To: Hearing Panel – Proposed Te Tai o Poutini Plan

From: Ruth Evans – Reporting Officer

Date: 28 February 2025

Re: **s42A Author Right of Reply – Noise**

Introduction and purpose

(1) The purpose of this report is to respond to the questions raised by Commissioners during the hearing for the Noise topic for the proposed Te Tai o Poutini Plan (**pTTPP**). This report will also respond to outstanding matters in response to submissions, evidence presented at the hearing and submitter responses to the Hearing Panel's Minute #59.

(2) This report is supported by the following attachments:

- Appendix 1: Recommended provisions – Noise - Right of Reply
- Appendix 2: Recommendations on submissions and further submissions – Noise – Right of Reply

(3) Where I have not specifically commented on a matter raised at the hearing, my position remains as set out in my s42A report and s42A report addendums.

(4) In making recommendations I continue to rely on the expert advice from Stephen Peakall, Acoustic Consultant, Marshall Day Acoustics.

(5) I note I have also filed joint rights of reply in relation to the Westport Rifle Range and Alma Road rezoning, as well as the Silver Fern Farms site at Hokitika.

Noise chapter and provisions

Overview

(6) I recommend a further amendment to the overview text in relation to maintaining appropriate noise levels to manage potential adverse effects, to simplify the language. This is a minor amendment for clarity.

(7) I acknowledge Ms Inta's presentation at the hearing, and her preference to 'minimise' potential adverse effects, rather than 'manage'. In my view 'manage' is appropriate because in includes the option to 'minimise' as well as other outcomes such as avoiding or mitigating. My understanding of 'minimise' is to reduce to the lowest extent possible, which may not always be necessary or practical when it comes to managing noise effects.

Objective 1

(8) I have reflected on the addition of 'unreasonably', noting that this could still be subjective and potentially increase uncertainty as to the outcome sought by this objective as it is unclear what 'unreasonably compromising' may be. At the hearing reframing NOISE-O1 to a positive objective was also discussed. I recommend a further amendment to this objective to remove the reference to 'unreasonably compromising' that I consider still meets the relief sought by Te Mana Ora (Community and Public Health) of the NPHS/ Te Whatu Ora (S190) (Te Whatu Ora) with respect to not providing 'absolute protection'.

Objective 2

(9) I have reviewed the wording of NOISE-O2 following discussions at the hearing regarding uncertainty as to what 'community infrastructure' or just 'infrastructure' (as per the recommended amendment) entails. I note that 'infrastructure' is defined in the pTTPP and defaults to the Resource Management Act 1991 (**RMA**) definition. On reflection the key reference in this objective is to 'lawfully established', whether it is community infrastructure, community facilities, infrastructure, regionally significant infrastructure or another lawfully established activity. Referring only to 'infrastructure' in the objective somewhat narrows the objective, or (although not the intention) could indicate, by singling out 'infrastructure' on its own that it does not need to be lawfully established. There is no scope to delete the reference to 'infrastructure' entirely because Manawa Energy Limited only sought that 'community' be deleted, I recommend 'and' be replaced with 'including'. If the Hearings Panel considered that there is scope to remove reference to 'infrastructure' I support a further amendment to the objective so that it simply refers to an activity being lawfully established.

(10) For completeness, I note that the original drafting intent and what 'community infrastructure' includes is not clear. At the hearing it was discussed whether community infrastructure may have been included to manage noise effects arising from community halls, for example concerts at the Barrytown Hall. In my view a community hall falls under the definition of 'community facility'. To cover this, one option could be to include reference to 'community facilities' however I do not think this addition is necessary because existing (assuming there are existing use rights or a resource consent), and any future permitted or consented activities will be 'lawfully established'.

Objective 3

(11) At the hearing Ms Inta spoke to her preference to protect quiet spaces such as libraries, churches and hospitals. The Noise chapter includes requirements for noise received in zones that enable sensitive activities as well as mitigation requirements for these types of activities where they establish in a noisier environment. I recommend a minor amendment to NOISE-O3 to include specific reference to 'sensitive' activities.

Policy 1

(12) At hearing the commissioners asked whether the reference to the 'surrounding environment' in clause (e) of the policy should be changed to 'receiving environment'. It was also requested that the chapter be checked to see if there are other references to 'surrounding environment' that may require review and potentially changing to 'receiving environment'. Mr Peakall expressed his view that 'surrounding environment' is appropriate as this captures the overall environment.

(13) The noise provisions focus on managing noise effects where that noise is received. I therefore consider 'receiving environment' to be the more appropriate term for NOISE-P1(e). In my view 'surrounding environment' is too broad and is not given effect to by the rules, in particular NOISE-RX which focuses on where noise is received. I note the term 'receiving environment' is used elsewhere in the chapter, as well as 'receiving site'[1]. I also understand that the receiving environment does not include unlawful activities.

(14) There is one other instance of 'surrounding environment' in NOISE-R12f. – 'effects on character and amenity values on the surrounding environment'. I consider 'receiving environment' to be more appropriate in this instance as well, as this rule sets matters of discretion where permitted activity

[1] See NOISE-P4 and NOISE-R12b.,

standards are not met and the effects are assessed with respect to where they are received. I also recommend a minor correction to replace 'on' with 'of'.

Policy 4

(15) At the hearing NOISE-P4b. was discussed and a question was asked arising from Ms Inta's presentation as to whether this clause should also refer to more sensitive places and/or environments. In my view, sensitive places or environments are adequately covered by clause a. of this policy, which requires consideration of maximum noise limits to reflect the character and amenity of the zone. I consider the character and amenity of the zone to be relevant with respect to what environments or places may be more or less sensitive to noise.

(16) As shown in the version of the chapter prepared for conferencing purposes, I have amended the reference to 'functional need and/or operational need' in NOISE-P4f., to remove the 'and'. I note that this does not preclude both a functional need and an operational need being considered. I have checked with other s42A authors with respect to consistency with other topics. I understand that Ms Easton has generally referred to 'functional need or operational need', the natural hazards topic s42A authors have used 'functional need or operational need' and 'operational need and fucntional need' has been used in the infrastructure provisions.

Rule 1

(17) I have recommended the removal of the reference to 'and comply with' in clause XXX[2] after discussion with Mr Peakall and to reflect how the New Zealand Standard is used in practice. I note this wording is consistent with the other clauses in NOISE-R1.

Rule 2

(18) I have recommended a further amendment to clause 1. to remove the repeated reference to '… associated with…' at the end of the sentence. As discussed at the hearing, this amendment provides for residential use of a site and continues to address the ambiguity associated with 'intermittent'.

(19) In relation to clause 12 of NOISE-R2, Mr Peakall and I have reflected on the wording of this clause following evidence presented at the hearing by New Zealand Agricultural Aviation Association (**NZAAA**) and New Zealand Helicopter Association, the preparation of the noise joint witness statement (**JWS**) referred to in Addendum #2, and the NZAAA response to the Panel's Minute 59. I continue to have concerns with the terms 'infrequent' and 'intermittent' in a permitted activity / exemption focused rule as they are not certain.

(20) As set out in his Right of Reply dated 28 February 2025, Mr Peakall remains of the view that some controls for the exemption are required (paragraph 9). However, Mr Peakall's evidence is that either a setback or the recommended restrictions on the number of aircraft and helicopter movements per year is appropriate. I consider the amendment to include 'or' rather than 'and' gives partial relief to the request by NZAAA to have no restriction on the number of movements, as this will be unlimited in areas beyond 250m from sensitive activities. I acknowledge that the either or approach does not align with the evidence of Dr Chiles for Te Whatu Ora, who is of the view that both a limitation on movements, and a setback is required. Relying on the advice of Mr Peakall that it can be either or, I consider this achieves a balance between enabling aircraft and helicopter movements for these activities, while still

[2] A new clause recommended to be included in the s42A version of provisions and numbered as 'XXX' in NOISE-R1

affording some protection to sensitive activities such as residential units, which I note are permitted in the General Rural Zone (GRZ).

(21) The Panel asked if 'any 12 month period' should refer to a calendar year. In my view the inclusion of 'any' indicates that this is to be assessed as a 12 month rolling average rather than a calendar year. If it was a calendar year this could result in 60 days in a row of aircraft and helicopter movements in proximity to sensitive activities, which I understand from discussing with Mr Peakall would not be appropriate. I note Mr Peakall has provided commentary at paragraphs 15 and 16 on the potential use of maximum hours, rather than number of days for this exemption and accept his expert advice that the 30 day limit is appropriate.

(22) I recommend including an advice note that NOISE-R2.12 does not apply to Conservation Estate land, in accordance with section 4(3) of the RMA.

(23) Regarding clause 16 of NOISE-R2, the Panel noted that this clause needed to include where the measurement should be taken from. I have discussed this with Mr Peakall who advised it should be from any point at or within the boundary of any site within a Residential Zone, Settlement Zone, Māori Purpose Zone, Hospital Zone, Open Space Zone, Natural Open Space Zone, Scenic Visitor Zone, Future Urban Zone or at the notional boundary of any site in the General Rural Zone or Rural Lifestyle Zone.

Rule 3

(24) NOISE-R3 has been renumbered so there is one clause for each issue that is covered by the rule.

(25) Clause 1.ii. was originally recommended to be deleted by Mr Peakall. This clause was discussed during expert conferencing and the experts[3] agreed that a modified version of this clause should be retained. I recommend accepting their expert advice on this matter and have included the amended wording in clause 1.ii.

(26) Clause 2 relates to railway noise. In the s42A Addendum #2 I set out my views on a potential Rail Noise Overlay. KiwiRail have provided a response to the Panel's minute 59 and continue to seek the Rail Noise Overlay. Mr Peakall has provided evidence on the KiwiRail response in his Right of Reply evidence at paragraphs 24 – 38.

(27) At paragraph 6 the KiwiRail response raises a concern that the measurement will be taken from the tracks as they exist today. It is my view that that the measurement will be taken from the railway track at its location at the time of any proposal. This includes if the track has moved anywhere within the KiwiRail designation. I acknowledge that while the overlay does not take into account topography or screening, this is addressed by clause 3.ii. which takes into account noise barriers as noted in paragraph 13 of the KiwiRail response.

(28) Through the process it was agreed that effects should be managed within 100m of the railway track (rather than the 40 metres as notified). I acknowledge the examples of how other district plans deal with railway noise and as set out in the addendum I agree that the designation boundary is a set point at which the measurement can be taken. I note that the 100m setback from the designation boundary is not universal, there are examples where the setback is less that 100m.

(29) On balance I continue to prefer the option of measuring from the railway track itself, where the effect arises from.

[3] Mr Peakall for West Coast Regional Council and Dr Chiles for New Zealand Transport Agency. See Table 3 item 1 of the noise JWS

(30) The train numbers on each line were discussed during the hearing. I recommend that the Hokitika line be exempt from NOISE-R3 as it would be onerous to require acoustic insulation for the very low train movements. I accept that the Rapahoe line should be included the provisions based on the information from KiwiRail that train movements on this line are expected to increase. It is my view that the 'alert overlay' proposed by KiwiRail for information purpose only in relation to the Hokitika line is not necessary in this instance due to the low number of movements and because it may cause confusion for plan users to include an overlay where there are no planning requirements. If the train numbers on the Hokitika line were to change in the future to an extent which necessitates insulation requirements for nearby sensitive activities this could be addressed via a plan change.

(31) Sporting activities and recreational activities are included in the definition of 'sensitive activity' because they fall under the definition of 'community facility'. At the hearing it was discussed whether there needed to be an exemption for sporting activities and recreational activities from the rules. In the case of NOISE-R3, I note that the acoustic insulation requirements apply to habitable rooms and space used for sleeping, therefore will not apply to sporting activities and recreational activities generally.

(32) Mr Hofmans presented at the noise hearing and expressed his view that the acoustic insulation requirements should not apply to his property near the Karamea Aerodrome. Mr Peakall has provided commentary on Mr Hofmans' situation at paragraphs 39 – 52 of his right of reply. I rely on and accept Mr Peakall's expert advice, that the insulation requirements should apply to Mr Hofmans' property and others in proximity to the Karamea Aerodrome. Applications to breach NOISE-R3.4. can be assessed on a case by case basis via a resource consent process. I note this will incur costs associated with the resource consent but it does provide the flexibility to put forward an alternative approach for assessment based on and site and/or proposal specific circumstances.

(33) The noise experts conferred regarding clause 7.v. of NOISE-R3 relating to ventilation noise, following discussion at the hearing regarding how the measurement would work, noting that 'at least 1m' could be 1m or 10+m. The experts note an amended wording of this clause[4] that clarifies the measurement point. I recommend using the wording agreed by the experts for this clause and have included this in the revised provisions.

(34) I recommend updating the rule references in NOISE-R3 and associated cross references in the advice note and NOISE-APP1-Acceptable constructions requirement to reflect the amended numbering of clauses in NOISE-R3. I have clarified with Mr Peakall that the acceptable construction requirements are applicable to all activities subject to NOISE-R3 except external noise insulation requirements required by NOISE-R3.6.ii. within the Westport Rifle Range Noise Overlay.

Rule 4

(35) A letter[5] tabled by the New Zealand Defence Force (**NZDF**) in relation to NOISE-R4 requested that the setback distance included in NOISE-R4.1.b.ii be amended to refer to distance in metres, consistent with the metric used in clause 1.b.i of this rule. I agree with this amendment for the reasons set out in the NZDF letter and recommend it be amended. This amendment was made in the version of provisions in my s42A Addendum #2 and has been retained in the Right of Reply version.

Rule X

[4] Noise JWS Table 3 item 2

[5] NZDF letter to Hearings Panel dated 3 September 2024

(36) NOISE-RX manages effects of noise in the receiving environment by setting maximum noise limits on a zone by zone basis. This is is a similar approch to a number of recent district plans including in Selwyn, Porirua, Queenstown, Timaru (propsoed approach) and New Plymouth. In the notified version of the pTTPP noise chapter the rules applied to where the noise was being generated, rather than where the noise was received. The recommended approach in NOISE-RX focuses on the management of noise effects where they are received. Scope to amend the approach is primarily via the Te Whatu Ora submission (S190). Other submitters also sought amendments to the noise limits to make them more or less restrictive, and some requested changes to the daytime/nighttime/weekend hours[6].

(37) The Hearings Panel asked how the recommended 65 dB L_{aeq} limit for the General Industrial Zone compared to other plans. Recent plan approachs in Selwyn and Porirua set no limit for their General Industrial Zone, Timaru proposes a 65 dB L_{aeq} limit and 75 dB L_{AFmax} limit during night time hours, and New Plymouth has limits of 75 dB $L_{aeq(15mins)}$ and 80 dB L_{AFmax}.

(38) In the s42A Addendum #2 version of provisions I had signalled I would consider adding 'lawfully established prior to XXXX [insert date the TTPP becomes operative]' to clause 4. In my view this is not necessary as the circumstances in which a sensitive activity with the Mineral Extraction Zone is likely to be rare, given the direction in MINZ-P4 to manage conflicts between mineral extraction activities and other land uses by ensuring that activities that are incompatible with the effects of mineral extraction are not established, and the non-complying activity status for activities not provided for.

Rule 9

(39) A concern was raised by the Hearings Panel regarding the recommendation to include clause 2 in NOISE-R9, requiring activities to be conducted in accordance with a Port Noise Management Plan and how this component of the rule would be implemented. Mr Peakall and I have reflected on this following the hearing, and discussed that an advice note may be more appropriate. Mr Peakall explains in his right of reply at paragraphs 55 to 60 how noise management plans are required in practice, and notes that they are recommended by the Port Noise Standard (NZS 6809: 1999 Acoustics Port Noise Management and Land Use Planning). On this basis I consider an advice note to be more appropriate than a rule and have included amended wording in NOISE-R9.

Rule 10

(40) Similarly, a clause was added to NOISE-R10 requiring activities in the Airport Zone to be conducted in accordance with a noise management plan. Along with the similar clause for the Port Zone, Mr Peakall and I have reflected on this following the hearing, and discussed that an advice note may be more appropriate. Mr Peakall explains in his right of reply at paragraphs 58 to 60 that not all airports are required to prepare a noise management plan and while it may be a useful tool, it is not necessary to ensure noise emissions are controlled. On this basis I consider an advice note to be more appropriate than a rule and have included amended wording in NOISE-R10.

(41) I recommend consolidating proposed clauses 2X and 2Y in this rule relating to engine testing, to align with the wording agreed to by Mr Peakall and Dr Chiles in the noise JWS (see Table 2 item 4). Scope to make this amendment is consequential to the amendment to delete clause 3 of NOISE-R10 and introduce NOISE-RX.

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[6] For example Loree Willson (S81.001), Deb Langridge (S252.004), Horticulture New Zealand (S486.087), Chris and Jan Coll (S558.327)

S32AA

(42) Section 32AA of the RMA requires a further evaluation to be undertaken in accordance with s32(1)- (4) if any amendment has been made to the proposal (in this case the pTTPP) since the original s32 evaluation report was completed. Section 32AA requires that the evaluation is undertaken in a level of detail that corresponds to the scale and significance of the changes. Minor changes to correct errors or improve the readability of the pTTPP have not been individually evaluated. In terms of s32AA, these minor amendments are efficient and effective in improving the administration of the pTTPP provisions, being primarily matters of clarification rather than substance.

(43) I note that I did not include a s32AA evaluation alongside the changes recommended in the s42A Addendum #1. I consider the majority of recommended changes are of a minor nature and are intended to improve the workability of the pTTPP.

(44) A more substantive change relates to the introduction of the Road Noise Overlay, using the mapping provided by New Zealand Transport Agency (**NZTA**). In my view this is a more efficient and effective approach than using a setback, because the overlay identifies what properties are affected via a planning map layer that is a noise contour based on modelling, rather than relying on measuring from the road carriageway. The NZTA overlay approach has been applied elsewhere and I consider there to be a good degree of certainty in this approach and sufficient information provided by NZTA and assessed by the relevant experts on which to act.

(45) The recommended amendments to the provisions as set out in Appendix 1 are therefore considered to be more appropriate than the notified version in the pTTPP.