
*Section 42A Report for Whangarei District
Council*

Private Plan Change 135 – GNLC Limited

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- 1 Plan Change 135 provisions as Notified**
- 2 Plan Change 135 as Amended Subsequent to Further Submissions ('Modified Proposal')**
- 3 Full copies of Submissions and Further Submissions**
- 4 District Plan Maps**

Summary of the Plan Change

Relevant District Plan	Whangarei District Plan declared operative on 3 May 2007
Plan Change Number	135
Location of Proposal	Land within the MPC - Marsden Primary Centre Environment as shown on the Plan referenced as 'MPC.F – Marsden Primary Centre Precinct Plans Part A: Precinct 2 Plan' (pg45 of 62).
Parts of the District Plan affected by the Proposed Private Plan Change	MPC – Marsden Primary Centre Environment and Noise and Vibration ('NAV') Chapters
Applicant	GNLC Limited
Date of Approval for Notification	15 th December 2016
Notification Period for Submissions	20 th December 2016 to 8 th February 2017
Notification Period for Further Submissions	22 nd February 2017 to 13 th March 2017

Index of Submissions

PC135-01	Yvonne Daji	Support	Yes
PC135-02	AI Limited c/- Mr Geoffrey Axtens	Support	No
PC135-03	Northport Limited c/- Reyburn and Bryant Ltd	Oppose changes to NAV.6.5 to remove the noise attenuation requirements from the Marsden Primary Centre Noise Zone 2	Yes
PC135-04	Marsden Maritime Holdings Limited c/- Reyburn and Bryant Ltd	Oppose changes to NAV.6.5 to remove the noise attenuation requirements from the Marsden Primary Centre Noise Zone 2	Yes
PC135-05	Refinery NZ c/- Mr Riaan Elliot	Oppose changes to NAV.6.5 to remove the noise attenuation requirements from the Marsden Primary Centre Noise Zone 2	Yes
PC135-06	New Zealand Transport Agency C/- Ms Sarah Ho	Oppose changes to NAV.6.5 to remove the noise attenuation requirements from the Marsden Primary Centre Noise Zone 2	Yes
PC135-06	Margaret Hicks	Oppose	Yes

Index of Further Submissions

Submittor No	Submittor Name	Position
X-PC135-01	Mere Kepa	Support
X-PC135-02	Refining NZ	Accept PC135-03 submission
X-PC135-03	Refining NZ	Accept PC135-04 submission
X-PC135-04	Refining NZ	Accept PC135-06 submission
X-PC135-05	Kiwirail Limited	Accept PC135-03 submission points 3 and 4
X-PC135-06	Kiwirail Limited	Accept PC135-04 submission points 3 and 4
X-PC135-07	Kiwirail Limited	Accept PC135-05 submission points 1.0 and 2.0
X-PC135-08	Kiwirail Limited	Accept PC135-08 as it relates to NAV.6.5
X-PC135-09	Margaret Hicks	Accept PC135-05 submission
X-PC135-10	Margaret Hicks	Reject PC135-02 submission

Author Experience and Qualifications

1. My name is Alister Hartstone. I am sole director of Set Consulting Limited, a company established in early 2016 that provides planning consultancy services to both local government and private clients. I hold a Bachelor of Regional and Environmental Planning with Honours from Massey University. I am a Full Member of the New Zealand Planning Institute.
2. I have previously worked in local government across Manawatu and Northland, commencing in 1995. During that time, I have dealt with a wide range of planning-related matters. I was a Planner and Section Planner with Far North District Council, and became the Resource Consents Manager at Whangarei District Council from 2005 – 2016. I managed a multi-disciplinary team overseeing the processing of all planning-related applications, as well as being involved in development and review of plan changes, presenting evidence at Environment Court hearings, development contribution policy development and implementation, and strategic projects across the council and community. In addition, I have been involved in several national working groups run by Local Government New Zealand and Ministry for the Environment.
3. I confirm that I am familiar with the Whangarei District, having lived and worked in Whangarei since 2004. I confirm that the evidence on planning matters that I present is within my areas of expertise and I am not aware of any material facts which might alter or detract from the opinions I express. I have read and agree to comply with the Code of Conduct for expert witnesses as set out in the Environment Court Consolidated Practice Note 2014. The opinions expressed in this evidence, are based on my qualifications and experience, and are within my area of expertise. If I rely on the evidence or opinions of another, my evidence will acknowledge that.

Introduction

4. This report has been prepared in accordance with section 42A of the Resource Management Act 1991 (RMA) and forms the Planning Report for Proposed Plan Change 135 (PC135). This report provides consideration of proposed provisions, recommendations in relation to submissions and, where appropriate, the report cross-references analysis of any background material and legislative discussions.
5. As a private plan change application, the proposal has been initiated by GNLC Limited ('GNLC') as applicant pursuant to Section 73(2) of the Act. Part 2 of Schedule 1 of the Act addresses the procedure for receiving and processing a request to change a District Plan. The application has followed this process as outlined below:

- a) The application was lodged in the appropriate form on the 4th November 2016 with Whangarei District Council ('WDC') by Terra Nova Planning Limited on behalf of GNLC. The application was supported by a Section 32 Analysis report dated November 2016, a report prepared by Marshall Day Acoustics Limited dated 4th November 2016, and relevant provisions of the District Plan notated with the proposed changes.
- b) The application was reviewed and a request for clarification on a number of matters associated with the proposal issued on the 20th November 2016 to Terra Nova Planning Limited. As a result, additional information was provided on the 28th November 2016. However, the application was not modified in accordance with Clause 24 in Part 2 of the First Schedule.
- c) The Whangarei District Council passed a resolution at its full Council meeting on the 15th December 2016 in accordance with Clauses 23 and 25 in Part 2 of the First Schedule of the Act. That resolution is recorded as follows:

4. Private Plan Change Application PC135 GNLC Limited

Moved: Cr Innes Seconded: Cr Deeming

"That the Council:

- a) Accepts the request for a private plan change by GNLC Limited pursuant to clause 25(2)(b) of Part 2 of the First Schedule of the Resource Management Act 1991;*
- b) Endorses the commencement of public notification of the private plan change under Clause 26 of Part 2 of the First Schedule of the Resource Management Act 1991;*
- c) Records that its decision to accept the request for a Plan change for notification does not fetter its decision-making in relation to the hearing and determination of submissions of the Plan Change following notification;*
- d) Records that the applicant shall pay the full actual and reasonable cost of processing this private plan change.*

CARRIED

- d) The Plan Change was notified on the 20 December 2016 in accordance with Clauses 26 and 29 in Part 2 of the First Schedule. A copy of the notified application is contained in Attachment 1. The submission period closed at 4pm on 8th February 2017. Full copies of the seven submissions received are contained in Attachment 3.

- e) A Summary of Submissions was notified on the 22nd February 2017, with the submission period closing at 4pm on 13th March 2017¹. Full copies of the four further submissions detailing 10 points of submission are contained in Attachment 3.
- f) Subsequent to the close of further submissions the applicant has been in dialogue with submitters and made suggestions as to amended provisions to address various concerns raised. The final suggested version with changes was received on 26th April 2017 and is contained in Attachment 2.
- g) A hearing for the proposed Plan Change has been scheduled for the 31st May 2017 at the time of preparing this report.

Description of the Plan Change

- 6. PC135 as notified requests three changes to the District Plan, summarised as follows:
 - a) To amend the Marsden Primary Centre Chapter of the District Plan by renaming two zones. The zone currently identified as 'Residential Compatible Industry Policy Area' is to be renamed as 'Mixed Use 1 Policy Area'. The zone currently identified as 'Light Industry Policy Area' is to be renamed as 'Mixed Use 2 Policy Area'. This is a change of nomenclature only. It does not affect any underlying rules in the Chapter.
 - b) To amend the Marsden Primary Centre Chapter of the District Plan by amending Rule IE2.5(1)(ii) to streamline the areas affected by the different noise limits, by referencing only the Noise Zone 1 and Noise Zone 2 areas as shown in an amended Precinct 2 Plan, and removing all other descriptions from the Rule.
 - c) Provisions in the Noise and Vibration ('NAV') Chapter are to be amended as follows:
 - i. 'NAV.6.1 Noise Arising from Activities within Environments' is to be amended to provide for separate noise limits for Marsden Primary Centre Noise Zone 2. These proposed noise limits will be less than the current limits (ie. 'quieter').
 - ii. As a consequential effect, reference to Marsden Primary Centre Noise Zone 2 under NAV.6.5 will be deleted. This is on the basis that, with the proposed reduced noise limits in Noise Zone 2, compliance with the sound insulation requirements for residential units under this rule is not required.
- 7. By way of explanation, the application projects that the mixed-use development to be undertaken within Noise Zone 2 will be dominated by residential activities. On that basis, a reduction in the noise limits across the zone is considered preferable. The reduction proposed is mooted as being effective in maintaining residential amenity without unduly limiting establishment of appropriate commercial activities, noting the intention of the Marsden Primary Centre Environment to allow for mixed use development while avoiding reverse sensitivity effects.

¹ The original closing date for receipt of further submissions was advertised as 7th March 2017. Due to a technical error where an additional submission was found to have been received within time but not disclosed in the summary of submissions, the period for lodging further submissions was extended until 13th March 2017. All submitters were notified of this by way of correspondence from WDC dated 28th February 2017.

8. In reducing the noise limits, sound insulation within residential units to be located in Noise Zone 2 is no longer required.
9. The application is supported by a technical report prepared by Marshall Day Acoustics. That report details the suggested changes and assesses the implications as it relates to likely effects and building construction.
10. The changes proposed under a) and b) above are not linked in any way, other than being contained in the same District Plan Chapter. No changes are proposed to the existing objectives or policies contained in either the Marsden Primary Centre or Noise and Vibration Chapters of the District Plan.
11. Documentation contained in the application makes reference to a retirement village complex. A land use consent has been granted (WDC reference LU1600156 dated 27th January 2017) for a 75 unit retirement village with communal facilities located generally within the land bounded by Pokapu Road, Waiwarawara Drive, and Orua Road.
12. Subsequent to the close of further submissions, the applicant has provided modified versions of the proposed provisions with a revised Section 32 assessment. The latest version of the modified provisions was provided to the Council on the 26th April 2017, with an updated Precinct Plan provided on the 1st May 2017. These provisions are contained in Attachment 2. For the purposes of this report, the proposed provisions contained in the application as notified are referred to as the 'proposed provisions'. The latest version of the proposed provisions provided by the applicant is referred to as the 'modified provisions'.

The Site and Context

13. The land subject to this application is defined on the Precinct Plan provided in support of the Plan Change which encompasses the area identified as the Marsden Primary Centre Environment. This area has been subject to historic resource consent applications for subdivision which have resulted in the current cadastral layout. Subsequent to the granting of subdivision consents, the property owners in conjunction with the Council undertook an extensive structure planning exercise which resulted in the Marsden Point-Ruakaka Structure Plan 2008 being adopted by the Council in November 2009. While a non-statutory document, the Structure Plan formed the basis for the introduction of the Marsden Primary Centre Environment², which was a private plan change approved by the Council on the 11 April 2012 and declared operative from the 24 April 2012.
14. Subsequent to the introduction of this operative Chapter, Council instigated a plan change process to review all noise and vibration provisions contained in the District Plan. As a result, Plan Change 110 resulted in a new chapter of the District Plan referred to as NAV being approved on the 11th May 2016 and declared operative on the 24th May 2016. This Chapter now contains all noise and vibration provisions across all chapters, including those that had been previously contained in the Marsden Primary Centre Environment.
15. Physically, the topography of the area in question contains flat grassed sections, with all roading and servicing infrastructure in place to service future development. Built development within the

² Known as Plan Change 83 – Northgate: Port Marsden Industrial Area lodged by North Holdings Limited

Marsden Primary Centre area at the time of preparing this report is limited to several residential buildings adjoining Casey Road in the northern portion of the site, and scattered commercial buildings and activities adjoining Pokapu and Waiwarawara Drive.

16. The western and southern boundaries of the development are bounded by One Tree Point Road and State Highway 15A respectively. The northern boundary is subject to a designation for the Oakleigh to Marsden rail corridor where Kiwirail Holdings Limited is the current designating authority. No physical works have commenced for establishment of the rail corridor. All land immediately surrounding the area is currently either farmed or used for rural lifestyle purposes.
17. In a wider context, the eastern boundary of the area is approximately 750 metres at its closest point from Marsden Point Road and associated existing heavy industrial activities, and 1.5 kilometres from the nearest residential development in Ruakaka. The Marsden Cove residential development is approximately 2 kilometres to the north of the area, being the closest existing residential development at One Tree Point. Approximately 2.6 kilometres to the northeast, Marsden Bay Drive forms the current boundary between existing rural and industrial activities associated with the Port and Marsden Point Refinery. The relevant Environment Maps from the District Plan are contained in Attachment 4.

Statutory Considerations

18. There are a range of statutory provisions under the RMA that are of relevance to the consideration of requests for private plan changes. These include the provisions applicable to both public and private plan changes as well as specific provisions in the First Schedule of the RMA for private plan changes.
19. Section 32 of the RMA establishes the process for evaluating the appropriateness of the Plan Change in achieving the purpose of the RMA. Section 32(1) states that an evaluation must:
 - (a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
 - (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*
20. An assessment under Sub-Section 32(1)(b)(ii) must—
 - (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *economic growth that are anticipated to be provided or reduced; and*
 - (ii) *employment that are anticipated to be provided or reduced; and*
 - (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*

(c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*

21. The Environment Court decisions of *Eldamos Investments Limited v Gisborne District Council* (W047/2005) and *Long Bay-Okura Great Park Society and ARC and Landco Limited v North Shore City Council* (A78/2008) set out directives for evaluating objectives, policies, rules, and other methods in district plans. The principle findings of these decisions are relevant in general to an assessment of the proposal.
22. I consider that the Section 32 Analysis prepared by Terra Nova Planning Limited, read in conjunction with the Marshall Day report (contained in Attachment 1), adequately addresses the key components of Section 32 of the RMA as follows:
 - a) The purpose of the Section 32 analysis, or problem to be addressed, is the extent that the current provisions of the Marsden Primary Centre Environment and NAV Chapters limit the establishment of residential activities within the Marsden Primary Centre Environment. The objective of the analysis is defined as *'to ensure opportunities for, and the viability of, residential development within the (currently named) Light Industry and Residential-Compatible Policy Areas, without requiring significant additional acoustic treatment.'*
 - b) Technical background information has been provided by way of the Marshall Day report that informs the Section 32 analysis, analyses the extent of positive and negative effects associated with the changes, and sets the scope of the scale and significance of the proposal.
 - c) The analysis assesses four reasonably practical policy options ranging from 'Status Quo (Do nothing)' to 'Awaiting amendments as part of the current rolling review urban package', assesses the costs and benefits of each option, including implications on economic growth anticipated from the proposed changes, and selects a preferred option.
 - d) The scale of the analysis and resulting Section 32 report is commensurate with the scale of the proposal, noting that it is confined to a relatively small geographical area and discreet provisions in the District Plan.
23. It should be noted that where changes are made to the proposal as a result of consideration of submissions and through the hearing process, further evaluation under Section 32 is required. The extent of further analysis is largely dependent on the significance of the changes. This is relevant given that modified provisions have been developed by the applicant in response to submissions and further submissions.
24. None of the submissions received raise specific concerns about the validity or scope of the Section 32 analysis provided with the application.

Assessment of Effects of the Proposal

25. The scope of any assessment of effects associated with the Plan Change is limited to issues of noise, noting that the proposed changes to nomenclature do not create any effects.
26. The assessment of effects is informed largely by the contents of the Marshall Day report provided with the application as notified. Section 7.0 of that report concludes that the proposed change will

‘....result in positive effects on future residential land use due to a general improvement in the level of amenity that can be expected at all times.’ It further states that ‘....the reduced daytime noise limits may potentially affect commercial activity by restricting or suppressing the type of commercial activities that could establish.’

27. The report focuses on noise effects within the Marsden Primary Centre Environment and highlights potential positive and negative effects resulting from what I consider to be a change in ‘bias’ from a predominance of industrial and commercial activities, to mixed use and predominantly residential activities. It is noted that this proposed change in bias has not drawn any submissions in opposition from landowners within the Marsden Primary Centre Environment.
28. However, submissions received from Northport Limited, Marsden Maritime Holdings Limited (‘MMHL’), Refining NZ, and New Zealand Transport Agency (‘NZTA’) have all sought, as the single point of relief, that the proposed change to NAV.6.5 be declined. Further submissions lodged by Refining NZ and Kiwirail Holdings Limited, and a submission and further submissions from Margaret Hicks, support this position. This assessment of effects therefore focuses on reverse sensitivity effects associated with noise.
29. The existing NAV.6.5 was introduced as part of the Council-initiated Plan Change 110 to review all the noise and vibration provisions in the District Plan, and to collate them into one chapter of the Plan. Specifically, NAV.6.5 introduced sound insulation requirements for noise sensitive activities³ established within a Business 1, 2, 3, Town Basin, Port Nikau Noise Zone 1 or 2, or Marsden Primary Centre Noise Zone 1 or 2 Environments. A description of the background to the existing provisions is contained in Section 3.0 of the Marshall Day report.
30. Submitters have raised the concern that removing internal noise design levels for any noise sensitive activities established in Noise Zone 2 may have a reverse sensitivity effect. That effect is identified through the submissions as encompassing noise effects arising from the operation of the refinery, State Highway 15A, construction and operation of rail services via the Oakleigh to Marsden Rail Corridor designation (‘rail corridor’), the port, and potential future activities on existing land zoned for commercial and industrial use owned by MMHL.
31. It is noted that Section 6.0 of the Marshall Day report touches on this matter but provides no detailed assessment of any reverse sensitivity effects as raised in submissions. No technical information has been provided by either the applicant or any of the submitters as to the potential extent of reverse sensitivity effects as claimed in the submissions. To date, the council has not sought independent advice on this matter.
32. The applicant has responded to the matters raised in submissions by providing the modified proposal to address reverse sensitivity effects associated with the operation of State Highway 15A and the rail corridor (see Attachment 2). That alternative splits Noise Zone 2 into Noise Zone 2 and Noise Zone 2A. Noise Zone 2A is intended to provide a 100 metre wide ‘buffer’ between the State Highway 15A and rail corridor boundaries. Properties within Noise Zone 2A will retain

³ Defined in the District Plan as *‘those activities that involve habitation of people within which concentration (of thoughts) is required and includes residential units, residential institutions, marae, hospitals, health care facilities and education facilities, excluding Airport staff and aviation training facilities or aero clubs (other than airport staff training facilities).’*

the current operative Plan provisions as they relate to sound insulation requirements, but will be subject to the proposed reduced internal noise limit rules.

33. At the time of preparing this report, it is understood that the applicant has circulated the modified proposal to Kiwirail and NZTA. Kiwirail have advised via e-mail dated 12th April 2017 that they *'...approve of the latest proposed rules that you have supplied.'* No advice has been received from NZTA as to their position on the modified proposal. However, NZTA's submission does state that it *'...seeks to ensure a minimum 100m buffer setback from the edge of the state highway as outlined in the Guide to Management of Effects on Noise Sensitive Land use near the State Highway Network 2015.'* This buffer setback appears to be achieved by the inclusion of Noise Zone 2A where it adjoins State Highway 15A.
34. I consider the inclusion of Noise Zone 2A is an appropriate response to the concerns of Kiwirail and NZTA. However, the applicant is invited to address this further at the hearing. In doing so, the applicant should address any possibility that the inclusion of Noise Zone 2A may affect persons who own or occupy land, other than GNLC Limited, within Noise Zone 2A who did not make a submission based on the notified version of the plan change. The notified version did not contain Noise Zone 2A, and those owners / occupiers therefore may have expected the proposed provisions for Noise Zone 2 to apply. Assuming that this question of scope can be adequately addressed, I support the modified proposal.
35. Refining NZ, Northport Limited, and Marsden Maritime Holdings ('MMHL') have all highlighted concerns regarding potential reverse sensitivity effects associated with existing or potential noise generating activities on their respective sites. The relief sought in these submissions is that the proposed changes to NAV.6.5 be declined. Section 16 of the RMA does place an onus on noise generating activities to ensure that any off-site noise effects do not exceed a reasonable level. However, as a matter of good planning practice, it is not appropriate to locate proposed residential development in close proximity to existing or potential noise generating activities.
36. As noted in the submission from Northport Limited, the operative Northland Regional Policy Statement ('RPS') includes specific policies emphasising the importance of regionally significant infrastructure. 'Regionally significant infrastructure' is defined in the RPS, and specifically includes the Marsden Point oil refinery and truck loading facility, Northport (including the adjoining land used for the movement and storage of cargo), state highways, and railway lines and associated railway facilities. MMHL owns a substantial portion of largely undeveloped Business 4 zoned land between the Northport facility and Marsden Primary Centre Environment.
37. By virtue of the hierarchy of planning documents established and defined in Section 75 of the RMA, the District Plan must give effect to the RPS. Policy 5.1.3 of the RPS as referenced in the Northport Limited submission reads (in full):

'Avoid the adverse effects, including reverse sensitivity effects of new subdivision, use and development, particularly residential development on the following:

(a) Primary production activities in primary production zones (including within the coastal marine area);

(b) Commercial and industrial activities in commercial and industrial zones;

(c) The operation, maintenance or upgrading of existing or planned regionally significant infrastructure; and

(d) The use and development of regionally significant mineral resources.'

38. Notably, the policy emphasises reverse sensitivity associated with new residential development. This plan change, coupled with the granting of consent for a retirement village within the site, signals a potential change in land use biased towards residential development (although still recognising the 'mixed use' intent of the provisions). I therefore consider that the concerns raised in the submissions from Refining NZ, Northport Limited, and MMHL are valid. The onus is on the applicant to address these potential effects by way of technical evidence to confirm that any reverse sensitivity effects arising from the plan change may be avoided.
39. In recommending that technical evidence be provided to address reverse sensitivity concerns, I note that during the assessment and reporting on Plan Change 110, the provisions of the then-proposed RPS were specifically considered. The Section 42A report for Plan Change 110 records that Policy 5.1.3 referenced above was beyond challenge at that time, and therefore would be suitably addressed by way of what are now the operative provisions contained in the NAV Chapter of the Plan.

Consideration of Submissions

New Zealand Transport Agency (PC135-06)

40. The contents of NZTA's submission relate to reverse sensitivity effects as discussed above. I therefore consider that the relief sought by NZTA should be **accepted**, on the basis that the reverse sensitivity issue is relevant. As discussed above, I consider that the modified version of the Plan Change will address the relief sought, subject to addressing the matter of scope.

Refining New Zealand (PC135-05 and X-PC135-02, X-PC135-03, and X-PC135-04)

41. Refining New Zealand's submission and further submissions both relate to reverse sensitivity effects as discussed above. I consider that the relief sought in the submission and further submission points can be **accepted**. However, I consider that the modified provisions that define a buffer described as Noise Zone 2A, and the provision of suitable technical evidence addressing reverse sensitivity concerns, will address the relief sought.

Northport Limited (PC135-03)

42. Northport Limited's submission relates to reverse sensitivity effects as discussed above. My recommendation is similar to that for Refining New Zealand above, whereby the submission points relating to reverse sensitivity should be **accepted**. However, I consider that the modified provisions that define a buffer described as Noise Zone 2A, and the provision of suitable technical evidence addressing reverse sensitivity concerns, will address the relief sought.

Marsden Maritime Holdings Limited (PC135-04)

43. MMHL's submission relates to reverse sensitivity effects as discussed above. My recommendation is similar to that for Refining New Zealand above, whereby the submission points relating to reverse sensitivity should be **accepted**. However, I consider that the modified provisions that define a buffer described as Noise Zone 2A, and the provision of suitable technical evidence addressing reverse sensitivity concerns, will address the relief sought.

Y Daji (PC135-01)

44. Yvonne Daji's submission supports the proposal as notified, noting that she owns Lot 48, 49, 54, 55, and 35 located within proposed Noise Zone 2. No specific details are provided in the submission, other than a comment that she *'would like to see progress after seven years of nothing.'*
45. As detailed above, additional technical evidence is required from the applicant to address concerns regarding reverse sensitivity. The need to address the effects is heightened by the emphasis in the RPS relating to regionally significant infrastructure. I therefore recommend that the relief sought in the submission from Yvonne Daji be **rejected**.

AI Limited (PC135-02)

46. The submission received from AI Limited, c/- Geoffrey Axtens, supports the proposal as notified. A number of matters are listed as to why the submitter supports the proposal, which generally relate to the proposed provisions supporting economic development in the locality and wider area. No evidence is available to support a proposition that a change in the noise limits as proposed will have a profound effect on the economics of development. In my view, it is more likely that the proposal is a small incremental step in achieving some market confidence associated with the Marsden City development.
47. For similar reasons to those expressed for the Daji submission, I recommend that the relief sought in the submission from AI Limited be **rejected**.

Kiwirail Holdings Limited (X-PC135-05, X-PC135-06, X-PC135-07, and X-PC135-08)

48. Kiwirail Holdings Limited lodged a further submission in support of submissions by Northport Limited, MMHL, Refining New Zealand, and NZTA. More particularly, Kiwirail highlights the potential reverse sensitivity issues associated with the existing rail corridor designation adjoining proposed Noise Zone 2 as notified.
49. The applicant's response to these concerns is discussed above. On this basis, the relief sought in the further submission from Kiwirail Holdings Limited is **accepted**, where that submission addresses reverse sensitivity effects on the rail corridor designation. I consider that the modified version of the Plan Change will address the relief sought, subject to addressing the matter of scope. It is noted that Kiwirail have provided written advice supporting the modified proposal.
50. Where Kiwirail's further submission supports relief sought in other submissions relating to reverse sensitivity on existing legally established noise generating activities, that is **accepted**. The

provision of suitable technical evidence addressing reverse sensitivity concerns will address the relief sought.

M Hicks (PC135-07, X-PC135-09, and X-PC135-10)

51. Margaret Hicks lodged a submission in opposition to the proposal as notified, and two further submissions in opposition to Refining New Zealand and AI Limited submissions.
52. Firstly, as a matter of scope, Ms Hicks submission discusses three points in her submission that fall outside the scope of the plan change. These matters are referenced again in the further submission lodged opposing the submission from AI Limited. Concerns about the land being fit for purpose, vulnerability to effects of climate change, and viability of the development are not 'on point'. In respect to these matters, I recommend those components of the submission, and further submission lodged opposing the submission from AI Limited, be **rejected**.
53. Ms Hick's concerns regarding the proposed provisions as they relate to noise, in both the submission and further submissions, is largely concerned with the implications of mixed use activities and potential for reverse sensitivity effects. The extent of these effects within the Marsden Primary Centre Environment are well traversed in the Marshall Day report. Section 5 of that report does highlight some potential effects both within the Noise Zone 2 and Noise Zone 1 areas, including issues such as night time noise level effects on sleep and potential limitations on commercial development in Noise Zones 1 and 2. Section 7 of the report concludes that taking into account these effects, '*...the Plan Change is considered to allow for greater certainty over residential amenity in the area.*' The Marshall Day report provides an evidential basis to refute Ms Hicks submissions. Therefore, I recommend that the matters contained in the submission and further submissions from Ms Hicks be **rejected**.
54. The submission points made by Ms Hicks regarding reverse sensitivity effects from noise generation activities outside the Marsden Primary Centre Environment are similar to those made in other submissions. My recommendation is that the submission points relating to reverse sensitivity should be **accepted**. However, I consider that the modified provisions that define a buffer described as Noise Zone 2A, and the provision of suitable technical evidence addressing reverse sensitivity concerns, will address the relief sought.

M Kepa (X-PC135-01)

55. The Council received an e-mail from Mere Kepa purporting to be a submission on the 2nd March 2017, during the period for making further submissions. While not made in the form of a further submission, Ms Kepa's submission records support for the proposal but the reasons stated suggest concerns regarding the need to provide for settlement of people of retirement age while managing noise from nearby heavy industries, trucks, and other noise sources.
56. No concerns have been raised by the applicant as to the validity of the submission. Given the broad nature of the submission does specifically identify the contents of the proposal, states a position on the proposal, and provides reasons for that position, the submission is considered valid.

57. However, for similar reasons to those expressed for the Daji submission, I recommend that it be **rejected**.

Conclusions and Recommendations

58. Under the RMA any person may make a request for a Private Plan Change to a District Plan. This report has carefully evaluated the request made by GNLC to change existing provisions contained in the Marsden Primary Centre and Noise and Vibration Chapters contained in the District Plan. The application has been prepared and presented in accordance with the requirements of the RMA.
59. In response to submissions and further submission, the applicant has provided a modified proposal. I consider that the modified proposal adequately addresses potential reverse sensitivity issues associated with the State Highway 15A and rail corridor designation matters raised in submissions.
60. However, the modified proposal is not supported by any evidence to address concerns raised regarding reverse sensitivity matters as highlighted in the majority of submissions. The need to specifically address this effect is supported by provisions contained in the RPS. I do not consider it possible to support the modified proposal without suitable evidence being provided to address this potential effect.
61. In addition, I consider advice regarding the matter of scope, as it relates to landowners within the proposed Noise Zone 2A, needs to be addressed. More particularly, any effect on owners within proposed Noise Zone 2A that had an expectation that the proposal as notified would be considered, and therefore did not submit, needs to be quantified.
62. Subject to the provision of information addressing the matters of scope and technical information addressing the reverse sensitivity issues, I consider the Plan Change request incorporating the modified proposal (contained in Attachment 2) is an appropriate response to the submissions received. I provide the following preliminary recommendation:
- a) That GNLC Limited provides the following information in their evidence to assist the Hearing Commissioner consideration of the Plan Change request:
 - A technical report prepared by a suitably qualified acoustic engineer that specifically in response to concerns about any reverse sensitivity effect created by the proposal, associated with the existing or potential noise generating activities located on the sites owned by Refining NZ, Northport Limited, Marsden Maritime Holdings Limited. This shall be included in the pre-circulated expert evidence.
 - An assessment of any scope issue that may arise where the inclusion of Noise Zone 2A (as per the modified proposal) may affect persons who own or occupy land, other than GNLC Limited, within Noise Zone 2A who did not make a submission based on the notified version of the plan change.
 - b) Subject to further information being provided in evidence or information presented at the hearing that may alter my opinion, my preliminary recommendation having considered all the

information supplied by the Requester, all submissions received, and having undertaken an analysis of the provisions, is that:

- Pursuant to Clause 29(4) of Part 2 to the First Schedule of the RMA, proposed Private Plan Change 135 lodged by GNLC Limited to the operative Whangarei District Plan be approved with modifications. Those modifications are contained in Attachment 2 of this report;
- That submissions PC135-01 and PC135-02 seeking the Plan Change be approved in its entirety be rejected;
- That submissions PC135-03, PC135-04, PC135-05, PC135-06 seeking the Plan Change be declined in part (as it relates to NAV.6.5) be accepted;
- That submissions PC135-07 seeking the Plan Change be declined in its entirety be rejected.
- Subject to further information being provided in evidence or information presented at the hearing that may alter my opinion, the decisions on the further submissions be accepted, accepted in part, or rejected based on the decisions made on the submissions.



Alister Hartstone BREP (Hons) MNZPI