

Audible Bird Scaring Devices - Issues and Options



To: **Strategy and Policy Committee**

Meeting Date: **Thursday, 1 April 2021**

Submitted by: **Senior Policy Planner**

Reference: **A1911573**

1 Reason for the report - *Te Take mō tēnei rīpoata*

Concern has been raised by members of the community regarding the use of Audible Bird Scaring Devices (ABSD) by the horticulture industry in the rural zone, specifically kiwifruit orchards.

This paper:

- Reviews the inclusion of noise controls for ABSD in the Whakatane District Plan (the District Plan).
- Discusses the options available to Council to understand the ABSD issue and management.

2 Recommendations - *Tohutohu akiaki*

1. THAT the Strategy and Policy Committee receive the Audible Bird Scaring Devices - Issues and Options report; and
2. THAT the Strategy and Policy Committee approve preferred options 1 and 2, to advocate on the communities behalf for alternative bird scaring options and undertake section 35 monitoring of the noise provisions in the District Plan; and
3. THAT the Strategy and Policy Committee be updated of the outcome of the preferred option/options.

3 Background - *He tirohanga whakamuri*

On 23 October 2020, the Mayor and Councillors received a letter from Mr B and S Pryde, on behalf of 36 individuals from 20 properties in the vicinity of Rewatu and Leader Roads, Poroporo. This letter raised concern about the use of audible bird scaring devices, the frequency of use and sound levels. The letter requested Council review the planning rules and consider how to promote alternative management of bird pests specifically within local kiwifruit orchards.

This report considers the issue of nuisance noise and management options.

4 Issue/subject - *Kaupapa*

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4.1.1 Operative District Plan Provisions for Audible Bird Scaring Devices

The Plan defines ABSD as “a noise emitting device being used for the purpose of disturbing or scaring birds including a gas gun, avian distress alarm and firearm, when being used specifically for bird scaring”. Objective 1 of Chapter 11 – General Provisions of the District Plan, aims to “maintain and enhance the health and safety of people and communities from nuisance effect and adverse effects on the environment”. Specifically, Objective 1, Policy 1 of Chapter 11 in the District Plan seeks to avoid, remedy or mitigate the adverse effects of intrusive noise.

Noise limits (day and night-time standards) are stated in rule 11.2.6.1 for all receiving zones such as residential, rural, mixed use, active reserve, cultural and industrial zones. However, rule 11.2.6.2 identifies a range of activities that are exempt from the noise limits of rule 11.2.6.1. Exempt activities have individual specified noise limits. These activities include temporary military training activities, prospecting, community events, Whakatāne Airport, Edgecumbe Dairy Manufacturing site. ABSDs are also identified as an activity exempt from these specified noise limits.

Rule 11.2.6.2 (Table 11.2 for specific activity noise limits) recognises ABSDs are a permitted activity providing they comply with the following noise controls:

- hours of operation are from half an hour before sunrise to half an hour after sunset;
- maximum sound from a device is 100dB L_{zpeak}^1 ;
- devices can operate at a frequency of three events per minute with a limit of 12 individual events per hour;
- a notice advising of device operation is fixed to the road frontage of the orchard containing the details of the person responsible for its operation; and
- Variable noise devices (such as distress call) that are used over a short or variable time duration may not exceed 50dBA SEL².

Where the above criteria cannot be adhered to, the use of an ABSD is a restricted discretionary activity. A resource consent would need to be submitted for Council to consider the activity and subsequent environmental effects against the requirements of the District Plan³. Specifically for frost fans or bird scaring devices (rule 3.5.4), Council would also require information on:

- Suitability of device with location against a manufacturing statement or assessed by a suitably qualified person;
- Other methods and alternative crop management options; and
- The proposed operating conditions and practices to help manage effects on the environment.

Further to the general provisions above, rule 11.4.5 for ABSD restricts Council discretion to:

- alternatives and the best practicable options;
- noise level and effects on the people (or activities) who will experience the noise, along with any proposed mitigation;
- cumulative adverse noise effects from existing ABSD;
- frequency, timing and operating conditions when the device may operate; and
- the location of ABSD.

¹ 100dB L_{zpeak} is the 100 decibel Z weighting peak sound pressure limit. ABSD's are measured in the L_{peak} level as this measurement responds better to short duration events such as gunshots. The Z weighting refers to the frequency weightings (A,C or Z) used in sound level meters. The correct weighting is given to ensure that the meter is similar to what is heard and Z weighting is often used for environmental noise.

² SEL or Sound Exposure Level is the summation of A weighted sound energy at a location over its true duration. SEL sound measurement is able to measure the net impact of an entire event such as the nature of distress calls which can be long in duration.

³ Rule 3.5 General Information Requirements of the District Plan.

4.1.2 Whakatane District Plan – inclusion of Audible Bird Scaring Device rules

In 2009, Council engaged specialist environmental acoustic consultants Marshall Day Acoustics (MDA) to provide advice on noise management provisions, appropriate for use in the then Proposed District Plan. MDA considered the updated New Zealand Standards for measurement of sound (NZS6801) and assessment of environmental sound (NZS6802). MDA also reviewed existing noise rules, such as bird scarers, to make the plan more robust. The subsequent MDA advice formed the basis of the noise provisions that are included in the District Plan.

Bird scaring devices were included as a permitted activity in the 2010 Operative District Plan (2010 District Plan). Rule 4.2.15.1(a)(iii)b of the 2010 District Plan provided that “a hail cannon and/or LPG bird-scare device shall be placed a minimum distance of 50m from any dwelling on an adjoining property”. No specific noise limit was included in the 2010 District Plan for bird scaring devices. This was because devices were allowed to exceed noise limits in rural zones due to the high importance for horticultural crop protection.

The permissive nature of bird scaring device use raised a number of community complaints. Council began investigating ways to manage bird scarer use and sought advice from New Zealand Kiwifruit Growers Incorporated (NZKGI). NZKGI provided Council with a Western Bay of Plenty District Council audible bird scare rule example.

Council continued to receive further complaints on bird scarer use from members of the rural community. During 2011 the Rangitāiki Community Board received a number of complaints relating to the issue of hail cannon use as a bird scaring device. The community board requested Council consider this issue further and suggested a variation to planning regulations. Council recognised bird scarers were an issue and sought to review their use through review of the 2010 District Plan.

In 2013 the Proposed Whakatāne District Plan was notified for public consultation. The consultation process highlighted there were insufficient rules around bird scarer device use and management. The 2013 Proposed District Plan (Proposed District Plan) included a rule for ABSD that:

- restricts the hours of operation from sunrise to sunset, with a maximum 100dB_{L_{zpeak}} at the notional boundary⁴ of rural zoned sites or within any residential zoned site;
- devices operate at a frequency of three events per minute, limited to 12 individual events per hour;
- variable noise devices (such as distress call) used over a short or variable time duration do not exceed 50dBA SEL;
- a notice containing the details of the ABSD operator is fixed to the roadside boundary; and
- a 420m buffer (or less if noise mitigation is used) between an ABSD and a notional boundary is a way of compliance.

Council received a number of submissions to the Proposed District Plan, which sought a range of matters, including to:

- restrict the location of ABSD in proximity to dwellings (Brian Shaw);
- limit the hourly frequency of ABSD use (concern from Toi te Ora Public Health);
- define a notional boundary (Toi te Ora Public Health);
- provide a noise limit consistent with a productive rural environment (specifically the noise limit from 50 LAeq was too low) seven days a week (concern from Horticulture New Zealand and NZKGI);
- delete ABSD rule (industry lead concern from Federated Farmers).

⁴ **Notional boundary** is defined as a line 20m from the façade of any rural dwelling, or the legal boundary where this is closer to the dwelling.

Several further submissions were received. There was opposition for compliance by distance because it should be based on sound level (HNZ and NZKGI). Support was received for retaining the ABSD rule (Toi te Ora) and for the use of L_{zpeak} sound measurement (Mark Fort). The Reporting Officer recommended (in the hearing report for Chapter 11) that the use of noise limits and the notified noise limit ($100dB_{L_{zpeak}}$) was the most effective way of dealing with the noise effects from ABSD.

The decisions hearing held on Chapter 11 supported the inclusion of noise limits (rather than setback distance) as the most effective way of dealing with ABSD. In addition, ABSD were also defined in the District Plan, along with the restricted discretionary status for activities that did not comply with the permitted activity. Due to this process, the Proposed District Plan was amended to include the ABSD rule (as it currently exists).

5 Options analysis - *Ngā Kōwhiringa*

The main options to address ABSD management include:

1. Community Advocacy - work with growers to facilitate practices that address local resident concerns;
2. District Plan Monitoring (Section 35 monitoring) – actively monitor ABSD use;
3. Public Plan change – amend rules and standards;
4. National Planning Standard implementation – option to revise ABSD provisions (if needed) as a consequential amendment by 2024; and/or
5. 2027 District Plan Review – review ABSD provisions in the lead up to the 2027 review

These options are not necessarily mutually exclusive and could occur simultaneously. The preferred options in the short term include **option 1** and **option 2**, with subsequent options (3,4 and 5) being considered after 2021.

5.1 **Option 1 - Community Advocacy** (joint preferred option)

Council could work in an advocacy role, prior to the 2021 kiwifruit budding season, with Horticulture NZ, NZKGI and the community, specifically to:

- raise awareness of the nuisance ABSD use can have on adjoining properties and residences, and encourage the consideration of alternatives and changed operational procedures;
- proactively work with HNZ and NZKGI to educate growers on alternative ABSD and bird scaring devices and practices (establish best practice that considers wider community concerns); and
- educate the wider rural community regarding permitted noise sources and levels within the rural and industrial zones. This would include direct contact with nearby properties and residences;

Both the Planning and Building and Environmental Service functions of Council could work towards educating the public and industry on permitted noise rules and activities may create more understanding around ABSD activities and their impacts.

5.2 **Option 2 - District Plan Monitoring (Section 35 Monitoring)** (joint preferred option)

Section 35 of the Resource Management Act 1991 (RMA) specifies local authorities (Council) have a duty to gather information, monitor and keep records. The monitoring facet of section 35 allows Council to monitor the efficiency and effectiveness of policies, rules or methods in the District Plan to see whether they are effective in meeting the purpose of the RMA. Council is required to report on section 35 monitoring every 5 years, and is undertaking monitoring this year.

Through section 35 monitoring, Council could:

- actively monitor kiwifruit orchards that operate ABSD to gain data to better understand use, activity, noise compliance and cumulative noise concerns and
- employ, on a temporary basis, a compliance monitoring officer over the duration of the budding season (usually August /September) to determine the extent to the issue and compliance.

Active monitoring of ABSD use will enable Council to establish baseline data to understand the effectiveness of the existing rules.

5.3 Option 3 - Plan Change

Schedule 1 of the RMA identifies the plan change process for Council to amend existing rules in the District Plan. Council could initiate a public plan change to amend the existing rules. **Appendix 1**, identifies a range of rules from other districts which all seek to manage bird scaring devices and use. Whakatāne and Auckland both use the same dB L_{Zpeak} measure, while other councils use varying other units of sound measurement. In addition, Auckland has a more restricted rule with 85dB L_{Zpeak} compared to Whakatāne's 100dB L_{Zpeak} . Any change to the District Plan will require a robust evidence base to avoid opposition from kiwifruit industry and result in a potentially lengthy and costly RMA Schedule 1 plan change process.

5.4 Option 4 - National Planning Standards Implementation

The purpose of the National Planning Standards (NPS) is to standardise the structure, format and definitions of district and regional plans. Council is currently working towards implementing the NPS and notes that consequential plan changes may be necessary as it implements Government planning directives. Council could propose changing the provisions for ABSD alongside any possible NPS changes. However, this is likely to still require a plan change under Schedule 1 of the RMA as per Option 3, and is unlikely to commence until 2022/23 and could take several years to be completed.

5.5 Option 5 - District Plan Review 2027

The RMA requires Council to review the District Plan every 10 years. The ABSD provisions could be reviewed as part of the 2027 District Plan Review. Section 35 monitoring (identified in 3.2 above) could be used to inform any necessary changes to the Plan. Including to amend existing or propose new rules for ABSD noise control. This process would be subject to RMA Schedule 1 processes as per Option 3, involving public consultation, submissions and possible appeals, except that it would be part of a much broader change to the District Plan.

6 Significance and Engagement Assessment - *Aromatawai Pāhekoheko*

6.1 Assessment of Significance

- **Level of community interest: Moderate.** There exists a high level of community interest, predominantly from residents in the rural zone that adjoin kiwifruit orchards. Any changes to the existing Plan is likely to be of interest to industry partners.
- **Level of impact on current and future wellbeing: Moderate.** The expected level of 'socially accepted' activities and noise limits within and around the rural zone appears to have changed over time. This report seeks to assess whether the existing Plan rules are appropriate to meet the concerns of existing and future residents in our communities and District.
- **Rating impact: Low.** The expected costs from the report and any consequential outcomes are already included in the policy planning budget for the Review of Strategies and Changes. No additional costs or impact to rates is expected.

- **Financial impact: Low.** The expected costs from the report and any consequential outcomes are already included in the policy planning budget for the Review of Strategies and Changes. No additional financial impact is expected as a result of this report and options.
- **Consistency: Low /Moderate.** The report proposals could result in changes to the District Plan, however any change will need to be consistent with higher order strategic direction and policies.
- **Reversibility: Moderate.** The report proposal identifies five options for managing ABSD's and acceptable noise levels in the rural zone. Community advocacy , once committed to, could easily be reversed. However, a plan change could be costly or time-consuming to reverse once committed to.
- **Impact on Māori: Moderate.** ABSD use in relation to horticultural activities in close proximity to Māori ancestral land, water, sites and wāhi tapu sites, could impact on Maori culture and traditions.
- **Impact on levels of service: Moderate.** Recognising the concerns raised by local residents near orchards using ABSD's, we are proactively providing an enhanced level of service.
- **Impact on strategic assets: Low.** This report does not seek the sale of strategic assets and has no impact on the performance of strategic assets.

6.2 Engagement and community views

- The level of community engagement detailed in the engagement plan will be determined by the preferred option of the Strategy and Policy Committee. The resulting engagement will seek to involve iwi, Māori, industry stakeholders and affected communities as required.
- In addition, any amendments to the District Plan (if required) will follow statutory processes, which seek community input via initial community consultation and the formal submission / further submission.

7 Considerations - *Whai Whakaaro*

7.1 Financial/budget considerations

The expected costs from the options proposed in this report can be met in the Review of Strategies Changes Budget (Y50027). Undertaking a plan change would limit the use of this budget for other projects.

7.2 Climate change assessment

The likely impacts of climate change in the Bay of Plenty been considered in relation to the use of ABSD's as a horticulture operational pest management tool by:

- The use of ABSD's generally relies on a gas explosion (LPG). This will be releasing a small amount of fossil fuel within the Bay of Plenty. Reviewing the use of these devices and working to change existing pest management practices in the horticultural sector, will help to reduce fossil fuel emissions. Alternatives can include visual and water deterrents;
- Limiting the use of ABSD could enhance the district's biodiversity and ecology, by limiting disturbance to native flora and fauna within the vicinity;
- By limiting the use of traditional ABSD devices, more ecological and environmental friendly alternatives could be developed or used more frequently; and
- This report takes into account a locally and culturally appropriate responses to climate change by 'thinking and acting long term' by promoting industry best practice that seeks to reduce reliance on fossil fuels.

Based on this climate change assessment, the decisions and matters of this report are assessed to have **low** climate change implications and considerations, in accordance with the Council’s Climate Change Principles.

7.3 Risks

The key risks for the report options include:

- Adverse effect on the community due to ongoing noise health and wellbeing related issues;
- Possible economic impacts to orchardists due to changing operational practices and impact on quality produce;
- Publicity from affected community and horticulture industry as conflicting expectations create tension;
- Baseline data to understand the issue requires a long lead in time and needs to coincide with the 2021 ‘kiwifruit budding season’;
- Development of any consequential amendments to the Plan has a long lead in time due to the democratic planning system process; and
- Industry partners and local communities may disagree with the committee’s preferred option/s.

These risks will be assessed and managed throughout the project.

8 Next steps - *Ahu whakamua*

That officers report back to the Strategy and Policy Committee to update on progress made.

Attached to this report:

- Appendix 1: New Zealand Kiwifruit Growers Industry – Audible Bird Scarer Rules

Report Authorisation:

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