Mitigation Plan as is currently the case. We signal this as a matter for PNL to attend to in terms of their obligations to produce an operative Port Noise Mitigation Plan.

- 11.40 Before assessing the next group of specific submissions to AP29.B, it is useful to record here a provision known as the “three strikes” provision. Although it is basically intended that the Port Noise Contour Map in the Port Noise Management Plan are the foundation for the various levels of mitigation, and are altered as a consequence of annual reassessment, there is a further proposed provision that if, on 3 occasions, noise levels at any given property are found to exceed 65 dBA Leq at night, the owners of that property will be entitled to the top tier mitigation. The rules governing this are contained in AP29.B.1.
- 11.41 A number of points in the submission of **PNL (S12(4.16))** relate to the mitigation package in AP29.B.1. The first of these is a request to delete the ‘three strikes’ provision. In response, Mr Rae recommended deleting the three strikes provision from the 60 to 65 dBA category and leaving it only in the 65 dBA and above category, as is the case at Port Chalmers. Ms Carter agreed with this recommendation and noted that the provision would still protect other areas through any revision of the contours. We note that contours are revised annually so the three strikes provision only has the effect of pulling forward mitigation by a maximum of twelve months, and in practice by the time three strikes occur it would be likely to be significantly less time. We consider that the three strikes provision is appropriate to ensure residents most affected by noise receive mitigation without delay. However, for residents affected to a lesser degree, we consider that the slight delay until the contours are revised is not unreasonable. We therefore agree with the views of Mr Rae and Ms Carter. It is recommended that the three strikes provision is deleted from the 60 to 65 dBA category but left in the 65 dBA and above category.
- 11.42 **PNL** also requested four other alterations to AP29.B.1 and B.2 as follows:
- PNL requested that, under certain circumstances, the indoor design level achieved by mitigation should be allowed to rise above 40 dBA Ldn. In her evidence, Ms Carter suggested wording taken from Port Lyttelton (Christchurch) to address the same issue. In Mr Rae’s report, he accepted that where it is not practicable to achieve 40 dBA Ldn then an exemption would be appropriate. We agree with Mr Rae and recommend the wording from Port Lyttelton should be adopted. The wording should be slightly modified to reflect terminology and the 50% property value mitigation cap at Port Nelson. Ms Carter notes that this wording could be included either in AP29.B or in the definition of Acoustic Treatment (MW.3C). We

consider that the changes should be made to the definition of Acoustic Treatment as this will then apply consistently to AP29.B.1, AP29.B.2 and AP29.B.3 rather than just AP29.B.1.

- PNL requested a mechanism to provide closure in a situation where a property owner does not accept an offer for mitigation or purchase. Mr Rae advised in his report that as the circumstances of a property owner may change any offer should remain indefinitely. We agree with Mr Rae.
- There is an inconsistency in the maximum cost of acoustic treatment for houses above and below 65 dBA in AP29.B. Above 65 dBA, acoustic treatment is not required if it exceeds 50% of the property value (excluding land), but below 65 dBA there is no limit. PNL requested that the same limit be introduced for both categories. We agree that there is no apparent reason why the two categories should not be subject to the same limit.
- PNL included a request in their submission to limit mitigation to address port noise only and not other noise sources. In his report Mr Rae raised practical difficulties with this request and Ms Carter subsequently noted in her evidence that she considered this point did not need to be pursued

11.43 Within AP29.B there is also a difference for houses either side of the 65 dBA contour as to the Port Operator's contribution to mitigation. We have just recommended that the total cost of acoustic treatment should be limited to the same value, but currently the Port Operator would pay 100% of that cost for houses exposed to 65 dBA and above, but only 50% of the cost for houses exposed to below 65 dBA. **Mr Robertson (S15(3))** suggested an alternative approach of using a sliding scale whereby the Port Operator's contribution would vary progressively between 50% and 100%. We can see the merit in this idea as currently there is a step change from 64 dBA to 65 dBA, meaning for two neighbouring houses exposed to similar noise levels one will have all acoustic treatment paid for by the Port Operator and the other will have to pay for half the costs.

11.44 We questioned Ms Steven about what would happen to houses mitigated for 64 dBA or below, which subsequently become exposed to 65 dBA or above. Ms Steven explained that PNL's interpretation of the Variation is that such houses would be reassessed. The 50% of any acoustic treatment already paid for by the residents would be reimbursed by the Port Operator, and in some circumstances additional treatment may also be required to maintain appropriate internal noise levels. However, in his supplementary report, Mr Rae noted that this is not explicit in the Variation as it currently stands and he helpfully proposed additional text to give effect to this interpretation.

11.45 In assessing this matter, we resolved that it is appropriate that the Port Operator's contribution for acoustic treatment is greatest for those houses most



affected by port noise, and is less for houses exposed to lower port noise levels. The reassessment of houses described by Ms Steven appears to be an appropriate method of overcoming potential inequity issues which could arise if noise contours expand. However, if contributions by the Port Operator were on a sliding scale, this process of reassessment would create a substantial administrative burden every time the noise contours moved. We therefore consider that while a sliding scale would avoid an undesirable step change in contributions, we agree with Mr Rae that this alternative would not be practical. However, we consider it important that in lieu of a sliding scale, the provisions for reimbursement should be clarified as suggested by Mr Rae.

**RECOMMENDATION 23:**

*That the submissions by Mr and Ms Ward (S13(2)) and the associated further submissions by Nelson Waterfront Protection Association (X2) and the Residents' Representatives of the Port Noise Liaison Committee (X3) be rejected.*

*That the submissions by Port Nelson Ltd (S12(4.16)(i, ii, iv)) be accepted in part insofar as they accord with the amendments below. As a consequence, the associated further submission by Nelson Waterfront Protection Association (X2) be rejected.*

*That the submissions by Port Nelson Ltd (S12(4.16)(iii, v)) be rejected. As a consequence, the associated further submission by Nelson Waterfront Protection Association (X2) be accepted.*

*That the submission by Mr Robertson (S15(3)) be accepted in part insofar as it accords with the amendments below.*

**AMENDMENTS TO VARIATION 07/01**

AP29.B.1.i:

*Insert new list item between (e) and (f):*

*“Where as a result of updating the Port Noise Contour Map a property that has previously received Acoustic Treatment under the provisions of AP29.B.2 or AP29.B.3 comes within the provisions of AP29.B.1, that property owner shall be entitled to reimbursement of the amount of the property owner’s contribution under AP29.B.2 or AP29.B.3, as the case may be.”*

AP29.B.2.i:

*Delete second bullet point “; or receive an assessed 60-65 dBA  $L_{eq}$  (15 min, 10pm – 7am) on more than three occasions (more than 24 hours apart) during any rolling 12 month period.”*

MW.3C:

*Replace existing definition with:*

*“Acoustic treatment means acoustic treatment of a residential unit to achieve an indoor design*

level of 40 dBA  $L_{dn}$  within all habitable spaces, either with ventilating windows open or with mechanical ventilation installed and operating, when port noise is at or below the certified level of port noise and shall include the cost of testing and obtaining an Acoustic Certificate; except in the following circumstances when the above indoor design level does not need to be achieved:

- a) the property owner seeks a form of or level of acoustic treatment or mitigation that results in a different indoor design level, or,
- b) it is impracticable to achieve the specified indoor design level due to the desirability of maintaining heritage features of a building, and instead the indoor design level of the habitable spaces will be reduced as far as practicable, or,
- c) it is impracticable to achieve the specified indoor design level in habitable spaces at a cost of 50% of the value of the property (excluding land value), and instead the indoor design level in habitable spaces will be reduced as far as practicable while not exceeding the cost of 50% of the value of the property (excluding land value)."

AP29.B.2.i(b):

Amend to read:

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

#### Appendix AP29.B.4

11.46 Appendix AP29.B.4 deals with the staging of mitigation for noise affected properties. The submissions to this provision are as follows:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(10)	Oppose	Amend AP29.B.4.1 by inserting after "iii) Stage 3" the following: 'Not more than three years after the notification of Variation 07/01, the Port Operator shall notify owners of all noise-affected properties receiving between 55dBA and 60dBA of their eligibility to request technical advice and financial assistance for mitigation works from the Port Noise Liaison Committee'.
	S1(11)	Oppose	Amend AP29.B.4.1 by inserting a new paragraph at the end as follows: "iv) Ongoing works. Not less than every three years after notification of Variation 07/01, the Port Operator shall notify

			owners of all noise-affected properties of their eligibility to request technical advice and financial assistance for mitigation works from the Port Noise Liaison Committee”.
PNL	S12(4.17)	Oppose	i.AP29.B.4.i.i) – amend for Stage 1 to clarify the 6 month period begins once agreement achieved between the owner and Port. ii. Amend to enable the parties to agree on a longer time frame if circumstances dictate. iii. Amend AP29.B.4.i ii) so that a longer time frame is given for making offers to contribute.
	Further Submission		Support/oppose
	X2 NWPA		Oppose

- 11.47 **Mr Sinner (S1(10,11))** requested measures that would require PNL to be proactive in informing people that they are eligible for assistance under the mitigation plan. Mr Rae agreed that all residents should be advised at the outset, but considered it would be an unnecessary burden on PNL to have to regularly remind residents of their eligibility. We agree with Mr Rae.
- 11.48 **PNL (S12(4.17))** requested changes to the timeframes specified for various actions in the mitigation plan. The first of these relates to the time for settlement of purchase or completion of acoustic treatment after an offer is accepted. This is currently specified as a maximum of six months, and PNL requested, firstly, that this starts when agreement is reached and, secondly, that this could be longer by agreement. Mr Rae noted in his report that the six months does not commence until the owner accepts an offer and therefore neither of these alterations are required. We agree with Mr Rae.
- 11.49 **PNL** also requested extending the timeframe over which offers are made under AP.29.B (in the 60 to 65 dBA category). In her evidence Ms Carter suggested that on the evidence of progress to date five years would be more appropriate than three years. During our visit to Port Chalmers, we heard that the Port Company found it invaluable to have flexibility in implementing the mitigation. The residents on the noise liaison committee were very supportive of the approach adopted there. We consider that five years would be appropriate to ensure that mitigation occurs in a timely fashion while allowing the Port Operator slightly greater flexibility. Accordingly we have recommended changes to *AP29.B.4.i.ii) and AP29.B.4.i.iii):*

**RECOMMENDATION 24:**

*That the submission by **Mr Sinner (S1(10))** be accepted.*

*That the submission by **Mr Sinner (S1(11))** be rejected.*

*That the submission by **Port Nelson Ltd (S12(4.17)(iii))** be accepted. As a consequence, the associated further submission by **Nelson Waterfront Protection Association (X2)** be rejected.*

*That the submissions by **Port Nelson Ltd (S12(4.17)(i, ii))** be rejected. As a consequence, the associated further submission by **Nelson Waterfront Protection Association (X2)** be accepted.*

**AMENDMENTS TO VARIATION 07/01**

AP29.B.4.i.iii):

*Add “Not more than three years after the notification of Variation 07/01, the Port Operator shall notify owners of all noise-affected properties receiving 55 dBA L<sub>dn</sub> and above and less than 60 dBA L<sub>dn</sub> of their eligibility to request technical advice and to be considered for financial assistance for mitigation works”.*

AP29.B.4.i.ii):

*Replace “three” with “five”*

**Appendix – AP29.C**

- 11.50 Appendix AP29.C covers the requirements for forming and operating a Port Noise Liaison Committee. The Committee is referred to in Rule INr.40. That rule requires the Port Operator to establish, maintain and participate in a Liaison Committee.
- 11.51 Specifically, Appendix AP29.C sets out the requirements for the following matters:
- Committee Composition
  - General Duties of the Committee
  - Role of the Committee
  - Committee Resourcing
- 11.52 Before turning to assess the specific submissions lodged to Appendix AP29.C, we note that there was a lot of discussion of this matter at the hearing by submitters and further submitters. Both the **Association** and the **Residents’ Representatives** commented extensively on the various aspects of the

Committee's operation. We were left in no doubt as to the important role that this Committee will need to play. In fact, earlier in this recommendation report (Topic A), we stressed the importance of a functional Port Noise Liaison Committee as the interface between the Port Operator (PNL) and the residents affected by noise from the Port. As we outlined in Topic A, that observation was influential in our recommendation to confirm the Variation. The information we collected at Port Chalmers, and recorded in our last Minute also confirmed the importance of the Liaison Committee. For this reason, it is important that we record our views regarding the function and role of the Committee in ensuring the success of the management regime being advanced to deal with port noise issues at Nelson.

- 11.53 Our starting point is the Port Chalmers' decision. In paragraph 43 of that decision, the Court recorded the position of the Residents' Association which appeared on that case. The Residents' Association at Port Chalmers saw controls as a necessary part of the noise regime which was to be adopted, but saw a mitigation package as holding the greatest hope for long term resolution together with a cooperative consultative committee. The Court stated that in its view the Port Company should have adopted such an approach well before that time. The Court went on to set in place a process for finalising the port noise management and mitigation regime which we have referred to throughout this decision. It specially referred to the role of a liaison committee. We quote from paragraph 174 of that decision:

*"We cannot protect the Port by preventing people from living in the residential homes and we cannot protect the residents' properties as a physical resource by avoiding the emission of all noise. We must strike a balance between the needs of the Port Company and the wider community and those of the residents of Port Chalmers. The parties are realistic enough to realise that the Court cannot wave a magic wand. What is needed here is a step-wise progression that enables the local community to work with the Port Company for the benefit of the region and residents. In our view the only proposition that we had before us which would enable the parties in this way is a mitigation package/noise liaison committee/noise management plan."*

- 11.54 In that situation, the noise liaison committee was clearly seen by the Court as a corner-stone of the process, a position with which we fully agree.
- 11.55 Our discussions with the Dunedin City Council, Port Otago Limited, and residents' representatives on the Noise and Environmental Liaison Committee at Port Chalmers convinced us that the Committee operated correctly, and with a constructive and positive approach exhibited by all concerned, the liaison committee can be a key element in ensuring the successful outcome of a noise management/mitigation protocol.
- 11.56 On the evidence before us it seems that this is not currently the position in Nelson. The Committee is constituted under Part 4 of the draft Port Noise Mitigation Plan. This provides that there shall be a Committee with equal representation from four groups, the Port Operator, the Nelson City Council,

representatives of residents living in the Port Hills residential area, and representatives of the Port Industrial Area users and cargo owners. The Port Operator representatives are to include one executive management member. It is expressly provided that the Committee is to be constituted as a separate committee from the Port Nelson Environmental Consultative Committee irrespective of whether the two committees have a common or similar membership (this aspect of the proposed structure differs from the position at Port Chalmers).

- 11.57 We were advised that there have been four meetings since the Residents' Representatives were elected at a public meeting in November 2007. Meetings are held at 12 noon and lunch is provided. Residents have two representatives at present, with an alternate for each, who have attended all the meetings so far except for one, at which three residents were present.
- 11.58 A number of witnesses before us promoted the view that there should be a majority of residents on the Committee. PNL considers that the balance of the Committee "*seems to be about right*". Both the Residents' Representatives and PNL consider that it would be helpful to have an independent person chairing the Committee. Concerns were expressed by the Residents' Representatives about the amount of time they have to put into their role; the fact that the meetings are held during the day, without payment, which results in loss of income; and varying attendance records in terms of both numbers and personnel on behalf of the representative groups.
- 11.59 We have heard (and witnessed at Port Chalmers) that moving away from a regulatory noise control environment to a management/mitigation system depends entirely, for achieving satisfactory outcomes, on cooperation, good communication and real commitment by all concerned, undertaken in an atmosphere of good faith. A crucial part of this is the Port Noise Liaison Committee. It is necessary that the Committee meets a number of critical criteria; namely that:
- It is of a workable size comprised of those who must have genuine input into its outcomes;
  - It must meet at times convenient to its members;
  - It must have structured meetings and meet sufficiently regularly to ensure that the very important issues with which it is required to deal are in fact dealt with in a timely manner; and
  - It must have consistent membership and attendance as far as practically possible.
- 11.60 In terms of the last of these matters, i.e. membership, it is our view that it is not necessary to have representatives on the Committee of groups who are not required to achieve, or participate in achieving, the outcomes with which the Committee is charged. Nor, in our view, is it necessary for an exact balance of numbers of representative groups. The Port Operator is required to take into

account the views of the residents. The residents are required to take into account the views of the Port Operator. That could be achieved by one representative from each of the Port Operator and the residents, and equally well in a 2:1 situation if issues are approached in an open minded and constructive way.

- 11.61 The crucial point is that all members of the Committee must have the interests of the proper promotion of the new scheme of port noise management and mitigation as their focus. Thus, it is not the role of the Port representatives on the Committee to try to promote the operation of the Port over the interests of the residents; likewise it is not the role of the residents on the Committee to try to promote their interests over the efficient and appropriate workings of the Port. The Committee is set up to achieve certain outcomes and it is essential that it works constructively to that end.
- 11.62 In our opinion, this will best be achieved by having only the key players formally on the Committee, by which we mean the Port Operator and the residents. In our opinion, three residents' representatives and three representatives of the Port Operator will form an appropriately constituted committee. We see no need for there to be formal membership of the Committee of any representatives of Port Industrial Area users, cargo owners, or stevedores, or for that matter the Nelson City Council or the Tasman District Council (which are the equal shareholders in PNL). Agendas can be set up for meetings of the Committee, and representatives of other interest groups can be invited to attend and participate in discussion, but without the right to vote, when issues relating to their interests are being dealt with. Thus for example, a representative of the stevedoring companies could attend when there are issues on the agenda relating to matters into which the stevedores could usefully have an input at the Committee meeting (as distinct from being consulted by the Port Operator, or for that matter the residents, beforehand). This is standard corporate practice: it is common, for example, for the head of a certain department in a company to be invited to attend a meeting of directors of that company at a specified time and for a specified purpose. That is the kind of input which we consider is appropriate.
- 11.63 This will have the effect of simplifying the working of the Committee and reducing the number of members so that it has a better prospect of becoming a vibrant and cohesive body with one forward looking aim. That brings us to the issue of who will chair this Committee.
- 11.64 On this point, strong views were expressed by the residents, with which PNL concurred, that there should be an independent chairperson. In Otago the chairperson is an independent director of Port Otago Limited, but not an employee of that company, or a Councillor. Views expressed to us strongly endorsed his (the Chair's) contribution to the workings of that Committee. In our opinion, a similarly independent person should chair the Nelson Port Noise Liaison Committee. That will result in a Committee of seven, including a chairperson with a casting vote. Various views are clearly held on how the independent Chairperson should be appointed. We see no reason why that

person cannot be appointed by the Committee itself, in conjunction with the Port Operator.

- 11.65 The Chairperson should have all expenses paid, and receive fair remuneration, and these outlays should be borne by the Port Operator as part of the expenses of the Committee which it is required to take responsibility for. The level of remuneration could be set by the Committee in consultation with the Chair after taking advice from an independent firm of chartered accountants with expertise in setting director's remuneration. It may be thought that reference to director's remuneration is placing the importance of the Committee into a higher level than it may presently be perceived as having. However, this indication reflects our combined view that the importance of the function of this Committee cannot be underestimated. It is quite clear to us from the evidence that the Committee needs to step up to a higher level of commitment and involvement in dealing with the governance issues of the port noise management and mitigation process. It must be lead at a high level of competence and this is to be reflected in both the appointment and remuneration of a suitable independent chair, whose role it will be to lead this Committee effectively into the implementation of the new regime.
- 11.66 We do not consider that it is appropriate for the Residents' Representatives to be paid. Rather, the representatives should be those who see an element of public good in the outcomes of the Committee's workings, and give their time and effort in that spirit. If the Committee works properly, the time commitment should lessen. The implementation of the mitigation package should be competently run by the Port Operator, as it is by Port Otago Limited, and a key factor in that will be the engagement by the Port Operator of an appropriately experienced person whose job it is, as in Otago, to make the mitigation package work in a practical and sensible way. In our view, some careful liaison with Mr Lindsey Coe and Mr Brian Corson of Port Otago Limited, and observation of their implementation methods, would go a long way towards resolving the current reservations expressed by the residents about the way the mitigation package is being implemented in Nelson. At the same time there would, in our view, be real merit in the three elected residents' representatives on the new Committee having discussions with the residents' representatives on the Port Chalmers' committee.
- 11.67 By a combination of all these matters we are satisfied that a Port Noise Liaison Committee in Nelson can achieve the purposes intended under the proposal.
- 11.68 Before concluding on these matters we wish to record that, for us, one of the principal themes to emerge from the hearing concerning the Committee was that the current Committee appears to be unnecessarily 'bogged down' in technical details of administering the Port Noise Mitigation Plan. We heard that this involves the Committee giving technical advice to owners of properties on how to achieve acoustic insulation. Whilst we acknowledge that that AP29.B.3.i states that "*the Port Noise Liaison Committee will provide technical advice to the owners of properties*" we do not think this the appropriate function of the Committee. We



did not witness such a 'hands on' approach from the Port Chalmers' committee. Rather in that case, the acoustic experts of the Port Company provide the technical advice. This requirement at Nelson appears to put an unnecessary burden on the Residents' Representatives, who consequently feel a bigger commitment is required from them (and hence the need for remuneration and timing commitment issues). Whilst there were no submissions lodged to AP29.B.3.i, and thus it is out of our scope to delete the provision, we nevertheless record that we feel it is nonsensical and does not constitute the best use of the Committee's time and/or resources. This is something that the Council may wish to consider when they prepare any future alteration to the noise provisions of the PNRMP (see Topic H – Miscellaneous Matters).

11.69 Finally, although the Committee should have a constant composition, and those elected or appointed to it should attend as many meetings as absolutely possible, we see no reason in principle why there should not, occasionally, be a substitute member for one of the elected or appointed members, if that is necessary. This can reflect adversely on the cohesion between members of the Committee but does not necessarily need to do so. We turn now to submissions on these issues.

11.70 Submissions to those provisions are as follow:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(12)	Oppose	Amend AP29.C.1 by inserting the following at the end: 'AP29.C.1.ii The Port Noise Liaison Committee shall elect, for such term as the Committee may decide, a chairperson from among its own members or may elect a person not otherwise appointed to the Committee, except that in either case the person elected map not be an employee of the Port Operator. The chairperson shall have an ordinary vote in all matters before the Committee and in the case of a tie shall have a casting vote'.
Auckland Point School	S6(9)	Oppose	Amend AP29.C.1 by inserting the following at the end: 'AP29.C.1.ii The Port Noise Liaison Committee shall elect, for such term as the Committee may decide, a chairperson from among its own members or may elect a person not otherwise appointed to the Committee, except that in either case the person elected map not be an employee of the Port Operator.

			The chairperson shall have an ordinary vote in all matters before the Committee and in the case of a tie shall have a casting vote'.
	Further Submission		Support/oppose
	X2 NWPA		Support
Gibbons Holdings Ltd	S2(j)	Oppose	AP29.C.1 - Port Noise Liaison Committee. The Port Noise Liaison Committee should consist of a mix of membership with a rating in favour of residents (potentially affected by the Noise) and be given "teeth" so that its recommendations are required to be implemented.
Gibbons Holdings Ltd	S2(k)	Oppose	AP29.C.4.d) Port Noise Committee Resourcing. Delete the words "owners of noise affected properties" and insert the words "any persons having an interest created in the public at large."

- 11.71 **Mr Sinner (S1(12))** and the **Auckland Point School (S6(9))** both submitted that the Committee should elect a chairperson from within, or outside, its membership. They both requested that such a person should not be an employee of the Port Operator. The chair should have a vote and a casting vote in the event of a tie. **Gibbons Holdings Limited (S2(j))** submitted that the Committee should consist of a mix of membership with a weighting in favour of residents potentially affected by noise, and given "teeth" so that its recommendations are required to be implemented.
- 11.72 The above submissions by **Mr Sinner, Auckland Point School** and **Gibbons Holdings Limited** are all accepted in part, for the reasons outlined in the introduction to the discussion on Appendix AP29.C. Amendments will be made to the provisions of AP29.C.1 to provide for the recommendations we have described above.
- 11.73 **Gibbons Holdings Ltd (S2(k))** also sought an alteration to clause (d) of AP29.C.4. Currently that provision requires an annual summary of the activities of the Committee to be provided to owners of noise affected properties. The submitter requests that the summary is provided to *"any persons having an interest created in the public at large"*. We agree that the information should be publicly available if requested and have recommended an alteration to this effect
- 11.74 As an aside, we note that we have emphasised the need for a cooperative and cohesive approach to decision making by the Committee. To a degree, the proposal of **Gibbons Holdings Limited** is contrary to the spirit of that approach. On the other hand, this proposal would add transparency and would

allow the Port Noise Liaison Committee to review progress with its recommendations. The submission is allowed in part to the extent that there will be an alteration to AP29.C4 (d) to the effect that “*The summary shall be provided to any member of the public upon request.*” We also note our previous recommendation in respect to an amendment to AP29.A.1.i.(d) thus:

*“The operator shall respond in writing to the Committee within 30 days unless the parties agree a different time-frame to state and explain its decision with respect to any recommendation of the Committee and how it proposes to implement any recommendations including time-frames.”*

**RECOMMENDATION 25:**

*That the submissions by **Mr Sinner (S1(12))** and **Auckland Point School (S6(9))** be accepted in part insofar as they accord with the amendments below. As a consequence, the associated further submission by **Nelson Waterfront Protection Association (X2)** be rejected.*

*That the submissions by **Gibbons Holdings Ltd (S2(j), S2(k))** be accepted in part insofar as they accord with the amendments below.*

**AMENDMENTS TO VARIATION 07/01**

AP29.C.1.i:

*Replace the first paragraph and bullet point list with:*

*“The Port Noise Liaison Committee required under Rule INr40 c) shall comprise: an independent chairperson, three members appointed by the Port Operator, and three members appointed by residents living in the Port Hills.”*

*Add new paragraph:*

*“The Committee shall appoint its own Chairperson in conjunction with the Port Operator. The Port Operator shall be responsible for the Chairperson’s remuneration and expenses which will be set by the Committee after taking advice from an independent firm of chartered accountants with expertise in setting director’s remuneration.”*

AP29.C4 (d)

*Add the following words to the end of the sentence.*

*“The summary shall be provided to any member of the public upon request.”*

## 12. TOPIC G: MEANINGS OF WORDS (DEFINITIONS)

### Overview

- 12.1 In addition to those submissions either supporting or opposing the Variation as discussed in Topics A-C, a number of submissions requested specific alterations to Objectives and Policies (Topic D), Rules (Topic E) and the Appendices (Topic F). Of those, some submitters sought outright changes or consequential changes to the meanings of words (definitions) used in those objectives/policies, rules and appendices.
- 12.2 The details are as follows:
- MW.71A Habitable Space
  - MW.111A Mechanical Ventilation
  - MW.126A Noise-affected Property
  - MW.145 Port Industrial Area/MW.145A Port Noise
- 12.3 While modifications to these definitions may appear to be minor tinkering with the Variation, the opposite is true as the definitions determine the fundamental meaning of the Variation. For this reason, we spent significant time during the hearing discussing definitions and have given the matter careful consideration.

### MW.71A Habitable space

- 12.4 The submissions lodged in relation to this definition are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.1)	Oppose	i. Amend MW71A so it includes short term living accommodation and is clearer on which rooms are included.
			ii. Include words to indicate that the Port will not be required to provide acoustic insulation to unconsented parts of existing dwellings.
	Further Submission	Support/Oppose	
	X2 NWPA	Oppose	

- 12.5 Two changes to this definition were requested in the submission of **Port Nelson Ltd (S12(4.1))**. The first change requested by **PNL** is to include reference to “short term living accommodation” in the definition and remove ambiguity over which rooms in a house are included and excluded in the definition. However, with respect to short term living accommodation, Ms Carter for PNL subsequently noted in her supplementary evidence that the inclusion of such

accommodation in the definition of habitable space was not required as any short term living accommodation per se would require resource consent. Further, Ms Carter considered that the resource consent process would be the appropriate mechanism to address sound insulation requirements for short term living accommodation. Mr Rae for the Council shared this conclusion.

- 12.6 As already indicated in Topic C (Ongoing Administration of the Variation), we had already addressed our mind to this wider issue when considering the various administration aspects of the Variation. In that section we observed that any non-residential activities sensitive to noise in the Port Effects Control Overlay (including educational facilities, short-term living accommodation, and hospitals) will require resource consent and will be assessed for noise effects including the need for any insulation. We therefore concluded that no change to AD11.3.14 is necessary. We also noted that this provision affecting the Port Effects Control Overlay applies regardless of the zoning. Given that we accepted the reasoning and did not require any alteration to AD11.3.14 to specifically refer to short term living accommodation, it follows that we do not recommend including short term living accommodation in the definition of habitable space.
- 12.7 Still dealing with the first issue raised by PNL in respect to this definition - namely the ambiguity in the definition of habitable space - we note that Mr Rae proposed an amended definition under heading 2 of his supplementary report. The proposed amendment uses the term “residential activity” which is already defined in the PNRMP. We agree that the wording proposed by Mr Rae clarifies the definition of habitable space and addresses the concern raised by PNL about which rooms are included in the definition of habitable space.
- 12.8 We note that in heading 21 of his supplementary report, Mr Rae proposes a further change to the definition to include educational facilities. As discussed in Topic E (Rules), we have recommended an alternative approach to address noise at Auckland Point School, and therefore we do not recommend including “educational facility” in the definition of habitable space.
- 12.9 The second change to the definition of “habitable space” requested by **PNL** was to exclude unconsented parts of existing dwellings from the Port Operator’s mitigation obligations. This submission was opposed by the **Association**.
- 12.10 We understand from Mr Rae that a significant proportion of the housing stock in the affected area is relatively old and it is likely that records of building consent will not exist for many houses. **Ms Thomas (for the Residents’ Representatives)** expressed significant concern at the hearing over the difficulty that residents would face in proving that all parts of older houses have consent. We agree with Ms Thomas’ concerns and consider that residents should not be under an obligation to prove appropriate consents exist for all parts of a house as this could be a substantial burden.
- 12.11 We note that Ms Carter’s supplementary evidence indicated that PNL is prepared to adopt a pragmatic approach. We endorse this and note that, in general, we

consider that in entering into the new system of liaison, management and mitigation, the Port Operator should be responsible for dealing with the existing building stock as it currently stands. We therefore recommend rejecting the request to change this aspect of the definition of habitable space. However, for recent building work without appropriate consent, we do not consider that the Port Operator should be responsible for mitigation. From Mr Rae's supplementary report 'recent' in this context could be taken as meaning building work carried out after the introduction of the Building Act 1991.

- 12.12 We note and agree with the suggestion of Ms Carter in her supplementary evidence that further explanatory text should be added by PNL to the Port Noise Mitigation Plan. However we do not have any direct powers of recommendation over the Mitigation Plan and simply encourage PNL to make that 'belts and braces' alteration themselves.

***RECOMMENDATION 26:***

*That the submission by **Port Nelson Ltd (S12(4.1))** be accepted in part; and as a consequence, the associated further submission by **Nelson Waterfront Protection Association (X2)** be accepted in part insofar as they accord with the amendment below.*

*Advice Note:*

*It is recommended that that further explanatory text should be added by Port Nelson Ltd to the Port Noise Mitigation Plan to reflect the situation regarding dwellings and parts of dwellings built after 1991 without building consent.*

***AMENDMENT TO VARIATION 07/01***

*MW. 71A:*

*Amend to read:*

*"Habitable space means the interior parts of a building used for any residential activity but excluding any bathroom, laundry, water closet, pantry, walk-in-wardrobe, corridor, hallway, lobby, clothes drying room, garage, carport or other space of a specialised nature occupied neither frequently nor for extended periods."*

### MW.111A Mechanical Ventilation

12.13 The submissions lodged in relation to this definition are as follows:

Submitter	Submission No.	Request	Decision Sought
PNL	S12(4.2)	Oppose	i. Amend MW.111A to ensure that clause (c) is part of clause (b) or similar. ii. Amend MW.111A to ensure it is clear that Port Nelson is only offering to pay for option (a) and if the owner chooses option (b) the owner will be required to pay the difference regardless of whether the property is in the area for 100% contribution or 50% contribution area.
	Further Submission		Support/Oppose
	X2 NWPA		Oppose

12.14 This definition affects changes proposed to Appendix AP19 to the PNRMP which deals with Acoustic Insulation Requirements associated with the implementation and administration of the Port Effects Control Overlay. In particular, AP19.2.ii sets out the minimum ventilation requirements for habitable spaces in new or altered buildings. The appendix sets out three methods (a, b and c) for meeting the requirements. **PNL (S12(4.2))** submitted that the definition of mechanical ventilation was not clear due to the inclusion of the reference to only options “a) or b)”. Mr Rae recommended that deleting the reference to “a) or b)” in the definition would clear up any confusion and allow all three methods in AP19.2.ii to prevail in the way the rule was intended to function. We agree with Mr Rae that this would help clarify the definition.

12.15 **PNL’s** submission also requested that the definition of “Mechanical Ventilation” be amended to make clear that the additional cost of option b) would be borne by residents who choose this option. Rather than being included in the main body of MW.111A, this change would be required in AP19.2.ii, which is referenced by definition MW.111A. While this does not alter the meaning of the Variation, we agree that this issue should be clarified by adopting the amended wording suggested for AP19.2.ii by Ms Carter at the hearing (modified from her written evidence).

**RECOMMENDATION 27:**

*That the submission by **Port Nelson Ltd (S12(4.2))** be accepted. As a consequence, the associated further submission by **Nelson Waterfront Protection Association (X2)** be rejected.*

***AMENDMENTS TO VARIATION 07/01***

*MW.111A:*

*Delete “a) or b)”*

*AP19.2.ii:*

*Replace “...(option b), their financial contribution under the Mitigation Plan will be correspondingly greater.” with “...(option b), those residents shall be required to pay the difference.”*

**MW.126A Noise-affected property**

12.16 The submissions lodged in relation to this definition are as follows:

Submitter	Submission No.	Request	Decision Sought
Sinner, Jim	S1(3)	Oppose	Amend MW.126A to insert the words “educational or” before the words “residential purposes”.
Auckland Point School	S6(3)	Oppose	Amend MW.126A to insert the words “educational or” before the words “residential purposes”.
	Further Submission		Support/Oppose
	X3 Residents’ Reps of PNLC		Supports both S1 and S6

12.17 These submissions all seek alteration to the definition of the term “noise-affected property” so that noise insulation for educational facilities such as Auckland Point School becomes included in the provisions of INr.40 and AP29.

12.18 Both **Mr Sinner (S1(3))** and **Auckland Point School (S6(3))** requested identical changes to the definition of noise-affected property (MW.126A) to include properties used for educational purposes. We are aware that educational facilities are not included in the Variation as notified, the scope of which was intended to provide an acceptable standard of amenity for primarily residential activities. We understood from the submissions that Auckland Point School is mainly affected by daytime traffic noise from traffic on Haven Road and was previously affected by logging activities when they were frequently closer to the School than the current locations. We were also advised that a major part of Auckland Point School lies outside the proposed Port Effects Control Overlay, and therefore the school is currently protected by Rules INr.38/CMr.55 (which requires noise from activities in the Port Industrial Area and Coastal Marine Area to not exceed noise limits at the residential zone (school) boundary).



- 12.19 We have resolved not to recommend changing the definition of ‘noise affected property’ to include educational facilities as requested by the submitters, as this is the only existing school in the Port Effects Control Overlay, and any new schools or other non-residential activities would need to provide their own acoustic insulation if they gain approval through the resource consent process. As an aside, we do note that the noise contours may change in the future so that the School may potentially be affected to a greater degree by the Port Effects Control Overlay (and as it has no ‘habitable spaces’ it would not be eligible for acoustic treatment contributions from the Port Operator). This means it may potentially lose its current ‘protection’ under INr.38/CMr.55. Accordingly, we have concluded that the most appropriate way to retain Auckland Point School’s current protection from noise effects is to amend rules INr.38/CMr.55 so that the rules will continue to apply to the school even if the contours and the Port Effects Control Overlay area changes in the future.
- 12.20 For the above reasons, and as outlined in the discussion on Rules INr.38/CMr.55 (Topic E) we have recommended that noise at Auckland Point School be addressed by an alternative approach and therefore it is not necessary to alter the definition of MW.126A.

***RECOMMENDATION 28:***

*That the submissions by **Mr Sinner (S1(3))** and **Auckland Point School (S6(3))** and the associated further submission by the **Residents’ Representatives of the Port Noise Liaison Committee (X3)** be rejected.*

*We note that while we recommend rejecting this specific request we have separately recommended changes to INr.38/CMr.55 as a result of considering the whole of the submissions of **Mr Sinner (S1)** and **Auckland Point School (S6)***

**MW.145 Port Industrial Area, MW.145A Port Noise**

- 12.21 The submissions lodged in relation to these definitions are as follows:

Submitter	Submission No.	Request	Decision Sought
Gibbons Holdings Ltd	S2(a)	Oppose	MW.145 Extend the defined area on the planning map and definition to include the area within the Boulder Bank from the point of entry into the Harbour through the Cut thereby extending the noise control provision over the whole of the

	S2(b)	Oppose	area which is in truth "the Port Industrial Area" including the area for access to it. MW.145Ai) Extend the defined area (both definition and planning maps) to include ships from the time they enter and until the time they leave the Harbour through the Cut.
	Further Submission		Support/Oppose
	X2 NWPA		Supports S2(a)
	X4 PNL		Opposes S2(a) and (b)

12.22 **Gibbons Holdings Ltd (S2)** requested that the definitions of Port Industrial Area and Port Noise be expanded to encompass ships in the area of sea inside the Boulder Bank. i.e. as they transit between a wharf and The Cut.

12.23 In his report, Mr Rae notes that PNL has limited control over noise emissions from ships, and ships in transit do not generally generate noise complaints. We were advised by Mr Rae that it has not been apparent from the consultation undertaken as part of the section 32 analysis that ships are causing significant problems while not at berth. As an aside we were advised that ships not at berth are excluded from the Port Noise Standard *NZS 6809:1999 Acoustics – Port Noise Management and Land Use Planning*. Overall, we were clearly of the view that the principle noise issues at Port Nelson are while ships are at a wharf.

12.24 On the basis of the evidence we heard from residents at the hearing we resolved that:

- Noise from ships in transit is not a significant issue; and
- Extending the Port Industrial Area as suggested would have negligible beneficial effect, and potential jurisdictional difficulties for the Port Operator in controlling noise from ships that have not actually arrived at berth or have left the Port.

12.25 We therefore recommend that definitions MW.145 and MW.145A are not altered.

***RECOMMENDATION 29:***

*That the submission by **Gibbons Holdings Ltd (S2(a, b))** and the associated further submission by **Nelson Waterfront Protection Association (X2)** be rejected, and the associated further submission by **Port Nelson Ltd (X4)** be accepted.*

### **MW3C Acoustic Treatment**

- 12.26 An additional consequential amendment to the definition of ‘Acoustic Treatment’ has been undertaken. The justification for this amendment is addressed under Topic F (Appendices) above. To avoid unnecessary duplication, it will not be discussed here.

***RECOMMENDATION 30:***

***AMENDMENTS TO VARIATION 07/01***

***MW3C:***

*That the definition of ‘Acoustic Treatment’ be amended in accordance with Topic F, Recommendation 23 above.*

### 13. TOPIC H: MISCELLANEOUS MATTERS

#### Overview

13.1 As indicated in earlier topics in this recommendation report, during the course of the hearing, and in the process of our deliberations, we discovered a number of issues which had not been raised in submissions but may require amendment. These generally fall into one of two categories as follows:

- Those minor matters where there are inconsistencies in terminology and which we propose to address in terms of clause 16(2) of the First schedule of the Act; and
- Some substantive matters affecting the overall approach of the Variation where there is not scope to address these issues as part of the current process. These are matters where we have provided recommendations where we consider they may aid a future alteration to the NRMP.

13.2 The details of the above **consequential amendments** and possible **future alterations to the NRMP** are set out below:

#### Consequential Amendments

13.3 In the course of the hearing we found inconsistencies in the acoustic descriptors and terminology used in the Variation. We questioned Mr Ballagh about these issues during the hearing and we understand any inconsistencies were unintentional.

13.4 We also found that the 'bands' of noise exposure defining categories of mitigation were not clearly stated, and we asked Mr Ballagh to propose wording to clarify this matter. While Mr Ballagh and Mr Hegley appeared to have a common understanding of the meaning of all acoustic terms, we understand that it would be possible for other people to misinterpret the intended meaning if incorrect or inconsistent terminology were to remain.

13.5 We consider it important to ensure there is no ambiguity in the Variation, and therefore consider that various consequential changes are required to give effect to our recommendation to adopt the overall approach of this Variation. None of the noise/acoustic experts (or the planners) presenting raised any issue with this desire for consistency of terminology and clarification of noise bands. Accordingly we recommend that, pursuant to clause 16(2), that the aforementioned minor alterations are undertaken by the Council. The details are outlined in the following:

**RECOMMENDATION 31:**

*Consistent acoustic descriptors, terminology and noise band categories should be used throughout the Variation. Pursuant to clause 16(2) of the Act, the following alterations are recommended:*

**AMENDMENTS TO VARIATION 07/01**

Throughout the Variation:

*The following terminology should be used in all circumstances when a noise level is quoted. In all these examples “XX” is the numerical value such as 65.*

*“XX dBA  $L_{dn}$ ”*

*“XX dBA  $L_{eq(15\ min)}$ ”*

*In relation to the three strikes rule: “XX dBA  $L_{eq(15\ min, 10pm-7am)}$ ”*

*In relation to Auckland Point School: “XX dBA  $L_{eq(15\ min, 8.30am-3.30pm)}$ ”*

*The subscript “(5 day average)” is not required as it is defined in the text*

MW.102:

*Delete “and is the night-weighted sound exposure level in A-frequency weighted decibels”*

AD11.3.14:

*Replace “10.92 Pasques ( $L_{dn}$  55 dBA)” with “55 dBA  $L_{dn}$ ”*

AP29.A.2.i(a):

*Replace*

*“The monitoring equipment shall as a minimum record noise levels statistics in 15-minute periods so that the  $L_{eq}$ ,  $L_{max}$  and  $L_{95}$  can be calculated for each 15-minute period.”*

*with*

*“The monitoring equipment shall as a minimum record noise level statistics in 15-minute periods so that the  $L_{eq}$ ,  $L_{max}$  and  $L_{90}$  can be determined for each 15-minute period.”*

AP29.A.2.i(b):

*Replace “ $L_{eq}$ , calculated  $L_{dn}$  and  $L_{max}$  levels”*

*with “ $L_{eq}$ ,  $L_{max}$  and calculated  $L_{dn}$  levels”*

AP29.B:

*All references describing categories/bands should be replaced to use the terminology:*

*“65 dBA  $L_{dn}$  and above”*

*“60 dBA  $L_{dn}$  and above and less than 65 dBA  $L_{dn}$ ”*

*“55 dBA  $L_{dn}$  and above and less than 60 dBA  $L_{dn}$ ”*

### **Possible future alterations to the Nelson Resource Management Plan**

13.6 As mentioned, we have identified a number of issues which had not been raised in submissions but may require future amendment. We have provided recommendations where we consider they may aid a future alteration to the NRMP. The matters affected by this generally fall into six issue groups as follows:

- Exclude noise generated in the Port Operational Area from INr.38/CMr.55.
- Suburban Commercial Zone
- Complaints System
- Updates of the Port Noise Contour Map
- Continuous monitoring
- Role of Port Noise Liaison Committee re technical advice

#### Exclude noise generated in the Port Operational Area from INr.38/CMr.55

13.7 For the reasons previously discussed in Topic C (Ongoing Administration of the Variation), we consider there to be a flaw in the Variation due to the wording of INr.38.1 and CMr.55.1, which there is not scope in the submissions to alter. The flaw is that because INr.38/CMr.55 impose fixed noise limits at all locations outside the Port Effects Control Overlay, the port noise contours cannot expand. This also imposes restrictions on existing Port activities which were used as a basis to determine the current Port Noise Contour Map.

13.8 We have noted that this flaw is not expected to become problematic for the Port Operator in the short term. This is because there were tolerances within the acoustic predictions, which will enable the Port to operate at a marginally lower level than allowed for by the current position of the contours. Rather, this is a medium term issue and therefore we recommended this should be addressed within the next two years.

13.9 While this Variation relates solely to port noise, part of the Variation wording added to INr.38 and CMr.55 refers to noise from the airport in the same manner as the problematic wording relating to port noise. We have not examined aircraft noise in detail, but it is comprehensively addressed by the PNRMP in INr.39. It appears that this Variation has therefore introduced another flaw into the PNRMP as aircraft noise is now subject to two potentially contradictory controls. We therefore recommend any future alteration to the NRMP exempts both aircraft and port noise from INr.38. The airport is not within the Coastal Marine Area and therefore we recommend deletion of all references to the airport in CMr.55 in any future alteration to the NRMP.

### Suburban Commercial Zone

13.10 The nearest existing residential properties to the Port Operational Area are within the Suburban Commercial Zone. Our understanding of the Objectives and Policies of the PNRMP relating to this Zone is that it is intended to be flexible, and does not exclude residential activity. On the contrary, it appears that residential activity is anticipated in this Zone. New residential buildings in the Suburban Commercial Zone are required to be acoustically treated to mitigate port noise. However, if the level of port noise subsequently increases the Variation potentially has two discrepancies:

- It does not include any requirement for the Port Operator to address any resulting shortfall in the acoustic treatment, as it does in the Residential Zone; and
- There is also no requirement for the Port Operator to acoustically treat existing houses.

13.11 On the basis of the evidence presented to us, we could not see any reason for the Suburban Commercial Zone (SCZ) being excluded from port noise mitigation in the Variation. Nevertheless, no submissions were lodged dealing with this issue or seeking specific relief for the SCZ and therefore we do not have any scope to make alterations. We do record however that notwithstanding the absence of specific submission on this zone, some submitters such as **Mr Northrop** and **Gibbons Holdings** did address this in their presentations at the hearing. For example:

- During the hearing we asked **Mr Northrop**, who lives in this Zone, why he had not submitted on this issue. We understand that he was unaware that the Suburban Commercial Zone was essentially excluded from the Variation. This is understandable given that we found careful reading of the Variation is required including cross-reference to definitions before the exclusion becomes apparent; and
- Conversely, **Mr Gibbons** was aware of the exclusion, but given that his property is already substantially acoustically insulated, he considered that further acoustic treatment would be unlikely to be practical even if port noise did increase.

13.12 The Variation has been presented to us as being designed primarily to protect sleep. We are not aware of any reason why residents in the SCZ should be entitled to less sleep protection than residents in the Residential Zone. There are different amenity values in the two zones and most of the SCZ is significantly affected by noise from State Highway 6. However, we understand from Mr Northrop and Mr Gibbons that port noise is still clearly audible in the SCZ and can be disturbing. Having considered the evidence, we are of the opinion that in

future, the PNRMP should be extended to provide residents in the SCZ the same level of protection from port noise as those in the Residential Zone. As the Port Operator would then be required to mitigate noise to 40 dBA Ldn, the corresponding requirement in SCr.69A.1 for new habitable spaces would also need to be 40 dBA Ldn rather than 45 dBA Ldn.

- 13.13 We recognise that our recommended future change to the SCZ provisions would have significant financial implications for the Port Operator that have not been tested in the section 32 analysis for this Variation and would need to be rigorously tested prior to any future alteration to the NRMP. For example, there are parts of the SCZ exposed to greater than 65 dBA Ldn where the Port Operator would be required to offer to purchase residential buildings. Also, the higher floors of the apartment buildings are likely to be in that top category of mitigation. Nevertheless, we consider that in a zone such as the SCZ that allows for residential activity, the PNRMP should provide for protection of sleep for residents. Accordingly, we recommend further research by the Council on this matter.

#### Complaints System

- 13.14 During the hearing we heard that following agreement by the Port Noise Liaison Committee, the system for complaints has been publicised, such that all complaints are investigated by the Nelson City Council in the first instance. This is contrary to evidence we heard, that it will usually be easier for a noise maker, such as the Port Operator, to identify and resolve any noise issues if made aware of them when they actually occur. However, we understand that in this instance the residents would prefer that the initial investigation is impartial. Mr Rae suggested amendments in his supplementary report to document this current practice. Ms Carter noted that to allow the Port Operator to also investigate complaints, provision should be made for the Port Operator to be notified by Council when complaints are received. Overall, while it is not clear that directing complaints to the Council in the first instance, rather than Port Operator, is the best mechanism for identifying causes of noise, we agree that it is more important that all complaints are dealt with in a consistent manner.
- 13.15 For the above reasons, we therefore agree with Mr Rae that the Variation should be amended (in the next 2 years) to reflect the agreed system of recording and responding to noise complaints.

#### Updates of the Port Noise Contour Map

- 13.16 We have already discussed the issues surrounding the lag of the Port Effects Control Overlay being updated following any update of the Port Noise Contour Map. In his supplementary report, Mr Rae proposed a possible mechanism to link these processes. As we have already noted, we do not think it essential that the two systems are rigidly linked as they serve different purposes. However, we do consider that the situation at Port Chalmers should be avoided whereby due to this lag the “Port Effects Control Overlay” is now significantly smaller than



the Noise Contours. Due to the lack of scope to address this issue we have not explored the options in detail, but we note that requiring updates of the Port Noise Contour Map every two years rather than every year would facilitate a more practical solution. We have not recommended any wording to link the Port Effects Control Overlay and Port Noise Contour Map.

#### Continuous Monitoring

- 13.17 A related issue to the requirements for the Port Noise Contour Map is the requirements for continuous monitoring. The two requirements have different time periods in the Variation. We raised this during the hearing and Mr Ballagh recommended that logically the requirements for monitoring should be consistent with the requirements to update the Port Noise Contour Map. As the monitoring should be a vital tool in alerting to any need to modify the position of the Port Noise Contour Map, we agree that the time periods for both requirements should be consistent.

#### Role of Port Noise Liaison Committee re technical advice

- 13.18 While it was not raised in written submissions, we became aware from **Ms Thomas'** oral submission that the Variation has made the Port Noise Liaison Committee responsible for providing "technical advice" to property owners. This was not our understanding of the purpose of the Committee and is not part of the scope of the equivalent committee which successfully operates at Port Chalmers.
- 13.19 We anticipate that the residents on the Committee will generally be laypeople without technical expertise. Technical advice should be provided by the Port Operator. If the Committee considers technical advice to be required it should recommend that the Port Operator conducts or commissions the appropriate work. When questioned on this issue Mr Rae and Mr Ballagh expressed the opinion that this wording in the Variation was a mistake.
- 13.20 For the above reasons, we recommend that any future alteration to the NRMP seeks to delete the reference in AP29.3.i to the Port Noise Liaison Committee providing technical advice to the owners of properties in the 55dBA to 59dBA noise contour band.

#### ***RECOMMENDATION 32:***

#### ***RECOMMENDATIONS FOR FUTURE ALTERATIONS TO THE NELSON RESOURCE MANAGEMENT PLAN***

#### *MW.126A*

*Replace "in the Residential Zone" with "in the Residential or Suburban Commercial Zones"*

SCr.69A.1.a)

Replace “45” with “40”

INr.38.1 (as amended by recommendation 16):

Replace:

“This rule does not apply to:

- (i) noise generated by the Airport and received within the Airport Effects Control Overlay;
- (ii) noise generated within the Port Operational Area and received within the Port Effects Control Overlay,...

With:

“This rule does not apply to Aircraft Noise or noise generated within the Port Operational Area,...

CMr.55.1 (as amended by recommendation 16):

Replace:

“This rule does not apply to:

- (i) noise generated by the Airport and received within the Airport Effects Control Overlay;
- (ii) noise generated within the Port Operational Area and received within the Port Effects Control Overlay,...

With:

“This rule does not apply to noise generated within the Port Operational Area,...

AP29.A.1.i(ff)

Add “to be summarised in a flow chart, with all complaints directed to the Nelson City Council for the initial investigation.”

AP29.A.2.i(a)

Delete “for at least five years”

Insert “After five years and every two years thereafter the Port Noise Liaison Committee shall review the necessity of continuous monitoring and may decide to suspend the requirement until the committee decides that it shall be resumed.”

AP29.A.2.i(d)

Delete “on an annual basis for the first five years, and”

AP29.A.2.i(h)

Replace with:

“The Nelson City Council will take such steps as necessary to encourage any noise complaints to be made directly to it, and the Environmental Officer will investigate the complaint as soon as circumstances allow and will advise the Port Operator of the complaint. When a noise complaint is received by the Port Operator the Port Operator will immediately advise the Nelson City Council.”

AP29.B.3.i:

Replace “The Port Noise Liaison Committee will provide...” with “The Port Operator will provide...”

## **Closing Comments**

- 13.21 In closing, we wish to clarify that any potential future alteration to the NRMP to give effect to the six issues outlined above should not in any circumstance be considered to undermine the various recommendations we have made, including the recommendation in Topic A to confirm the Variation subject to some modifications. We strongly and unanimously believe that the confirmation of the Variation at this point is the most appropriate course of action having regard to part 2 of the Act. We are certain that the Variation in its modified form is a necessary, appropriate and timely response to the issues of port noise at Nelson. Furthermore, we believe that the provisions of the Variation will serve the purpose of the Act in that they will facilitate the sustainable management of natural and physical resources in a way that enables people and communities to provide for their social economic and cultural wellbeing and for their health and safety.
- 13.22 We should also add that none of the matters we have identified for a possible future alteration to the NRMP are of such magnitude as to warrant a departure from the general philosophy and approach embodied in the Variation. Whilst it is true that we could have recommended that the Variation be withdrawn and renotified at a later time to include those matters, we carefully discounted this option given that we believe that the Variation is fundamentally sound. Furthermore, we were also conscious of the duties of the Council under section 21 of the Act to avoid unnecessary delay in exercising its power and functions under the Act. In this respect, we are aware that the issue of port noise has been a long standing one and all parties require certainty as to the approach to be adopted regardless of whether they are in agreement with that approach or not. Accordingly, we record that the issuing of our recommendation to confirm the Variation, subject to some modification, along with a further recommendation for the Council to consider the need for some future changes within the next two years, is collectively considered by us to be a reasonable approach in the circumstances.



## APPENDIX A – Commissioners’ evaluation of submissions and further submissions

The text below outlines a summary of relief sought by submitters and further submitters, and the Commissioners’ recommendation of acceptance or rejection for each submission.

### 1. Submissions opposing the Variation in its entirety

Submitter	Submission No.	Request	Decision Sought	Recommendation
Alliance Group Ltd – Nelson Plant	S4	Oppose	Delete the Variation entirely	Reject
	Further Submission		Support/oppose	
	X1 Ward, David and Jocelyn		Oppose	Accept
Nelson Waterfront Protection Association (NWPA)	S10(1)	Oppose	Withdraw the Variation and recommence extensive consultation before re-notifying a new variation, or	Reject
	S10(2)	Oppose	Decline the Variation, or	Reject
	S10(3)	Oppose	Amend it so as to impose enforceable noise limits on port activities, implement effective noise monitoring and measurement, provide a compensation package, establish a Port Noise Liaison Committee with equal representation, and any other measures to ensure health and wellbeing of the local community	Reject
	Further Submission		Support/oppose	
	X1 Ward, David and Jocelyn		Support S10(3)	Reject
	X3 Residents’ Reps of PNLC		Support S10(3)	Reject
	X4 PNL		Oppose S10(1-3)	Accept
Robertson, Bruce	S15(2)	Oppose	Curfew between 12pm and 6am	Reject
	Further Submission		Support/oppose	
	X3 Residents’ Reps of PNLC		Support	Reject
	X4 PNL		Oppose	Accept

## 2. General Submissions in Support

Submitter	Submission No.	Request	Decision Sought	Recommendation
Weyerhaeuser New Zealand Inc	S7(1)	Support	Retain Variation to exclude noise from vehicles on roads	Accept
	S7(2)	Support	Retain Variation so that Port Operator is responsible for management of activities giving rise to noise including mitigation of adverse effects	Accept
	Further Submission		Support/oppose	
	X4 PNL		Support S7(1)	Accept
ENZA Ltd	S8	Support	Retain Variation to provide contributions towards the cost of acoustic insulation to properties in the vicinity of Port Nelson	Accept
	Further Submission		Support/oppose	
	X10 NFL (formerly Weyerhaeuser)		Support	Accept
Nelson Pine Industries Ltd	S18	Support	Adopt Variation as notified	Accept in part
	Further Submission		Support/oppose	
	X10 NFL (formerly Weyerhaeuser)		Support	Accept in part
Port Nelson Ltd (PNL)	S12(3.1)	Support	Retain the overall approach in the Variation	Accept
	Further Submission		Support/oppose	
	X2 NWPA		Oppose	Reject
	X10 NFL (formerly Weyerhaeuser)		Support	Accept

### 3. Submissions opposing fundamental aspects of the Variation

Submitter	Submission No.	Request	Decision Sought	Recommendation
Bateup, Suzanne Elizabeth	S3	Oppose	Introduce controls and monitoring amended to reduce noise below current levels	Reject
	Further Submission		Support/oppose	
	X1 Ward, David and Josephine		Support	Reject
	X5 Matthews, A and D		Support	Reject
	X6 Hunter, Burke		Support	Reject
	X7 Davies, A and B		Support	Reject
	X8 Hawthorne, S L		Support	Reject
	X9 Strickland, B R		Support	Reject
Evans, William PP	S17	Oppose	Contours do not accurately reflect the noise environment. Delete the requirement for acoustic treatment unless Port Operator provides guaranteed financial assistance	Reject
Northrop, Ian Richard	S9(2)	Oppose	Assurance that extension to noise line will not enable the Port Operator to build and work extension to MWS without proper consultation.	Reject
	Further Submission		Support/oppose	
	X3 Residents' Reps of PNLC		Support	Reject

#### 4. Administration Section

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(4)	Oppose	Amend the definition of Port Effects Control Overlay at AD11.3.14 to state that the boundaries of the overlays will be adjusted when contours are updated.	Reject
Auckland Point School	S6(4)	Oppose	Amend the definition of Port Effects Control Overlay at AD11.3.14 to state that the boundaries of the overlays will be adjusted when contours are updated.	Reject
	Further Submission		Support/oppose	
	X4 PNL		Opposes S1 and S6	Accept
Port Nelson Ltd (PNL)	S12(4.3)	Oppose	Amend AD11.3.14 to make it clear other activities sensitive to noise will also be required to provide acoustic insulation if they are within the port effects control overlay regardless of zoning.	Reject
	Further Submission		Support/oppose	
	X2 NWPA		Oppose	Accept



## 5. Objectives and Policies – General

Submitter	Submission No.	Request	Decision Sought	Recommendation	
PNL	S12(3.2)	Oppose	Strengthen the objectives and policies to provide framework necessary to support the approach and methods proposed, including reverse sensitivity issues for PNL.	Reject	
	S12(3.3)	Oppose	Include an exception mechanism to relieve the Port Operator or house owner of all or part of their obligations to acoustically insulate a building based on heritage aspects.	Reject	
	S12(3.4)	Oppose	Provide further objectives, policy statements and explanations on how outdoor living environments are to be dealt with.	Reject	
	Further Submission		Support/Oppose		
	X2 NWPA		Oppose		Accept

## 6. Objectives and Policies – DO12.1.2

Submitter	Submission No.	Request	Decision Sought	Recommendation
PNL	S12(4.4)	Oppose	i. Re-instate the word 'generally' to Policy 12.1.2	Accept
			ii. Amend DO12.1.2 to include water way leases.	Accept
			iii. Amend explanation accordingly.	Accept
			iv. Or provide alternative words as appropriate.	
Further Submission		Support/Oppose		
X2 NWPA		Oppose		Reject

**7. Objectives and Policies – DO12.1.3**

Submitter	Submission No.	Request	Decision Sought	Recommendation
PNL	S12(4.5)	Oppose	i. Amend DO12.1.3 to acknowledge the port and surrounding residential area co-exist and compatibility difficult to achieve.	Accept
			ii. Amend DO12.1.3 to address reverse sensitivity effects on Port.	Reject
			iii. Or alternative words.	Accept
			iv. Include amended versions of DO12.1.3 and Explanation and Reasons (see detailed submission).	
	Further Submission		Support/Oppose	
	X2 NWPA		Oppose	Accept in part
	X10 NFL (formerly Weyerhaeuser)		Support	Accept in part

8. Objectives and Policies – DO12.1.4

Submitter	Submission No.	Request	Decision Sought	Recommendation	
PNL	S12(4.6)	Oppose	<p>i. Amend to limit the potential number of new residential units/apartments in Suburban Commercial Zone in Port Effects Control Overlay.</p> <p>ii. Amend to require affected party approval from the Port for any resource consents.</p> <p>iii. Or alternative words.</p>	Reject	
	S12(4.7)	Oppose	<p>i. Amend DO12.1.4.iv to mention in the method other types of buildings required to provide acoustic insulation under the policy and rules for the Port Effects Control Overlay (and clarify whether schools to be included).</p> <p>ii. Delete the words ‘noise affected properties’ and replace with appropriate words.</p>	Accept in part	
	Further Submission		Support/Oppose		
	X2 NWPA		Oppose		Accept in part
	X10 NFL (formerly Weyerhaeuser)		Supports S12(4.6)	Accept in part	

**9. District Wide Objectives and Policies – DO12.1.5**

Submitter	Submission No.	Request	Decision Sought	Recommendation
PNL	S12(4.8)	Oppose	i. Amend DO12.1.5.i to include other adverse effects contemplated by the policy, or delete the words “in particular through noise reduction practices and technologies”. ii. Delete DO12.1.5.iii and DO12.1.5.iv or insert a cross reference to Policy 12.1.3.v. iii. Amend DO12.1.5.i to add the words “in conjunction with the lessees in the Port Industrial Area”. iv. Or alternative appropriate words.	Reject
		Further Submission		
		X2 NWPA	Oppose	Accept

**10. Objectives and Policies - Residential Zone**

Submitter	Submission No.	Request	Decision Sought	Recommendation
PNL	S12(4.9)	Oppose	i. RE2.1- Delete method RE2.1.viii and RE2.1.ix. ii Include a method stating adoption of noise minimisation techniques where practicable.	Reject  Accept
		Further Submission		
		X2 NWPA	Oppose	Accept in part

## 11. Objectives and Policies - Industrial Zone

Submitter	Submission No.	Request	Decision Sought	Recommendation
Gibbons Holdings Ltd	S2(c)	Oppose	IN1.3 Port Industrial Area. Delete the clause in its entirety.	Reject
PNL	S12(4.11)	Oppose	INd and INd.3 – Amend to include reference to reverse sensitivity effects on the Port Industrial Area from activities nearby in the Residential and Suburban Commercial zones.	Accept
	Further Submission		Support/oppose	
	X2 NWPA		Oppose	Reject
PNL	S12(4.12)	Oppose	i. Policy IN2.2 – Amend so it includes reference to unreasonable levels of adverse effects and reference to whether the adverse effects are able to be reasonably mitigated. ii. IN2.2.xii – amend to use habitable space, or revert to bedroom and lining areas approach as per Draft Variation (July 2005).	Accept  Accept
	Further Submission		Support/oppose	
	X2 NWPA		Oppose	Reject

## 12. Objectives and Policies – Coastal Marine Area

Submitter	Submission No.	Request	Decision Sought	Recommendation
PNL	S12(4.14)	Oppose	CM3.1.i – Amend to include acknowledgement of highly modified nature of the Port Industrial Area.	Reject
	Further Submission		Support/oppose	
	X2 NWPA		Oppose	Accept

**13. Residential Zone Rules: REr.64**

Submitter	Submission No.	Request	Decision Sought	Recommendation
Ward, David and Jocelyn	S13(1)	Oppose	In REr.64.1 delete the reference to "Port Effects Overlay".	Reject
	Further Submission		Support/oppose	
	X3 Residents' Reps on PNLC		Support	Reject
	X4 PNL		Oppose	Accept

**14. Rule REr.65A (and associated Rules SCr.69A, INr.71A and Appendix AP19.2)**

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(9)	Oppose	Amend Rule REr.65A in the Permitted column by replacing the words "the building is" with the words "any new sleeping areas are".	Reject
	Further Submission		Support/oppose	
	X1 Ward, David and Jocelyn		Oppose	Accept
PNL	S12(4.10)	Oppose	i. Amend REr.65A and associated rules in other zones (e.g. SCr.69A and INr.71A and AP19) to remove ambiguity and clarify that internal noise level standard can be achieved with windows open.	Accept
			ii. Make any necessary amendments to ensure that all activities intended to be captured by this rule are included.	Accept
	Further Submission		Support/oppose	
X2 NWPA		Oppose	Reject	

### 15. Rule INr.23

Submitter	Submission No.	Request	Decision Sought	Recommendation
Gibbons Holdings Ltd	S2(d)	Oppose	INr.23. Delete the words "Port area and are essential ancillary activities" from Variation 7.	Reject

### 16. Rules INr.38 and CMr.55

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(1)	Oppose	INr.38 Amend Rule INr.38 to replace the second to last sentence in the Permitted column with the following: "This rule does not apply to (a) noise generated by the Airport and received within the Airport Effects Control Lines, or to (b) noise generated within the Port Operation Area and received within the Port Effects Control Overlays".	Accept in part
	S1	Oppose	Various decisions sought to address the concern that "...the proposed rules provide no protection for students at Auckland Point School from Port Noise that could impact adversely on teaching and learning"	Accept in part
Auckland Point School	S6(1)	Oppose	INr.38 Amend Rule INr.38 to replace the second to last sentence in the Permitted column with the following: "This rule does not apply to (a) noise generated by the Airport and received within the Airport Effects Control Lines, or to (b) noise generated within the Port Operation Area and received within the Port Effects Control Overlays".	Accept in part
	Further Submission		Support/oppose	
	X4 Port Nelson Ltd		Supports both S1 and S6	Accept in part

Auckland Point School	S6	Oppose	Various decisions sought to address the concern that "...the proposal does not include adequate protection for the school"	Accept in part
	Further submission		Support/oppose	
	X3 Residents' Reps on PNLC		Support	Accept in part

## 17. Rule INr.40

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(2)	Oppose	Amend Rule INr.40 to include the following words at the bottom of the Permitted column: "Noise from activities in the Port Industrial Area must also comply with the conditions of Rule INr.38, except within the Port Effects Control Overlays".	Reject
	S1(5)	Oppose	Amend the rule to ensure that noisy activities within the Port Industrial Area are still subject to controls as necessary to protect workers and other activities within the Port Industrial Area.	Reject
Auckland Point School	S6(2)	Oppose	Amend Rule INr.40 to include the following words at the bottom of the Permitted column: "Noise from activities in the Port Industrial Area must also comply with the conditions of Rule INr.38, except within the Port Effects Control Overlays".	Reject
	S6(5)	Oppose	Amend the rule to ensure that noisy activities within the Port Industrial Area are still subject to controls as necessary to protect workers and other activities within the Port Industrial Area.	Reject
	Further Submission		Support/oppose	
	X4 PNL		Oppose S1(2), S1(5), S6(2), S6(5)	Accept



PNL	S12(4.13)	Oppose	<ul style="list-style-type: none"> <li>i. Amend INr.40.1(a) to relax the timeframes for production of the Port Noise Management Plan.</li> <li>ii. Amend INr.40.1(b) to relax time requirements for Mitigation Plan.</li> <li>iii. Amend INr.40.1(c) to allow for establishment of an interim Port Noise Liaison Committee.</li> </ul>	Accept in part
Further Submission			Support/oppose	
X2 NWPA			Oppose	Accept in part

### 18. Appendix AP29 – General

Submitter	Submission No.	Request	Decision Sought	Recommendation
PNL	S12(4.18)	Oppose	Amend the structure and phrasing of AP29 so it is clear that it contains matters to be addressed in the management and mitigation plans, and liaison committee, and are not worded as if they are rules.	Reject
Further Submission			Support/oppose	
X2 NWPA			Oppose	Accept

## 19. Appendix AP29.A

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(8)	Oppose	Amend AP29.A to specify that, for the purpose of determining whether Auckland Point School is exposed to noise that exceeds the thresholds for mitigation specified in the Plan, measurement shall be based on noise levels between 8:30am and 3:30pm.	Accept in part
Auckland Point School	S6(8)	Oppose	Amend AP29.A to specify that, for the purpose of determining whether Auckland Point School is exposed to noise that exceeds the thresholds for mitigation specified in the Plan, measurement shall be based on noise levels between 8:30am and 3:30pm.	Accept in part

## 20. Appendix AP29.A.1

Submitter	Submission No.	Request	Decision Sought	Recommendation
Gibbons Holdings Ltd	S2(e)	Oppose	AP29.A.1.i.d) Minimum Port Noise Management Plan Provisions. The Management Plan should impose a requirement on the Port Operator to respond in writing to the Committee within 30 days, unless the parties agree a different timeframe, on how it proposes to implement any recommendations including timeframes. This would add transparency to the Port Operators consideration to Committee requests.	Accept in part
	Further Submission		Support/oppose	
	X2 NWPA		Support	Accept in part

21. 29.A.2

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(6)	Support	Retain the requirement for the Port Operator to carry out continuous monitoring as per AP29.A.2.	Accept
Auckland Point School	S6(6)	Support	Retain the requirement for the Port Operator to carry out continuous monitoring as per AP29.A.2.	Accept
	Further Submission		Support/oppose	
	X4 PNL		Opposes S1	Reject
Gibbons Holdings Ltd	S2(f)	Oppose	AP29.A.2.a) Record of Recordings. Recordings to be kept for a period of not less than 6 months.	Accept in part
	S2(g)	Oppose	AP29.A.2.d) Contour Map. Amend the wording to read "a Port noise contour map based on a busy 14 day operating scenario".	Accept in part
	S2(h)	Oppose	AP29.A.2.j) - Public Access. Extend the provision to enable public access to all reports, minutes and recommendations considered or made by the Committee and requiring all dealings between the Committee and PNL to be the subject of written record.	Accept in part
	Further Submission		Support/oppose	
X4 PNL		Opposes S2(g)	Reject	
PNL	S12(4.15)	Oppose	<ul style="list-style-type: none"> <li>i. AP29.A.2i – Amend so that continuous monitoring not required and replace with more appropriate provisions.</li> <li>ii. Include a statement to require recording acoustic certificate on LIMs for properties.</li> <li>iii. Delete monthly reporting requirements in AP29.A.2.i(b).</li> </ul>	Reject

	Further Submission		Support/oppose	
	X2 NWPA		Oppose	Accept
Northrop, Ian Richard	S9(1)	Oppose	Ensure that noise is monitored by a third party.	Reject
	Further Submission		Support/oppose	
	X3 Residents' Reps of PNLC		Support	Reject
Norman, Annabel Claire	S14	Oppose	Amend Port Noise Contour Map to include more properties affected by noise	Accept in part
Robertson, Bruce	S15(1)	Oppose	Require 1 full year of continuous noise recording to be taken from at least 3 different locations.	Reject
	Further Submission		Support/oppose	
	X3 Residents' Reps of PNLC		Support	Reject
	X4 PNL		Oppose	Accept

## 22. Appendix AP29.A.3

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(7)	Oppose	Amend provision AP29.A.3.i(a)ii to clarify that Port Noise measurements shall not be adjusted to exclude noise from log handling activities.	Reject
Auckland Point School	S6(7)	Oppose	Amend provision AP29.A.3.i(a)ii to clarify that Port Noise measurements shall not be adjusted to exclude noise from log handling activities.	Reject
	Further Submission		Support/oppose	
	X2 NWPA		Supports S1 and S6	Reject
	X4 PNL		Opposes S1 and S6	Accept
Gibbons Holdings Ltd	S2(i)	Oppose	AP29.A.3.1.b) Procedure for measuring Port Noise. Delete this subclause in its entirety.	Accept in part

23. Appendix AP29.B.1 and B.2

Submitter	Submission No.	Request	Decision Sought	Recommendation
Ward, David and Jocelyn	S13(2)	Oppose	AP29.B.1 – include a statement to the effect that any acoustic treatment carried out will be in keeping with the existing architectural style of the house being treated.	Reject
	Further Submission		Support/oppose	
	X2 NWPA		Supports	Reject
	X3 Residents’ Reps of PNLC		Supports	Reject
PNL	S12(4.16)	Oppose	i.AP29.B.1.i and AP29.B.2.i – delete the three strikes provisions.	Accept in part
			ii. Amend to include exceptions to required level of acoustic treatment where for heritage or other reasons it is not practicable to achieve the required level of acoustic treatment and provide for alternative instruments.	Accept in part
			iii. Provide a mechanism enabling closure for Port if an owner does not accept the offer of treatment or purchase.	Reject
			iv. Amend to provide the assessed cost of acoustic treatment limited to 50% of value of property to apply to next category (60 – 65dBA Ldn).	Accept in part
			v. Include a statement indicating that noise received by the property must be established as attributable to port noise, for mitigation or purchase offers to apply.	Reject
Further Submission		Support/oppose		
X2 NWPA		Oppose	Accept in part	

Robertson, Bruce	S15(3)	Oppose	Contributions from Port Operator for acoustic treatment should be on a sliding scale	Accept in part
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**24. Appendix AP29.B.4**

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(10)	Oppose	Amend AP29.B.4.1 by inserting after "iii) Stage 3" the following: 'Not more than three years after the notification of Variation 07/01, the Port Operator shall notify owners of all noise-affected properties receiving between 55dBA and 60dBA of their eligibility to request technical advice and financial assistance for mitigation works from the Port Noise Liaison Committee'.	Accept
	S1(11)	Oppose	Amend AP29.B.4.1 by inserting a new paragraph at the end as follows: "iv) Ongoing works. Not less than every three years after notification of Variation 07/01, the Port Operator shall notify owners of all noise-affected properties of their eligibility to request technical advice and financial assistance for mitigation works from the Port Noise Liaison Committee".	Reject

PNL	S12(4.17)	Oppose	i.AP29.B.4.i.i) – amend for Stage 1 to clarify the 6 month period begins once agreement achieved between the owner and Port.	Reject
			ii. Amend to enable the parties to agree on a longer time frame if circumstances dictate.	Reject
			iii. Amend AP29.B.4.i ii) so that a longer time frame is given for making offers to contribute.	Accept
Further Submission			Support/oppose	
X2 NWPA			Oppose	Accept in part

## 25. Appendix – AP29.C

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(12)	Oppose	Amend AP29.C.1 by inserting the following at the end: 'AP29.C.1.ii The Port Noise Liaison Committee shall elect, for such term as the Committee may decide, a chairperson from among its own members or may elect a person not otherwise appointed to the Committee, except that in either case the person elected may not be an employee of the Port Operator. The chairperson shall have an ordinary vote in all matters before the Committee and in the case of a tie shall have a casting vote'.	Accept in part
Auckland Point School	S6(9)	Oppose	Amend AP29.C.1 by inserting the following at the end: 'AP29.C.1.ii The Port Noise Liaison Committee shall elect, for such term as the Committee may decide, a chairperson from among its own members or may elect a person not otherwise appointed to the	Accept in part

			Committee, except that in either case the person elected may not be an employee of the Port Operator. The chairperson shall have an ordinary vote in all matters before the Committee and in the case of a tie shall have a casting vote'.	
	Further Submission		Support/oppose	
	X2 NWPA		Support	Reject
Gibbons Holdings Ltd	S2(j)	Oppose	AP29.C.1 - Port Noise Liaison Committee. The Port Noise Liaison Committee should consist of a mix of membership with a rating in favour of residents (potentially affected by the Noise) and be given "teeth" so that its recommendations are required to be implemented.	Accept in part
Gibbons Holdings Ltd	S2(k)	Oppose	AP29.C.4.d) Port Noise Committee Resourcing. Delete the words "owners of noise affected properties" and insert the words "any persons having an interest created in the public at large.	Accept in part

## 26. MW.71A Habitable space

Submitter	Submission No.	Request	Decision Sought	Recommendation
PNL	S12(4.1)	Oppose	i. Amend MW71A so it includes short term living accommodation and is clearer on which rooms are included. ii. Include words to indicate that the Port will not be required to provide acoustic insulation to unconsented parts of existing dwellings.	Accept in part
	Further Submission		Support/Oppose	
	X2 NWPA		Oppose	Accept in part



**27. MW.111A Mechanical Ventilation**

Submitter	Submission No.	Request	Decision Sought	Recommendation
PNL	S12(4.2)	Oppose	i. Amend MW.111A to ensure that clause (c) is part of clause (b) or similar. ii. Amend MW.111A to ensure it is clear that Port Nelson is only offering to pay for option (a) and if the owner chooses option (b) the owner will be required to pay the difference regardless of whether the property is in the area for 100% contribution or 50% contribution area.	Accept
	Further Submission		Support/Oppose	
	X2 NWPA		Oppose	Reject

**28. MW.126A Noise-affected property**

Submitter	Submission No.	Request	Decision Sought	Recommendation
Sinner, Jim	S1(3)	Oppose	Amend MW.126A to insert the words “educational or” before the words “residential purposes”.	Reject
Auckland Point School	S6(3)	Oppose	Amend MW.126A to insert the words “educational or” before the words “residential purposes”.	Reject
	Further Submission		Support/Oppose	
	X3 Residents’ Reps of PNLC		Supports both S1 and S6	Reject

**29. MW.145 Port Industrial Area, MW.145A Port Noise**

Submitter	Submission No.	Request	Decision Sought	Recommendation
Gibbons Holdings Ltd	S2(a)	Oppose	MW.145 Extend the defined area on the planning map and definition to include the area within the Boulder Bank from the point of entry into the Harbour through the Cut thereby extending the noise control provision over the whole of the area which is in truth "the Port Industrial Area" including the area for access to it.	Reject
	S2(b)	Oppose	MW.145Ai) Extend the defined area (both definition and planning maps) to include ships from the time they enter and until the time they leave the Harbour through the Cut.	
	Further Submission		Support/Oppose	
	X2 NWPA		Supports S2(a)	Reject
	X4 PNL		Opposes S2(a) and (b)	Accept