

Whakatāne District Plan

Plan Change 6 – Audible Bird Scaring Devices

Summary of Submissions

Summary of decisions requested by public submission

Prepared under Clause 7 of Schedule 1 of the RMA

In this document, the public feedback given during the submission process (8 August 2022 to 16 September 2022) has been summarised and changes requested by the submissions listed.

10 January 2023

Proposed Plan Change 6 – Audible Bird Scaring Devices

Feedback received by submission

Proposed Plan Change 6 – Audible Bird Scaring Devices was publicly notified on Monday 8 August to 5pm Friday 16 September. The submission period ran for six weeks.

During the formal submission period, 9 submissions were received.

Copies of submissions and the summary of submissions are now available for viewing on the Council website, at the libraries and service centres.

Further submissions are now being sought and close 5pm Friday 10th February 2023.

Description and scope of Proposed Plan Change 6

Since the Whakatāne District Plan was made Operative in 2017, Council has received complaints relating to the sound from audible bird scaring devices, particularly impulsive devices. Within the rural zones, horticulture, primarily kiwifruit orchards, has increased since 2017. Resident complaints relating to the negative impacts caused by the use of impulsive devices have also increased. A number of changes to the District Plan have been identified to help manage these impacts.

Proposed Plan Change 6 seeks the following outcomes:

- To manage the level of sound and the frequency of impulsive sound events
- To introduce restricted Discretionary activity status and Assessment Criteria
- To clarify sound level limits and use for non-impulsive devices

Proposed Plan Change 6 consists of changes to the Whakatāne District Plan that seek to:

- Amend the permitted sound level and hours of operation for non-impulsive sound events
- Reduce the permitted sound level and frequency from impulsive sound events
- Amend restricted discretionary activity assessment criteria for impulsive sound events
- Include Restricted discretionary activity assessment criteria to assess the impact on significant indigenous biodiversity sites
- Introduce acoustic modelling to identified affected parties from impulsive sound events

Making further submissions on Proposed Plan Change 6

Further submissions close **5pm Friday 10th February 2023**.

Clause 8 Schedule 1 RMA identifies who can make a further submission, and states:

“The following persons may make a further submission.....

- a) any person representing a relevant aspect of the public interest; and*
- b) any person that has an interest in the proposed ... plan greater than the interest that the general public has; and*
- c) the local authority itself.”*

A further submission may only express support or opposition to a matter raised in an original submission. It must not raise new matters.

Further submissions must be in the correct format. Forms can be found on the webpage or from Council service centres and libraries.

Post to: Policy Planner
Whakatāne District Council
Private Bag 1002
Whakatāne 3158

Deliver to: Policy Planner
Whakatāne District Council
4 Commerce Street
Whakatāne

Email: policyplanning@whakatane.govt.nz *Online:* whakatane.govt.nz/plan-change-6

A copy of the further submission is also **required** to be sent to the original submitter not later than **five working days** after lodging the further submission with Whakatāne District Council (clause 8A, Schedule 1 of the RMA).

Addresses for service of the submitters can be found in the Compilation of Submissions.

Once the closing date for further submissions has passed, Whakatāne District Council will convene a hearing to consider submissions and further submissions and recommend decisions on the matters raised. Anyone who has made a submission or further submission and who has indicated that they wish to be heard will have the right to attend the hearings and present their submission.

Proposed Plan Change 6 amendments to the District Plan

The following table identifies the proposed changes to District Plan rules 11.2.6.2, 11.2.7.1.h and 11.4.5.1.

Each change is given its own identification number. Submission points are cross-referenced to the change using this number.

Existing text is black, new text is in *blue italics underlined* and deleted text is ~~strikethrough~~.

Table 1: Plan Change 6 - cross reference numbers

Change Number	Proposed Changes
	<p>11.2.6 NOISE LIMITS</p> <p>11.2.6.2 / TABLE 11.2: SPECIFIC ACITIVTY NOISE LIMITS</p> <p>Activity: Audible bird scaring devices Noise controls</p>
1.1	<p>General Requirements</p> <p>Audible bird scaring devices shall only be operated from half an hour before sunrise to half an hour after sunset.</p>
1.2	<p>A legible notice is to be fixed to the road frontage of the property on which the device is being used, giving the name, address, <u>and</u> contact telephone number of the person responsible for the operation of any such device(s).</p>
1.3	<p><u>Devices that generate non-impulsive sound events</u></p> <p><u>The operation of non-impulsive audible bird scaring devices shall comply with the following noise levels at any point within the notional boundary of any rural dwelling or the site boundary in any residential zone:</u></p> <p>i. <u>7:00am – 10:00pm 50dB LAeq,</u></p> <p>ii. <u>10:00pm – 7:00am 40dB LAeq and 70dB LAmax.</u></p>
1.4	<p><u>Devices that generate impulsive sound events</u></p> <p><u>The operation of impulsive audible bird scaring devices are permitted where the noise does not exceed 85dB L_{Cpeak} at any point within the notional boundary of any rural dwelling or site boundary in any residential zone. There is no restriction on the number of individual events between half an hour before sunrise to half an hour after sunset.</u></p>
1.5	<p><u>The operation of impulsive audible bird scaring devices is a restricted discretionary activity (see criteria in Rule 11.4.5) where the noise exceeds 85dB L_{Cpeak} at any point within the notional boundary of any rural dwelling or site boundary in any residential zone. The operation of such a device must: i. not exceed 3 events within a 1 minute period and shall be limited to a total of 70 individual events per day, and ii. shall operate between half an hour before sunrise to half an hour after sunset</u></p>
1.6	<p><u>Advice Note: Existing use rights will apply for audible bird scaring devices that have been lawfully established in accordance with S10 of the RMA and comply with the permitted noise standards of the Operative District Plan 2017, prior to the notification date 8 August 2022 of Plan Change 6.</u></p>
1.7	<p>Devices that Generate Discrete Sound Events</p> <p>Discrete sound events from an audible bird scaring device, including shots or audible sound shall:</p> <p>i. shall not exceed 100dB L_{Zpeak},</p>

- ii. ~~not exceed 3 events within a 1 minute period and shall be limited to a total of 12 individual events per hour.~~

Devices that Generate Short or Variable Sound Events

~~Where audible sound is used over a short or variable time duration, no event may result in a sound level greater than 50dBA SEL.~~

~~Audible bird scaring devices which do not comply with this rule are a restricted discretionary activity.~~

11.2.7 TABLE 11:1 AND TABLE 11:2 SPECIFIC ACTIVITY NOISE LIMIT

- 2.1 11.2.7.1.h At any point within the notional boundary of any rural zoned site, residential zone boundary or within the site boundary of any other site used for a noise sensitive activity, and excludes excluding any dwelling/s located on the same site as that on which the device is being operated.

11.4 ASSESSMENT CRITERIA FOR RESTRICTED DISCRETIONARY ACTIVITIES

11.4.5 Audible Bird Scaring Devices

- 3.1 11.4.5.1 Council shall restrict its discretion to the following:
 - a. consideration of the best practicable option, including alternative types of bird scaring devices, alternative options for crop protection, effectiveness of those alternative options. ~~and their affordability.~~
 - 3.2 b. an acoustic report from a suitably qualified acoustics expert that identifies the 85dB LCpeak contour from the notional site boundary or site boundary in any residential zone for the purposes of identifying affected parties as part of a resource consent application
 - 3.3 c. the noise level generated and the effect on affected parties ~~those persons~~ or activities who will experience the noise and any proposed mitigation
 - 3.4 e. ~~cumulative adverse noise effects from existing Audible Bird Scaring Devices~~
 - 3.5 d. the number of devices, the frequency, timing, time of year and the operating conditions when they may operate
 - 3.6 e. the location of or exclusion areas for any device in an orchard to manage effects on affected parties
 - 3.7 f. an assessment be undertaken by a suitably qualified person to assess the potential impacts on indigenous fauna of a Significant Indigenous Biodiversity Site
 - 3.8 g. the General Information Requirements, Rule 3.5.4

Summary of Submissions

The following table summarises the submissions lodged with Council relating to Plan Change 6. The main points and issues raised by submitters in their submissions are cross referenced with numbering in Table 1. To read full versions of the submissions received, see the Compilation of Submissions.

Submitter		Submission point	Plan Change Number	Support / Oppose / in part	Summary of decision requested	Decision reasons
No.	Name					
1	Sarah van der Boom	1	1.4, 1.6	Support	Lower decibel rating for audible bird scarers.	Lower dB rating for audible bird scarers.
		2	2.1	Oppose	Increase the distance between dwellings and audible bird scarer from 2 to 5 kilometres.	Distance between dwellings and audible bird scarer be increased to 2 kilometres and 5 kilometres for residential areas.
		3	3.3	Support	Apply reverse sensitivity rules to protect existing rural dwellings and communities.	Peace and quiet in rural areas is an important value that should be protected. Reverse sensitivity rules be applied for existing rural dwellings and communities to protect them from new horticultural development audible bird scarers.
2	Robert Humphries	1	1.4	Oppose	Plan Change 6 be withdrawn.	Support Horticulture New Zealand submission. Oppose Plan Change 6 as inhibits orchardist rights to protect crops in fair and effective manner.
		2	2.1, 3.2, 3.3, 3.5, 3.8	Oppose	Plan Change 6 be withdrawn and restarted.	The plan change process be started again as proposed changes not based on substantiated evidence and did not engage stakeholders with an equality or collaborative approach.
3	Elisabeth Sides	1	1.5	Support	85db L_{cpeak} audible bird scaring device as permitted activity limit.	Support lowering of decibel rate from 100db to 85db L_{cpeak} (impulsive devices).
		2	1.4, 3.2	Oppose	Set distance for device from dwelling.	Ask that the devices are not near my boundary and that orchardists use other methods.

		3	1.5	Oppose	Hours of use be restricted from 7am to 6pm.	7am – 6pm is a reasonable length of time for use.
		4	1.5	Oppose	Limit of 9 events per hour during the 11 hour period of operation.	Restrict the frequency of events.
4	Te Runanga o Ngati Awa	1	2.1	Support	The addition of 11.2.7.1.h 'marae, papakainga, marae urupa' to the noise controls column so they are specifically identified as 'noise sensitive activities'.	These should be recognised and provided for in the proposed plan change.
5	Keryn Mullins	1	1.4	Oppose	Disallow or turn device down.	Devices are too loud and continuous throughout the day and sound like big shot guns going off all the time. These should not be allowed and advantage of them is questionable as birds just fly back a few minutes later.
		2	1.2	Oppose in part	Required public notice advising of use.	Orchardists should put a public notice in the beacon to advise when about to use a device. Orchardists should start the devices at low decibels first before turning up volume.
6	Sandra and Bruce Pryde, (c/o Poroporo resident 2021 petition signees)	1	1.4	Oppose	Total ban of audible bird scaring devices in the Whakatāne District.	Devices can boom 144 times a day or 1008 times a seven day week. This causes extreme distress to humans and animals. Many alternatives can be used.
7	Rob and Helen Morris	1	1.5	Support	85db L_{cpeak} audible bird scaring device noise limit.	Change the noise from devices down from 100db to 85db L_{cpeak} as use impacts on our lives, especially from early morning loud booms.

		2	1.5	Oppose in part	Restrict hours of use to start from 7am and change the frequency booms	Hours of proposed use long. Monitor regularly to ensure orchardists are complying with WDC regulations, enforce rules and impose penalties. Monitor the frequency of use.
		3	3.5	Support	Limit the number of audible bird scaring devices per property.	Limit number of devices per property.
8	Horticulture New Zealand (HortNZ) and New Zealand Kiwifruit Growers Incorporated (NZKGI)	1	1.4	Oppose	Withdraw Plan Change 6.	The use of SEL as the sound measurement unit for audible bird scaring devices should be considered.
		2	3.2, 3.3	Oppose		A setback distances from an audible bird scaring devices at the notional boundary of a rural dwelling or residential boundary to meet the 85Lcpeak limit would be a threefold increase on the current setback. This is an inefficient approach to managing an activity that can be managed through permitted activity standards and education of users.
		3	1.4	Oppose		The basis for the 85dB Lcpeak is unclear. The use of SEL as the sound measurement is used by adjoining district plans and this measure should have been included.
		4	Section 32 Report	Oppose		The Section 32 Report does not give effect to the Regional Policy Statement (RPS) as required by s75(3) of the RMA. Specific RPS policies include UG 18B, UG 23B, UG 24B.
		5	Section 32 Report	Oppose		The Section 32 report does not consider Chapter 2 strategic objective 4 (in its entirety) and its impact on Chapter 11 Gen1 policy 2. Plan change 6 reduces the ability of the horticulture industry to operate.
		6	1.4, 1.5, 1.6	Oppose		The proposed changes will not necessarily achieve a reduction of nuisance sound effects in rural zones. No clear justification is provided in the Section 32 Report to support the existing permitted noise level as being too permissive. Compliance with the current rules needs to be determined. Support a joint education program by HortNZ and NZKGI, which is led by Council.

		7	Section 32 Report	Oppose	Withdraw Plan Change 6.	The plan change is based on community complaints as opposed to quantifying non-compliance. The Section 32 Report does not adequately identify the process of engagement with growers, community complaints and appropriate response or alternatives like education.
		8	Section 32 Report	Oppose		Analysis of Council meeting outcomes has predetermined the outcomes of the monitoring and data collection, resulting in a plan change. Rather than assessing the information to determine the most appropriate pathway forward.
		9	Section 32 Report	Oppose		PC6 is inconsistent with other district plans and what is proposed for Whakatāne is more restrictive than other councils like Hastings.
		10	3.1 – 3.8, Section 32 Report	Oppose		PC6 seeks to limit the ability of horticulture to operate. It is unclear for growers if a resource consent will be obtained for any device over the proposed 85dB noise limit.
9	Ross Gardiner	1a	1.2, 1.3, 1.4, 1.5	Oppose	Propose substitute text in submission be accepted to replace PC6 text	Proposed wording includes clarifying: <ul style="list-style-type: none"> • both impulsive and non-impulsive audible bird scaring devices hours of operation and legal notice requirements. • non-impulsive audible bird scaring devices permitted requirements. • impulsive audible bird scaring devices permitted requirements.
		1b	1.2, 1.3, 1.4, 1.5	Oppose	Proposed text relating to existing use rights be accepted.	Plan Change 6 is contrary to the Operative District Plan, specifically 3.1.1.1 rural plains descriptions and strategic objective 4 and policies 1-6.
		2	2.1	Oppose	Proposed text be accepted, if not broadened to include exclusion for other existing residential and future residential zones.	Oppose wording for 11.2.7.1.h, which is redundant due to proposed wording in submission.

		3	3.1 – 3.8	Oppose	Proposed text be accepted.	Oppose restricted discretionary wording and clause 11.4.5.1.f relating to significant indigenous biodiversity sites. Proposed wording includes restricting Council’s discretion to: <ul style="list-style-type: none"> a. noise levels by dwelling or noise sensitive activities, amenity and proposed mitigation measures. b. best practicable options. c. public notification precluded unless exceeds permitted activity standards at the boundary of any residential, urban living, deferred residential or education Zone.
		4		Support	Consequential numbering and formatting changes resulting from PC6 to the Operative District Plan be accepted.	The following changes be supported: <ul style="list-style-type: none"> a. any consequential amendments resulting to text formatting, numbering or national legislation changes (including the National Planning Standards. b. Council produces an acoustic assessment to support precluded areas.
		4a	1.4, 1.5	Oppose	Council produce and publish an acoustic map for preclusion areas and sites triggering the need for a resource consent.	Any introduced rule relating to significant indigenous biodiversity be supported by acoustic and wildlife assessment reports and mapped accordingly. Council should produce an acoustic assessment to support mapping for precluded areas or areas that trigger resource consent as a discretionary activity for new ABSDs around any Residential Zone, Urban Living Zone, Deferred Residential Zone, or Education Zone.
		4b	3.7	Oppose	Oppose the inclusion of rules relating to Significant Indigenous Biodiversity Sites (SIBS).	There is insufficient evidence to accurately quantify the effect on the SIBS. Council should provide robust information and produced preclusion area mapping where appropriate.