

Authorised Version

Environment Protection Amendment (Wind Turbine Noise) Regulations 2022

S.R. No. 120/2022

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Authorised Version

STATUTORY RULES 2022

S.R. No. 120/2022

Environment Protection Act 2017

Environment Protection Amendment (Wind Turbine Noise) Regulations 2022

The Governor in Council makes the following Regulations:

Dated: 18 October 2022

Responsible Minister:

LILY D'AMBROSIO

Minister for Environment and Climate Action

SAMUAL WALLACE

Clerk of the Executive Council

1 Objective

The objective of these Regulations is to amend the Environment Protection Regulations 2021 to specify matters in relation to wind turbine noise from wind energy facilities.

2 Authorising provision

These Regulations are made under section 465 of the **Environment Protection Act 2017**.

3 Principal Regulations

In these Regulations, the Environment Protection Regulations 2021¹ are called the Principal Regulations.

4 Revocation

The Environment Protection Amendment (Interim) Regulations 2021² are **revoked**.

5 Definitions

- (1) In regulation 4 of the Principal Regulations, for the definitions of ***alternative monitoring point*** and ***alternative monitoring point criteria*** substitute—

"alternative monitoring point means a point referred to in regulation 131BB;

alternative monitoring point criterion means the maximum noise level (expressed in dB(A)) for wind turbine noise when assessed at an alternative monitoring point, determined in accordance with regulation 131BC;"

- (2) In regulation 4 of the Principal Regulations, for the definition of ***authorising document*** substitute—

"authorising document means a planning permit or other document as amended from time to time that—

- (a) authorises the construction or operation of a wind energy facility; and
- (b) addresses wind turbine noise at the facility; and
- (c) is issued by a responsible authority under the **Planning and Environment Act 1987**;"

- (3) In regulation 4 of the Principal Regulations, for the definitions of ***noise limit*** and ***noise management plan*** substitute—

"noise limit means—

- (a) in Part 5.3 (other than Division 5), the maximum effective noise level allowed in a noise sensitive area, as determined in accordance with the Noise Protocol; and

- (b) in Division 5 of Part 5.3, the limit for wind turbine noise determined in accordance with regulation 131BA;

noise management plan means a plan prepared in accordance with regulation 131E;".

- (4) In regulation 4 of the Principal Regulations, for the definitions of ***NZS 6808:1998*** and ***NZS 6808:2010*** substitute—

"NZS 6808:1998 means New Zealand Standard 6808:1998, Acoustics—The Assessment and Measurement of Sound from Wind Turbine Generators, published by Standards New Zealand on 21 April 1998;

NZS 6808:2010 means New Zealand Standard 6808:2010, Acoustics—Wind farm noise, published by Standards New Zealand on 1 March 2010;".

- (5) In regulation 4 of the Principal Regulations, for the definition of ***post-construction noise assessment*** substitute—

"post-construction noise assessment means an assessment conducted in accordance with regulation 131D;".

- (6) In regulation 4 of the Principal Regulations, for the definitions of ***relevant landowner*** and ***relevant noise standard*** substitute—

"relevant landowner means a person who owns land with premises in the vicinity of a wind energy facility;

relevant noise standard, for the purposes of Division 5 of Part 5.3, means the noise standard for a wind energy facility determined in accordance with regulation 131B;".

- (7) In regulation 4 of the Principal Regulations, for the definitions of ***water corporation, wind energy facility, wind turbine, wind turbine noise*** and ***wind turbine noise agreement substitute***—

"water corporation has the same meaning as in the **Water Act 1989**;

wind energy facility means one or more wind turbines that are—

- (a) owned or operated by the same person or entity; and
- (b) installed in close proximity to each other (whether or not located on the same premises); and
- (c) electrically connected to a common grid;

wind turbine means a device that is used for extracting kinetic energy from the wind (other than for domestic or rural use of the land) and includes the—

- (a) components comprising the device, such as the blades, gearbox and generator; and
- (b) associated equipment in the immediate vicinity of the device, such as the transformer at its base;

wind turbine noise means the noise produced by the wind turbines at a wind energy facility;

wind turbine noise agreement means an agreement referred to in regulation 131A."

(8) In regulation 4 of the Principal Regulations **insert** the following definitions—

"1998 NZS wind energy facility means a wind energy facility for which the relevant noise standard is NZS 6808:1998, including if the authorising document to which the facility is subject sets out conditions to modify or replace NZS 6808:1998 in relation to wind turbine noise;

extraneous noise, for the purposes of Division 5 of Part 5.3, means any noise caused by extraneous events, including but not limited to sounds caused by precipitation, insects and fauna;

monitoring point means a location in a noise sensitive area that is used for the assessment of wind turbine noise, determined in accordance with the relevant noise standard;"

6 Regulation 113 substituted

For regulation 113 of the Principal Regulations **substitute**—

"113 Prediction, measurement, assessment and analysis of noise must be in accordance with Noise Protocol

A person who conducts a prediction, measurement, assessment or analysis of noise within a noise sensitive area for the purposes of the Act or these Regulations, other than Division 5 of this Part, must conduct the prediction, measurement, assessment or analysis in accordance with the Noise Protocol.

Note

The Noise Protocol sets out how to conduct the following noise-related assessments—

- (a) noise limits;
- (b) background levels;
- (c) alternative assessment criterion at an alternative assessment location, including when the Live music entertainment venues provisions (which include reference to agent of change) set out in the VPPs apply;
- (d) effective noise levels."

7 Division 5 of Part 5.3 substituted

For Division 5 of Part 5.3 of the Principal Regulations **substitute—**

"Division 5—Wind turbine noise

Subdivision 1—Wind turbine noise

131A Wind turbine noise agreement

- (1) An owner or operator of a wind energy facility and a relevant landowner may enter into a written agreement regarding noise limits with which the wind turbine noise from that facility must comply (***wind turbine noise agreement***).
- (2) A wind turbine noise agreement—
 - (a) must specify the wind energy facility and the premises of the relevant landowner (including any particular buildings) to which the agreement relates; and
 - (b) may modify the noise limits with which the wind turbine noise from that facility must otherwise comply in relation to noise emissions to the premises of the

relevant landowner specified in the agreement.

- (3) A wind turbine noise agreement cannot modify a noise limit with which the wind turbine noise from a wind energy facility must comply in relation to noise emissions to premises other than the premises of the relevant landowner.

131B Relevant noise standard

The relevant noise standard for a wind energy facility that is the subject of an authorising document described in column 2 of the Table is the standard set out in column 3 of that Table.

Table—Relevant noise standard for wind energy facilities

<i>Column 1 Item</i>	<i>Column 2 Authorising document applying to the wind energy facility</i>	<i>Column 3 Relevant noise standard</i>
1	An authorising document issued before 1 January 2011, unless item 2(b) applies	NZS 6808:1998
2	(a) An authorising document issued on or after 1 January 2011; or (b) Any authorising document that has been amended to require compliance with NZS 6808:2010	NZS 6808:2010
3	An authorising document that sets out conditions to modify or replace either NZS 6808:1998 or NZS 6808:2010 in relation to wind turbine noise	Either NZS 6808:1998 or NZS 6808:2010 as specified in items 1 and 2, as modified or replaced by the authorising document

131BA Noise limit

- (1) Subject to subregulations (2) and (3), the noise limit for a wind energy facility must be determined in accordance with the relevant noise standard for that facility.
- (2) If a wind energy facility is the subject of a wind turbine noise agreement, the noise limit for that facility in relation to noise emissions to the premises of the relevant landowner is—
 - (a) if the agreement is made before 1 November 2021, the noise limit specified in the agreement; or
 - (b) if the agreement is made on or after 1 November 2021, the noise limit that is the greater of—
 - (i) 45 dB(A); or
 - (ii) the background sound level plus 5 dB.
- (3) The noise limit for a 1998 NZS wind energy facility may be determined in accordance with the procedures set out in NZS 6808:2010 that relate to extraneous noise.

131BB Alternative monitoring point

- (1) For the purposes of an assessment of wind turbine noise under this Division (other than a post-construction noise assessment under regulation 131D), an alternative monitoring point may be used for the assessment—
 - (a) if a monitoring point for the wind energy facility is not readily accessible; or

- (b) if—
- (i) an assessment of wind turbine noise at a monitoring point for the wind energy facility would be affected by extraneous noise to a greater extent than an assessment of wind turbine noise at the alternative monitoring point; and
 - (ii) the alternative monitoring point is closer to a wind turbine or group of wind turbines in the wind energy facility than that monitoring point.
- (2) An operator of a wind energy facility must ensure that an alternative monitoring point for that facility is determined by a suitably qualified and experienced acoustician.

131BC Alternative monitoring point criterion

- (1) An operator of a wind energy facility must ensure that an alternative monitoring point criterion for an alternative monitoring point is determined by a suitably qualified and experienced acoustician.
- (2) In determining an alternative monitoring point criterion, the acoustician must be of the opinion that an assessment of wind turbine noise against the criterion at the alternative monitoring point accurately represents an assessment of wind turbine noise against the noise limit at the monitoring point, having regard to the environmental or other factors that differ between the alternative monitoring point and the monitoring point.

- (3) An acoustician who determines an alternative monitoring point criterion for an alternative monitoring point used for an assessment of wind turbine noise from a 1998 NZS wind energy facility may apply the procedures set out in NZS 6808:2010 that relate to extraneous noise in determining that alternative monitoring point criterion.

131C Duty to manage and review wind turbine noise

An operator of a wind energy facility must take all applicable actions set out in this Division to manage and review the wind turbine noise from the facility.

Note

Act compliance—section 25(1) (see regulation 6).

131CA Duty to ensure compliance with noise limit or alternative monitoring point criterion

- (1) An operator of a wind energy facility must ensure that wind turbine noise from the facility complies with—
- (a) the noise limit for that facility; or
 - (b) if the wind turbine noise is assessed at an alternative monitoring point, the alternative monitoring point criterion for that alternative monitoring point.

Note

Act compliance—section 25(1) (see regulation 6).

- (2) The operator must ensure that an assessment of wind turbine noise conducted for the purposes of determining compliance with subregulation (1) is conducted by a suitably qualified and experienced acoustician.

- (3) An acoustician who conducts an assessment of wind turbine noise from a 1998 NZS wind energy facility for the purposes of determining compliance with subregulation (1) may apply the procedures set out in NZS 6808:2010 that relate to extraneous noise in conducting the assessment.

131D Post-construction noise assessment

- (1) An operator of a wind energy facility that commences operation on or after 1 November 2021 must ensure that a post-construction noise assessment for the facility is conducted—
 - (a) within 12 months of the commencement of operation of the facility; or
 - (b) in the case of a facility that commences operation in stages as set out in the authorising document for that facility, within 12 months of each stage being completed.
- (2) A post-construction noise assessment must—
 - (a) be conducted in accordance with NZS 6808:2010 by a suitably qualified and experienced acoustician; and
 - (b) demonstrate whether or not the wind energy facility complies with the noise limit for that facility.
- (3) The operator must—
 - (a) ensure that a report of the post-construction noise assessment is prepared; and

- (b) engage an environmental auditor to prepare a report under regulation 164(ca)(i) in relation to the post-construction noise assessment.
- (4) The operator must give a copy of each report referred to in subregulation (3) to the Authority within 10 business days of the completion of the auditor's report.

131E Noise management plan

- (1) An operator of a wind energy facility must prepare and implement a noise management plan for the facility.
- (2) The noise management plan must include procedures for the following—
 - (a) the identification, assessment and control of risks of harm to human health and the environment from wind turbine noise;
 - (b) determining any alternative monitoring points and alternative monitoring point criteria for the wind energy facility;
 - (c) assessing whether wind turbine noise from the facility complies with—
 - (i) the noise limit for that facility; or
 - (ii) if the wind turbine noise is assessed at an alternative monitoring point, the alternative monitoring point criterion for that alternative monitoring point;
 - (d) reducing wind turbine noise from the facility in the event that non-compliance is detected with—
 - (i) the noise limit for that facility; or

- (ii) if the wind turbine noise is assessed at an alternative monitoring point, the alternative monitoring point criterion for that alternative monitoring point;
 - (e) addressing any complaints about wind turbine noise received by the operator, including who will investigate the complaint and respond to the complainant.
- (3) As soon as reasonably practicable after the noise management plan has been prepared, the operator must engage an environmental auditor to prepare a report under regulation 164(ca)(ii) in relation to the noise management plan.
- (4) The operator must provide a copy of the following to the Authority on request—
 - (a) the noise management plan;
 - (b) the report referred to in subregulation (3).
- (5) The Authority may require the operator to make amendments to the noise management plan.

131F Annual statement

- (1) The operator of a wind energy facility must provide a statement in accordance with this regulation to the Authority within 4 months of the end of each financial year.

- (2) A statement under this regulation must include the following information for the previous financial year—
 - (a) details of any complaints concerning wind turbine noise received by the operator and how the complaints (if any) were addressed;
 - (b) if applicable, evidence that the turbine operating modes complied with any relevant requirements contained in the authorising document for the facility;
 - (c) details of any maintenance activities undertaken, including any unscheduled servicing events;
 - (d) details of any noise remediation actions undertaken.
- (3) A statement under this regulation must demonstrate whether or not the wind turbine noise from the facility complied with—
 - (a) the noise limit for that facility; or
 - (b) if the wind turbine noise is assessed at an alternative monitoring point, the alternative monitoring point criterion for that alternative monitoring point.

131G Wind turbine noise monitoring

- (1) This regulation applies on and from 1 January 2024.
- (2) Within 3 months of the fifth anniversary of a wind energy facility commencing operation, and every subsequent 5 years, the operator of the facility must—

- (a) engage a suitably qualified and experienced acoustician to determine procedures and conduct monitoring to ensure that wind turbine noise from the facility complies with—
 - (i) the noise limit for that facility; or
 - (ii) if the wind turbine noise is assessed at an alternative monitoring point, the alternative monitoring point criterion for that alternative monitoring point; and
- (b) ensure that a report of the matters set out in paragraph (a) is prepared; and
- (c) engage an environmental auditor to undertake a review under regulation 164(ca)(ii) of the report referred to in paragraph (b); and
- (d) give a copy of the report prepared under paragraph (b) and the review referred to in paragraph (c) to the Authority.

131H Unreasonable noise

For the purposes of paragraph (b) of the definition of *unreasonable noise* in section 3(1) of the Act, wind turbine noise is unreasonable noise if it exceeds—

- (a) the noise limit for the wind energy facility; or
- (b) if the wind turbine noise is assessed at an alternative monitoring point, the alternative monitoring point criterion for that alternative monitoring point.

**Subdivision 2—Transitional
provisions—Environment Protection
Amendment (Wind Turbine Noise)
Regulations 2022**

131I Transitional provision—noise limits

A noise limit for a wind energy facility that was determined before the commencement of the Environment Protection Amendment (Wind Turbine Noise) Regulations 2022 is, on and from that commencement, the noise limit for that facility as if that noise limit were determined in accordance with regulation 131BA.

131J Transitional provision—annual statements

Despite regulation 131F(1), the operator of a wind energy facility that was operating during the financial year ending on 30 June 2022 must provide an annual statement to the Authority in accordance with regulation 131F(2) and (3) by 1 March 2023, unless the operator has already provided a statement to the Authority in accordance with regulation 131F as in force immediately before the commencement of the Environment Protection Amendment (Wind Turbine Noise) Regulations 2022.

Note

See also sections 28 and 30 of the **Interpretation of Legislation Act 1984**."

8 Functions of environmental auditors

In regulation 164 of the Principal Regulations, for paragraphs (c) and (ca) **substitute**—

- "(c) to perform any function conferred on an environmental auditor under a legislative instrument made under any Act;
 - (ca) for the purposes of Division 5 of Part 5.3—
 - (i) to independently verify whether or not any post-construction noise assessment conducted for a wind energy facility was conducted in accordance with NZS 6808:2010; and
 - (ii) to review any noise management plan prepared for a wind energy facility and any periodic monitoring undertaken under regulation 131G for the facility;"
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Endnotes

¹ Reg. 3: S.R. No. 47/2021 as amended by S.R. Nos 82/2021, 92/2021, 123/2021, 131/2021, 132/2021 and 86/2022.

² Reg. 4: S.R. No. 132/2021.

Table of Applied, Adopted or Incorporated Matter

The following table of applied, adopted or incorporated matter is included in accordance with the requirements of regulation 5 of the Subordinate Legislation Regulations 2014.

Statutory rule provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Regulation 5(4), which substitutes the definition of NZS 6808:1998 in regulation 4 of the Principal Regulations, regulation 5(8), which inserts the definition of 1998 NZS wind energy facility in regulation 4 of the Principal Regulations, and regulation 7, which inserts new regulation 131B in the Principal Regulations	New Zealand Standard NZS 6808:1998, Acoustics—The Assessment and Measurement of Sound from Wind Turbine Generators, published by Standards New Zealand on 21 April 1998	The whole

Environment Protection Amendment (Wind Turbine Noise)
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Endnotes

Statutory rule provision	Title of applied, adopted or incorporated document	Matter in applied, adopted or incorporated document
Regulation 5(4), which substitutes the definition of NZS 6808:2010 in regulation 4 of the Principal Regulations, regulation 7, which inserts new regulations 131B, 131BA, 131BC, 131CA and 131D in the Principal Regulations, and regulation 8, which amends regulation 164(ca) of the Principal Regulations	New Zealand Standard NZS 6808:2010, Acoustics—Wind farm noise, published by Standards New Zealand on 1 March 2010	The whole