

Guidance for “Excessive Noise” for Environmental Noise Officers

City Consenting & Compliance

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**Absolutely Positively
Wellington City Council**
Me Heke Ki Pōneke

Contents

- Introduction 3
- Purpose 3
- Objectives 3
- Principles 4
- Excessive Noise 5**
- Residential Stereo Noise 5
 - Noise Direction Notices (NDN) 5
 - Bars and Entertainment Venues: 6
 - One Off Music Event Meeting Temporary Activity Levels 7

Introduction

The local authority's Environmental Noise Officer (ENO) and our contractors, the Excessive Noise Control Officers (ENCO), are responsible for the Council's compliance duties under Sections 326 of the Resource Management Act 1991 (RMA). Additionally, the ENOs enforce compliance with Section 16 of the RMA and the district plan noise rules.

When breaches or offences are detected, the ENO will review the situation and take appropriate action, which may include enforcement measures as guided by this document and the Consenting and Compliance Unit's Enforcement Policy. The ENO will refer to the provisions of this document when providing guidance to our ENCOs, the noise control contractors.

Purpose

1. Manage the excessive noise service to ensure excessive noise complaints pursuant to section 326 of the RMA are investigated and resolved in a consistent and timely manner.
2. To provide procedural guidance on the excessive noise control provisions of the Compliance and Advice Unit's Enforcement Policy for Council's ENOs.
3. Provide guidance to the ENO's managing the excessive noise contract.
4. To provide a publicly available statement of the objectives and principles that will guide the Environmental Noise Team in the performance of its functions.

Objectives

1. Provide an understanding of the noise control process pursuant to Section 326 of the RMA.
2. Identify specific factors to be considered when investigating excessive noise complaints.
3. To investigate all valid noise complaints within a reasonable time frame
4. Understand when noise measurements and comparison to District Plan noise limits are appropriate.

For acoustical technical advice refer to Environmental Noise Officer Guidelines

Principles

Subject to officer discretion (discussed below), the ENO will exercise their compliance duties in general accordance with the following principles:

- *Integrity:* To act in a professional and courteous manner while upholding the values of Council and/or a particular resource consent, District Plan rule, or statutory requirement.
- *Fairness:* To take a fair and practicable stance regarding monitoring. Council will be guided by what is appropriate, practicable with regards to monitoring, and cost recovery.
- *Certainty:* To provide certainty and clarity with regards to setting, monitoring, and enforcing conditions of consent.
- *Efficiency:* To undertake responsibilities and duties in a timely manner that gives effect to the objectives and principles of this document whilst ensuring cost recovery charges adequately reflect the time spent by officers in monitoring any consent.

Excessive Noise

Residential Stereo Noise

Excessive noise control pursuant to section 326 of the RMA applies to “noise under human control only”. The legislation requires a subjective assessment only (no sound level measurements are required) of the noise being emitted and therefore the legislative provisions provide a very practical enforcement option to control residential stereo and people noise. Both ENOs and ENCOs’ may undertake investigations and take compliance action under Section 326 of the RMA.

Noise not under human control such as fixed plant must be measured in all instances.

Noise Direction Notices (NDN)

Enforcement officers or constables who have received a complaint and upon investigation consider the noise excessive may direct (orally or in writing) that the noise is immediately reduced to a reasonable level. For health and safety reasons a noise control officer must have assistance (another person present) when serving a noise direction notice.

A noise direction notice (NDN) may be served which is in force for 8 days; however, a shorter time may be specified. Failing to comply with the noise direction can result in seizure of the machine or equipment that is contributing to the excessive noise.

Key elements of the assessment of excessive noise in accordance with section 326 of the RMA are:

- Complaint based.
- The subjective assessment (no sound measurements are taken) reveals the noise “unreasonably” interferes with the peace, comfort and convenience of the complainant.
- Assessment from a trained warranted enforcement officer, namely a noise control officer (NCO).
- Assessment made from a position that is represent the greatest level of effects on the complainant. At the complainant’s place or a suitable position between the source and the complainant.

Key elements of compliance are:

- A noise direction notice (NDN) may be served on any person who appears to be responsible for the excessive noise.
 - The police prefer a written notice rather than a verbal direction
 - The notice is in-force for 8 days, but you may specify a shorter time.
 - Internal policy (H&S) requires 2 ENCOs or ENOs present to serve the notice.
 - If there is no person home (alarm or stereo left on) the ENCO can enter the place and seize the equipment or render it inoperable (turn off).
 - Must leave in a prominent position a noise direction notices and notice of entry providing the details outline in Section 328 (5) of the RMA.
 - Internal policy requires that a locksmith service is used, and the place is left secure
 - Police must be in attendance
- In accordance with the legislation the noise must be reduced to a reasonable level immediately. For practical purposes this means ASAP.
- Failure to comply means:
 - The NCO, accompanied by a police officer, or a police officer on direction from a ENCO or ENO that the noise is excessive may seize the equipment or render the noise source inoperable.
 - Entry/ seizure or render inoperable in the presence of a police officer is required
 - The NCO must leave in a prominent position a noise direction notices and notice of entry providing the details outline in Section 328 (5) of the RMA.

In addition to noise direction notices particularly where a long-term solution is sought, an abatement notice may be served, or enforcement orders may be sought. Investigations to find a long term solution require sound measurement and comparison with noise limits set in the District Plan and or an assessment whether the noise is reasonable pursuant to Section 16 of the RMA. Refer "Enforcement and Compliance Policy".

Bars and Entertainment Venues:

Require greater consideration than excessive noise created by residential activities. In addition to the excessive noise provisions of the RMA, District Plan noise limits and the provisions of Section 16 of the RMA applies. A higher level of noise emanating from commercial activities is permitted in the city than in the suburbs. The excessive noise provisions can be used for one off or very occasional issues only.

When an issue is identified as ongoing it must be resolved by undertaking sound measurements for comparison against district plan limits and assessment against section 16 of the RMA needs to be undertaken. The environmental noise officer contacts the complainants and advises that noise monitoring is being undertaken as this is the best approach in this instance. The environmental noise officer may choose to stand down the excessive noise control servicer if appropriate.

Directions for Excessive Noise control Officers on the Weekly Brief

- Serve a NDN where the noise is deemed excessive if appropriate.
- Note down the name of the person the notice is served on.
- Good notes are taken.
- If the NCO has concerns, they then contact the on-call Council environmental noise officer.
- For clarity no seizures

One Off Music Event Meeting Temporary Activity Levels

- Check whether a resource consent is required.
- Must adopt the best practicable option to a reasonable level (BPO) with Section 16 of the RMA.
- Where the event is known in advance:
 - Ask for a Management Plan to show how Section 16 will be adopted.
 - Later finish events better held on Fridays and Saturdays
 - Section 16 considers bass controls, knowledge and control over noise levels, duration, and times of the event.
 - Noise levels received at residential uses lower after 11pm or midnight
 - Contact details for the night.
 - Can be controlled by excessive noise provisions if not adopting BPO.

