

DECISION REPORT

PLAN CHANGE 87 – FROST PROTECTION FANS

INTRODUCTION

Pursuant to Section 10(1) of Schedule 1 of the Resource Management Act 1991, the District Plan Committee makes the following decisions on the provisions of the District Plan First Review and matters raised in submissions and further submissions to Plan Change 87 – Frost Protection Fans.

The decision is set out as follows:

- Decisions on submissions and further submissions
- Decisions on the provisions of the District Plan First Review

DECISIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS

The purpose of this part of the report is to show the decisions made on submissions and further submissions on a topic by topic basis with reasons and Section 32AA Analysis. Decisions are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and further changes as the result of decisions in blue.

TOPIC 1: FROST PROTECTION FANS – ACTIVITY STATUS

DECISION

That the change in activity status from Controlled to Permitted (with associated performance standards) be adopted with a minor amendment to Rule 4C.1.3.6(d) to allow testing for operational readiness outside of the hours of 8am to 5pm, Monday to Friday as follows:

(d) When the frost protection fan is operating for maintenance purposes the machine shall only be used from Monday to Friday 8am to 5pm. Testing outside these hours may only take place for urgent unforeseen maintenance purposes or for testing operational readiness.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
11	8	Te Puke Economic Development Group
13	13	Horticulture New Zealand
13	14	Horticulture New Zealand
21	7	New Zealand Kiwifruit Growers
FS33	5	Horticulture New Zealand
FS33	15	Horticulture New Zealand

Accepted in Part

Submission	Point Number	Name
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19	6	Federated Farmers of New Zealand (Inc.)
FS33	13	Horticulture New Zealand
FS33	16	Horticulture New Zealand

Rejected

Submission	Point Number	Name
1	10	Daniel Kinnoch
1	11	Daniel Kinnoch
1	12	Daniel Kinnoch
1	13	Daniel Kinnoch
1	14	Daniel Kinnoch
1	15	Daniel Kinnoch

REASONS / SECTION 32AA ANALYSIS

This provides for better flexibility for frost protection fan operators than the current and notified rules and avoids the need for unnecessary resource consents. It also provides an appropriate level of protection against the actual and potential adverse effects associated with noise generated by frost protection fans. Further, it provides an opportunity to avoid the need for resource consent if affected persons provide their written approval.

In addition, the rule and matters of discretion recognise the potential for effects on people who own neighbouring properties that may not yet be developed with a dwelling. Further to this, the rule recognises that during an unforeseen breakdown, there may be the need to operate the frost protection fan for testing purposes and this is considered to be appropriate. Extending the rule further to allow for testing for operational readiness outside of normal weekday business hours is considered to be practical and appropriate. It will also not result in unreasonable adverse effects associated with noise (particularly given the seasonal and infrequent use for operational testing).

The requirement to provide certification of compliance with the noise levels specified in the rules and other information identifying the location of the frost protection fans will ensure that compliance with the standards can be proven. It also allows Council to record the location of the frost protection fans to enable reverse sensitivity to be addressed.

The minor editorial changes suggested by one of the submitters are not considered appropriate as they will change the way that the rules are applied and may have unintended consequences. In this regard:

- The term 'notional boundary' is defined in the District Plan and reference to this term is appropriate as proposed;
- The changes suggested to Rules 4C.1.3.6(e)(ii)¹ and 4C.1.4.2(b)² would remove the necessary distinction between adjacent sites occupied by dwellings and those without;

¹ Proposed Rule 4C.1.3.6(a)(i) relates to noise limits at the 'notional boundary' of dwellings in the Rural and Lifestyle Zones that are occupied by a dwelling

² Proposed Rule 4C.1.3.6(a)(ii) relates to noise limits at the legal property boundary on sites within the Rural and Lifestyle Zones that are not occupied by a dwelling

- The opening sentence to Rule 4C.1.3.6(c) (permitted hours of operation for maintenance purposes) is necessary to distinguish between times during which frost protection fans are allowed to operate for frost protection purposes, and times that they are allowed to operate for maintenance and testing purposes.
- Terminology proposed in Rule 4C.1.4.2(d) (matter of discretion requiring consideration of the best practicable option for preventing and minimising adverse noise effects) is appropriate when considering effects of noise emissions.

This option is considered to be the most effective and efficient method to achieve the objectives of the District Plan.

The following provides a further evaluation of the changes made to Plan Change 87 since the original evaluation report under s32 of the Resource Management Act 1991. The level of detail corresponds to the scale and significance of the changes.

Minor amendment to allow testing for operational readiness

This option is to retain the changes proposed with a minor amendment to allow testing for operational readiness outside of normal weekday business hours.

Costs	<ul style="list-style-type: none"> • Potential for minor, infrequent and temporary nuisance to neighbours.
Benefits	<ul style="list-style-type: none"> • Allowing testing for operational readiness outside normal business hours (a benefit for frost fan operators). This is a practical solution that will help enable the frost fan operator to have confidence that the machine will work when required operationally.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> • Effective in addressing the issue that greater flexibility is required for the establishment and operation of frost protection fans. This option also recognises the need and requirements of frost protection fans which are required for primary productive activities in the rural environment. • Effective in achieving the objectives of the District Plan which seek to ensure noise is not unreasonable, having regard to the character and amenity of the zones where noise is generated and received. • This option is considered to be an efficient method for addressing the identified issue and to achieve the objectives of the District Plan.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> • N/A – Sufficient information is available.

TOPIC 2: FROST PROTECTION FANS – REVERSE SENSITIVITY

DECISION

That the proposed rule requiring new dwellings to be designed to mitigate noise effects from frost protection fans be retained as notified, with clarification edits and the addition of an explanatory note to refer readers to Rule 4C.1.3.6 which sets out the permitted noise limits for frost protection fans.

- (iii) Any new dwelling to be erected, or the addition of habitable space to an existing dwelling, within 300m of any existing or consented approved frost protection fan located on a title separate to that of the subject site and in different ownership shall be designed and constructed so as to ensure that, with respect to noise emitted by any existing or consented approved frost protection fan, internal noise levels do not exceed LAeq(15min) 30dBA in any bedroom and LAeq(15min) 40dBA in other habitable room.

Written certification of such compliance from a suitably qualified and experienced acoustic engineer shall be submitted with the building consent application for the dwelling concerned. Where the windows of the dwelling are required to be closed to achieve compliance with the aforementioned noise limits, alternative means of ventilation shall be provided in compliance with clause G4 of the New Zealand Building Code or any subsequent equivalent clause.

For the purposes of this rule:

Dwelling includes minor dwelling.

Existing means any frost protection fan which was both physically and lawfully established on a site prior to lodgement of a building consent application for the dwelling concerned.

Approved means any frost protection fan that is not existing but for which; resource consent has been granted; or certificate of compliance for a permitted activity has been granted; or written certification of compliance with noise limits has been provided to Council in accordance with Rule 4C.1.3.6(b); prior to lodgement of a building consent application for the dwelling concerned.

For the purposes of this rule, "consented" means:

- (a) any frost protection fan for which a resource consent has been granted; or
- (b) any permitted frost protection fan for which certification has been provided to the Council in accordance with Rule 4C.1.3.6(b);

prior to lodgement of a building consent application for the dwelling concerned.

Explanatory Notes:

To achieve the required internal noise levels for dwellings and additions under this rule, consideration will need to be given to the permitted noise limits in Rule 4C.1.3.6 and to the actual noise limits that existing or approved frost protection fans are able to emit in accordance with their lawful establishment and/or approval.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
11	9	Te Puke Economic Development Group
13	15	Horticulture New Zealand
19	6	Federated Farmers of New Zealand (Inc.)
21	8	New Zealand Kiwifruit Growers
FS33	5	Horticulture New Zealand

FS33	6	Horticulture New Zealand
FS33	10	Horticulture New Zealand
FS33	11	Horticulture New Zealand

Accepted in Part

Submission	Point Number	Name
1	16	Daniel Kinnoch
1	18	Daniel Kinnoch
1	19	Daniel Kinnoch
1	21	Daniel Kinnoch
1	22	Daniel Kinnoch
FS33	7	Horticulture New Zealand
FS33	8	Horticulture New Zealand
FS33	9	Horticulture New Zealand
FS33	12	Horticulture New Zealand

Rejected

Submission	Point Number	Name
1	17	Daniel Kinnoch
1	20	Daniel Kinnoch

REASONS / SECTION 32AA ANALYSIS

This recognises the need for the horticultural industry to protect valuable crops while also protecting the health and amenity of people who wish to build dwellings near frost protection fans. In addition, it is considered to be the most effective and efficient method to provide protection for the on-going operation of existing and consented frost protection fans from potential reverse sensitivity effects associated with the development of new dwellings that may be affected by noise. It is noted that these fans are used infrequently and only at a certain time of the year.

The proposed explanatory note will assist plan users to design dwellings so that occupants are adequately protected against noise from frost protection fans.

Minor editorial changes suggested by one of the submitters are acknowledged, however, many of the changes he requests will have unintended consequences for the way in which the rules are interpreted and/or will not be consistent with the existing format and structure of rules within the Plan.

The following provides a further evaluation of the changes made to Plan Change 87 since the original evaluation report under s32 of the Resource Management Act 1991. The level of detail corresponds to the scale and significance of the changes.

The addition of an explanatory note to provide guidance to those building dwellings about the anticipated noise levels from existing and approved frost protection fans.

Costs	<ul style="list-style-type: none"> None
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Benefits	<ul style="list-style-type: none"> Provides plan users with information on the permitted noise limits for frost protection fans and the need to identify the noise limits allowed for existing and approved frost fans to assist them with designing their dwelling to mitigate noise effects.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> Effective and efficient.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> N/A – Sufficient information is available.

TOPIC 3: FROST PROTECTION FANS – HEIGHT IN POST HARVEST ZONE

DECISION

That the changes to Rule 22.4.1(a) allowing an exemption for frost fans to reach a height of 15m in Post Harvest Zones be retained as notified.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
11	10	Te Puke Economic Development Group
13	16	Horticulture New Zealand
21	9	New Zealand Kiwifruit Growers
FS33	17	Horticulture New Zealand

Rejected

Submission	Point Number	Name
1	23	Daniel Kinnoch

REASONS

Adopting the change to Rule 22.4.1(a), as notified, is an effective and efficient method to address the anomaly in the District Plan that the Post Harvest Zone does not identify the specific height requirement for frost protection fans. In addition, it is considered entirely appropriate to deal with the changes proposed to Rule 22.4.1(a) through Plan Changes 82 and 87 separately as the plan changes are not conflicting, and they deal with different issues and different parts of the rule. However, the submitter's concern is acknowledged in that the decisions on height limit within the Post Harvest Zone (14m) and the specific height limit of frost fans within the same zone (15m) may appear to be conflicting. Therefore, this decision shows how Rule 22.4.1 (a) would appear in the District Plan once the decisions from each Plan Change are combined. This shows that the height limit for all buildings/structures is 14m except for frost fans which can go to 15m.

SUMMARY

The decisions on the topics above as well as a number of minor editorial changes to improve the readability of rules are shown in context in Attachment 1. As in the topics above, the blue is used to help submitters and further submitters understand what changes have been made since the Plan Change was notified.

DECISIONS ON THE PROVISIONS OF THE DISTRICT PLAN FIRST REVIEW

The purpose of this part of the report is to show the decisions to change the provisions of the District Plan First Review.

Decisions are shown as follows; existing District Plan text in black and decisions in red.

Section 4C – Amenity

See Attachment 2.

Section 22 - Post Harvest

22.4.1 General

The following performance standards shall be met by all Permitted and Controlled Activities and shall be used as a guide for the assessment of all other activities. Any Permitted or Controlled activity that fails to comply with any of these standards will be a Restricted Discretionary Activity for the particular non-compliance.

(a) Height of buildings/structures

Maximum: ~~12m~~ 14m excluding frost protection fans which shall be a maximum of 15m inclusive of blades.

Except that:

For Lot 4 DP 376727 Te Puna the maximum shall be 9m.

4C.1 Noise and Vibration

Explanatory Statement

4C.1.3 Activity Performance Standards

The following performance standards shall be met by all Permitted and Controlled Activities and shall be used as a guide for all other activities. Any Permitted Activity which fails to comply with any of these standards shall be deemed a Discretionary Activity for the particular non-compliance.

4C.1.3.2 Noise Limits

(a) Noise limits for activities in Residential, Rural-Residential, Future Urban, Rural and Lifestyle Zones

- (i) All activities located within these zones shall be so conducted as to ensure that noise from the site shall not exceed the following noise limits within the stated timeframes at any point within the *notional boundary* of any *dwelling* in a Rural, Lifestyle or Rural-Residential Zone, or at any point within the boundary of any property within a Residential or Future Urban Zone (other than the site of the activity);

Time Period		Sound Level Not to be Exceeded	
Day	Hours	Leq	Lmax
Monday to Saturday	7am to 10pm	50dBA	N/A
Sunday	7am to 6pm	50dBA	N/A
At all other times and on public holidays		40dBA	65dBA

(iii) Any new dwelling to be erected, or the addition of habitable space to an existing dwelling, within 300m of any existing or consented approved frost protection fan(s) located on a title separate to that of the subject site and in different ownership shall be designed and constructed so as to ensure that, with respect to noise emitted by any existing or consented approved frost protection fan(s), internal noise levels do not exceed LAeq(15min) 30dBA in any bedroom and LAeq(15min) 40dBA in other habitable room.

Written certification of such compliance from a suitably qualified and experienced acoustic engineer shall be submitted with the building consent application for the dwelling concerned. Where the windows of the dwelling are required to be closed to achieve compliance with the aforementioned noise limits, alternative means of ventilation shall be provided in compliance with clause G4 of the New Zealand Building Code or any subsequent equivalent clause.

For the purposes of this rule:

Dwelling includes *minor dwelling*.

Existing means any frost protection fan which was both physically and lawfully established on a site prior to lodgement of a building consent application for the *dwelling* concerned.

Approved means any frost protection fan that is not *existing* but for which; resource consent has been granted; or certificate of compliance for a permitted activity has been granted; or written certification of compliance with noise limits has been provided to *Council* in accordance with Rule 4C.1.3.6(b); prior to lodgement of a building consent application for the *dwelling* concerned.

For the purposes of this rule, "consented" means:

- (a) any frost protection fan for which a resource consent has been granted; or
- (b) any permitted frost protection fan for which certification has been provided to the *Council* in accordance with Rule 4C.1.3.6(b);

prior to lodgement of a building consent application for the *dwelling* concerned.

Explanatory Notes:

To achieve the required internal noise levels for *dwellings* and the addition of *habitable space* to existing *dwellings* under this rule, consideration will need to be given to the permitted noise limits in Rule 4C.1.3.6 and to the actual noise limits that any existing or approved frost protection fan(s) are able to emit in accordance with their lawful establishment and/or approval.

4C.1.3.6 Frost Protection Fans – Performance Standard for Permitted Activity

~~Frost protection fans (including portable non-fixed type) shall be a Permitted Activity subject to the relevant performance standards of the underlying zone. Should the fan not comply with the relevant noise standards the activity shall default to be considered as a Controlled or Restricted Discretionary Activity as detailed in 4C.1.3.7 and 4C.1.3.8.~~

Frost protection fans (including portable non-fixed type) shall be a Permitted Activity subject to compliance with the following performance standards. Any frost protection fan(s) (including portable non-fixed type) that fail to meet these performance standards shall be a Restricted Discretionary Activity.

(a) Noise limits

Noise from the operation of a frost protection fan or fans shall not exceed 55dBA L_{Aeq} or 65dBA L_{Amax} when measured:

Rural and lifestyle zones

- (i) At any point at or within the notional boundary of any dwelling in the Rural or Lifestyle Zone that:
- is or will be located on a title separate to that of the subject site and in different ownership; and
 - was existing or approved ~~on~~ prior to the date that certification is provided to the Council in accordance with (b), below;
- (ii) At any point at or within the boundary of a property in the Rural or Lifestyle Zone that:
- is located on a title separate to that of the subject site and in different ownership; and
 - did not have an existing or approved dwelling ~~on~~ prior to the date that certification is provided to the Council in accordance with (b) below;

Other zones

- (iii) At any point at or within the boundary of any property within a Residential, Rural-Residential, Medium Density Residential or Future Urban Zone.

For the purposes of (i) and (ii) above:

Dwelling includes minor dwelling.

Existing means any dwelling both physically and lawfully established on a site.

Approved means any dwelling that is not existing but for which; resource consent has been granted; or certificate of compliance for a permitted activity has been granted; or building consent has been granted.

(b) Certification that noise limits are met

Evidence of the ability to meet (a) above shall be provided to Council prior to the installation of the frost protection fan(s) and shall include:

- (i) Certification from an appropriately qualified and experienced acoustic engineer that the noise limits in (a) above will be met; and

ATTACHMENT 1

- (ii) A plan showing the location, and Global Positioning System co-ordinates, of the frost protection fan(s) to which the certification applies.

(c) Operating times for frost protection

When the a frost protection fan is in operation for frost protection the frost protection fan must not start up until the air at canopy height drops to 2°C, and shall cease operation when the rising temperature reaches 4°C at canopy height.

(d) Operating times for maintenance and testing

When the a frost protection fan is operating for maintenance purposes the machine shall only be used from Monday to Friday 8am to 5pm. Testing outside these hours may only take place for urgent unforeseen maintenance purposes or for testing operational readiness.

Except that:

(e) Written approval for exceeding noise limits

Noise from the operation of a frost protection fan or fans may exceed the noise levels described in (a) above, if:

- (i) The noise to be produced by the operation of the frost protection fan(s) is assessed and determined by an appropriately qualified and experienced acoustic engineer.

The assessment shall include:

- the noise levels to be produced by the operation of the frost protection fan(s);
- identification of the non-compliances with the noise levels specified in (a) above;
- a plan showing the location, and the Global Positioning System co-ordinates, of the frost protection fan(s) to which the assessment applies;

AND

- (ii) The written approval of the owners of the land, and owners and occupiers of the dwelling(s) to which the non-compliances apply have provided their written approval for the non-compliances identified in the assessment provided in (i) above.

AND

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- (iii) The information in (i) and (ii) above is provided to Council prior to the installation of the frost protection fan(s).

Any frost protection fan (including portable non fixed type) that fails to meet the performance standards above shall be a Restricted Discretionary Activity.

Explanatory Notes:

Fan Type - The distance required to achieve 55dBA L_{Aeq} and 65dBA L_{Amax} will vary depending on the noise performance of the frost protection fan(s).

For portable frost protection fans, determination and/or certification of noise to be emitted must take into account the full range of possible operating locations for the device.

~~4C.1.3.7 Frost Protection Fans — Performance Standard for Controlled Activity~~

~~Where the following performance standards cannot be met then the activity shall fall to being assessed as a Restricted Discretionary Activity.~~

- ~~(a) Noise from the operation of frost protection fans shall not exceed 55dBA L_{eq} and 65dBA L_{max} at any point within the *notional boundary* of any *dwelling* in a Rural or Lifestyle Zone (excluding a residential *dwelling* on the same property on upon which the fan is operating) nor at any point within the boundary of any property within a Residential, Rural Residential or Future Urban Zone.~~
- ~~(b) When the frost protection fan is in operation for frost protection the frost protection fan must not start up until the air at canopy height drops to 2°C, and shall cease operation when the rising temperature reaches 4°C at canopy height.~~
- ~~(c) When the frost protection fan is operating for maintenance purposes the machine shall only be used from Monday to Friday 8am to 5pm.~~

~~Explanatory Note:~~

~~Fan Type — The distance required to achieve 55dBA will vary depending on the noise performance of the frost protection fan. Applications for resource consent must be supported with evidence identifying the noise performance of the fan to be used.~~

~~Where the written approvals of all affected persons have not been obtained then notice shall be served on those persons.~~

~~Explanatory Note:~~

~~For the purpose of identifying affected persons where the noise from the operation of the frost protection fan exceeds 55dBA L_{eq} at any point within the *notional boundary* of any *dwelling* in a Rural, Lifestyle or Future Urban Zone, (excluding a residential *dwelling* on the same property on upon which the fan is operating) or~~

~~at any point within the boundary of any Residential or Rural Residential zone, those occupiers/owners shall be deemed to be affected.~~

~~4C.1.4~~ **Matters of Control – Controlled Activities**

~~4C.1.4.1~~ **Frost Protection Fans**

- ~~(a) ——— Council shall exercise control over the following;~~
- ~~(i) ——— The noise level that is permitted to be emitted from the frost protection fan;~~
 - ~~(ii) ——— The operational requirements of the frost protection fan;~~
 - ~~(iii) ——— The operation of the frost protection fan for maintenance purposes;~~
 - ~~(iv) ——— The hours of operation and times when the fan is permitted to operate.~~

4C.1.54 Matters of Discretion

4C.1.54.2 Restricted Discretionary Activity - Frost Protection Fans

~~Council shall restrict its discretion to the following:~~

- ~~(a) ——— The best practicable option, this should address as a minimum; alternative options for frost protection, effectiveness of those alternative options, affordability, cumulative effects of existing machines in the vicinity, and any effects on established land uses, and proposed mitigation.~~
- ~~(b) ——— The effect of the increased noise level on those persons who will experience noise levels over 55dBA *Leq* at their *notional boundary* or boundary.~~

Council shall restrict its discretion to the following:

- (a) The level of noise that is to be emitted from the frost protection fan(s).
- (b) The effect of noise on the owners of land, and owners and occupiers of dwellings who will be affected by noise levels over 55dBA *LAeq* and/or 65dBA *L_{Amax}*.
- (c) The hours of operation, duration and frequency of use of the frost protection fan(s).
- (d) The best practicable option for preventing or minimising adverse effects associated noise emissions. This may include, but is not limited to consideration of alternative options for frost protection, effectiveness of those alternative options, affordability, cumulative effects of existing frost protection fans in the vicinity, effects on established land uses, and proposed mitigation.

(e) The operational requirements of the frost protection fan(s).

4C.1.6 Other Methods

(a) Application of other statutory powers

Notwithstanding the foregoing clauses the *Council* reserves the right to use its more general statutory and regulatory powers (e.g. under relevant resource management, environmental, and health legislation and *Council's* own bylaws) to exercise appropriate control over noise in the environment.

(b) Vibration

Where significant vibration effects are experienced *Council* may deal with the matter as a nuisance under the Health Act.

4C.1 Noise and Vibration

Explanatory Statement

4C.1.3 Activity Performance Standards

The following performance standards shall be met by all Permitted and Controlled Activities and shall be used as a guide for all other activities. Any Permitted Activity which fails to comply with any of these standards shall be deemed a Discretionary Activity for the particular non-compliance.

4C.1.3.2 Noise Limits

(a) Noise limits for activities in Residential, Rural-Residential, Future Urban, Rural and Lifestyle Zones

- (i) All activities located within these zones shall be so conducted as to ensure that noise from the site shall not exceed the following noise limits within the stated timeframes at any point within the *notional boundary* of any *dwelling* in a Rural, Lifestyle or Rural-Residential Zone, or at any point within the boundary of any property within a Residential or Future Urban Zone (other than the site of the activity);

Time Period		Sound Level Not to be Exceeded	
Day	Hours	Leq	Lmax
Monday to Saturday	7am to 10pm	50dBA	N/A
Sunday	7am to 6pm	50dBA	N/A
At all other times and on public holidays		40dBA	65dBA

(iii) Any new *dwelling* to be erected, or the addition of *habitable space* to an existing *dwelling*, within 300m of any *existing or approved* frost protection fan(s) on a title separate to that of the *subject site* and in *different ownership* shall be designed and constructed so as to ensure that, with respect to noise emitted by any existing or *approved* frost protection fan(s), internal noise levels do not exceed LAeq(15min) 30dB in any bedroom and LAeq(15min) 40dB in other habitable room.

Written certification of such compliance from a suitably qualified and experienced acoustic engineer shall be submitted with the building consent application for the *dwelling* concerned. Where the windows of the *dwelling* are required to be closed to achieve compliance with the aforementioned noise limits, alternative means of ventilation shall be provided in compliance with clause G4 of the New Zealand Building Code or any subsequent equivalent clause.

For the purposes of this rule:

Dwelling includes *minor dwelling*.

Existing means any frost protection fan which was both physically and lawfully established on a site prior to lodgement of a building consent application for the *dwelling* concerned.

Approved means any frost protection fan that is not *existing* but for which; resource consent has been granted; or certificate of compliance for a permitted activity has been granted; or written certification of compliance with noise limits has been provided to *Council* in accordance with Rule 4C.1.3.6(b); prior to lodgement of a building consent application for the *dwelling* concerned.

Explanatory Notes:

To achieve the required internal noise levels for *dwellings* and the addition of *habitable space* to existing *dwellings* under this rule, consideration will need to be given to the permitted noise limits in Rule 4C.1.3.6 and to the actual noise limits that any existing or approved frost protection fan(s) are able to emit in accordance with their lawful establishment and/or approval.

4C.1.3.6 Frost Protection Fans – Performance Standard for Permitted Activity

~~Frost protection fans (including portable non-fixed type) shall be a Permitted Activity subject to the relevant performance standards of the underlying zone. Should the fan not comply with the relevant noise standards the activity shall default to be considered as a Controlled or Restricted Discretionary Activity as detailed in 4C.1.3.7 and 4C.1.3.8.~~

Frost protection fans (including portable non-fixed type) shall be a Permitted Activity subject to compliance with the following performance standards. Any frost protection fan(s) (including portable non-fixed type) that fail to meet these performance standards shall be a Restricted Discretionary Activity.

(a) Noise limits

Noise from the operation of a frost protection fan or fans shall not exceed 55dB *LAeq* or 65dB *LAm_{ax}* when measured:

Rural and lifestyle zones

- (i) At the *notional boundary* of any *dwelling* in the Rural or Lifestyle Zone that:
 - is or will be located on a title separate to that of the subject site and in different ownership; and

ATTACHMENT 2

- was existing or approved prior to the date that certification is provided to the Council in accordance with (b), below;

- (ii) At any point at or within the boundary of a property in the Rural or Lifestyle Zone that:
- is located on a title separate to that of the subject site and in different ownership; and
 - did not have an existing or approved dwelling prior to the date that certification is provided to the Council in accordance with (b) below;

Other zones

- (iii) At any point at or within the boundary of any property within a Residential, Rural-Residential, Medium Density Residential or Future Urban Zone.

For the purposes of (i) and (ii) above:

Dwelling includes minor dwelling.

Existing means any dwelling both physically and lawfully established on a site.

Approved means any dwelling that is not existing but for which; resource consent has been granted; or certificate of compliance for a permitted activity has been granted; or building consent has been granted.

- (b) Certification that noise limits are met

Evidence of the ability to meet (a) above shall be provided to Council prior to the installation of the frost protection fan(s) and shall include:

- (i) Certification from an appropriately qualified and experienced acoustic engineer that the noise limits in (a) above will be met; and
- (ii) A plan showing the location, and Global Positioning System co-ordinates, of the frost protection fan(s) to which the certification applies.

- (c) Operating times for frost protection

When a frost protection fan is in operation for frost protection the frost protection fan must not start up until the air at canopy height drops to 2°C, and shall cease operation when the rising temperature reaches 4°C at canopy height.

(d) Operating times for maintenance and testing

When a frost protection fan is operating for maintenance purposes the machine shall only be used from Monday to Friday 8am to 5pm. Testing outside these hours may only take place for urgent unforeseen maintenance purposes or for testing operational readiness.

Except that:

(e) Written approval for exceeding noise limits

Noise from the operation of a frost protection fan or fans may exceed the noise levels described in (a) above, if:

- (i) The noise to be produced by the operation of the frost protection fan(s) is assessed and determined by an appropriately qualified and experienced acoustic engineer.

The assessment shall include:

- the noise levels to be produced by the operation of the frost protection fan(s);
- identification of the non-compliances with the noise levels specified in (a) above;
- a plan showing the location, and the Global Positioning System co-ordinates, of the frost protection fan(s) to which the assessment applies;

AND

- (ii) The written approval of the owners of the land, and owners and occupiers of the *dwelling(s)* to which the non-compliances apply have provided their written approval for the non-compliances identified in the assessment provided in (i) above.

AND

- (iii) The information in (i) and (ii) above is provided to *Council* prior to the installation of the frost protection fan(s).

Explanatory Notes:

Fan Type - The distance required to achieve 55dB *LAeq* and 65dB *L_{Amax}* will vary depending on the noise performance of the frost protection fan(s).

For portable frost protection fans, determination and/or certification of noise to be emitted must take into account the full range of possible operating locations for the device.

4C.1.3.7 Frost Protection Fans Performance Standard for Controlled Activity

Where the following performance standards cannot be met then the activity shall fall to being assessed as a Restricted Discretionary Activity.

- (a) Noise from the operation of frost protection fans shall not exceed 55dBA *Leq* and 65dBA *Lmax* at any point within the *notional boundary* of any *dwelling* in a Rural or Lifestyle Zone (excluding a residential *dwelling* on the same property on upon which the fan is operating) nor at any point within the boundary of any property within a Residential, Rural Residential or Future Urban Zone.
- (b) When the frost protection fan is in operation for frost protection the frost protection fan must not start up until the air at canopy height drops to 2°C, and shall cease operation when the rising temperature reaches 4°C at canopy height.
- (c) When the frost protection fan is operating for maintenance purposes the machine shall only be used from Monday to Friday 8am to 5pm.

Explanatory Note:

Fan Type The distance required to achieve 55dBA will vary depending on the noise performance of the frost protection fan. Applications for resource consent must be supported with evidence identifying the noise performance of the fan to be used.

Where the written approvals of all affected persons have not been obtained then notice shall be served on those persons.

Explanatory Note:

For the purpose of identifying affected persons where the noise from the operation of the frost protection fan exceeds 55dBA *Leq* at any point within the *notional boundary* of any *dwelling* in a Rural, Lifestyle or Future Urban Zone, (excluding a residential *dwelling* on the same property on upon which the fan is operating) or at any point within the boundary of any Residential or Rural Residential zone, those occupiers/owners shall be deemed to be affected.

4C.1.4 Matters of Control Controlled Activities**4C.1.4.1 Frost Protection Fans**

- (a) *Council* shall exercise control over the following;
 - (i) The noise level that is permitted to be emitted from the frost protection fan;
 - (ii) The operational requirements of the frost protection fan;
 - (iii) The operation of the frost protection fan for maintenance purposes;
 - (iv) The hours of operation and times when the fan is permitted to operate.

4C.1.54 Matters of Discretion**4C.1.54.2 Restricted Discretionary Activity - Frost Protection Fans**

~~*Council shall restrict its discretion to the following:*~~

- ~~(a) The best practicable option, this should address as a minimum; alternative options for frost protection, effectiveness of those alternative options, affordability, cumulative effects of existing machines in the vicinity, and any effects on established land uses, and proposed mitigation.~~
- ~~(b) The effect of the increased noise level on those persons who will experience noise levels over 55dBA *Leq* at their *notional boundary* or boundary.~~

Council shall restrict its discretion to the following:

- (a) The level of noise that is to be emitted from the frost protection fan(s).
- (b) The effect of noise on the owners of land, and owners and occupiers of *dwellings* who will be affected by noise levels over 55dB *LAeq* and/or 65dB *L_{Amax}*.
- (c) The hours of operation, duration and frequency of use of the frost protection fan(s).
- (d) The best practicable option for preventing or minimising adverse effects associated noise emissions. This may include, but is not limited to consideration of alternative options for frost protection, effectiveness of those alternative options, affordability, cumulative effects of existing frost protection fans in the vicinity, effects on established land uses, and proposed mitigation.
- (e) The operational requirements of the frost protection fan(s).

4C.1.6 Other Methods

- (a) Application of other statutory powers

Notwithstanding the foregoing clauses the *Council* reserves the right to use its more general statutory and regulatory powers (e.g. under relevant resource management, environmental, and health legislation and *Council's* own bylaws) to exercise appropriate control over noise in the environment.

- (b) Vibration

Where significant vibration effects are experienced *Council* may deal with the matter as a nuisance under the Health Act.