

Environment Protection Amendment Regulations

Exposure Draft

TABLE OF PROPOSALS

<i>Proposal</i>	<i>Page</i>
1 Objective	1
2 Authorising provision	1
3 Principal Regulations	1
4 Commencement	1
5 Revocation of the Environment Protection Amendment (Wind Turbine Noise) Regulations 2021	2
6 Definitions	2
7 Prediction, measurement, assessment and analysis of noise must be in accordance with Noise Protocol	5
8 Division 5 of Part 5.3 substituted	6
9 Functions of environmental auditors	17
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Endnotes	18



Victoria

Environment Protection Amendment Regulations

Exposure Draft

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 Commencement

These Regulations come into operation on 1 June 2022.

5 Revocation of the Environment Protection Amendment (Wind Turbine Noise) Regulations 2021

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

6 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 location, other than a location determined in accordance with the relevant noise standard, for the assessment of wind turbine noise;

alternative monitoring point criteria means the criteria (expressed in decibels) that apply at an alternative monitoring point to assess compliance with the noise limits set out in the relevant noise standard;"

- (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**;"
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- (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 limits determined in accordance with the relevant noise standard or regulation 131B(2);

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 the 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 the 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 that applies to wind turbine noise from 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, as measured at a noise sensitive area or an alternative monitoring point;

wind turbine noise agreement has the meaning given by regulation 131A."

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

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."

8 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 emitted by the 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 energy 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 energy facility must comply in relation to noise emissions to premises other than the premises of the relevant landowner.

131B Relevant noise standard

- (1) Subject to subregulation (2), 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</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Item</i>	<i>Authorising document applying to the wind energy facility</i>	<i>Relevant noise standard</i>
1	An authorising document issued before 1 January 2011	NZS 6808:1998 (unless item 2(b) applies)
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

- (2) If a wind energy facility is the subject of a wind turbine noise agreement made in accordance with regulation 131A, the relevant noise standard for the facility is to be read as if the noise limit set out in that standard in relation to noise emissions to the premises of the relevant landowner were—
- (a) if the agreement was made before 1 June 2022, the noise limit (as determined in accordance with the

relevant noise standard set out in the Table in subregulation (1)) specified in the agreement; or

- (b) if the agreement was made on or after 1 June 2022, the noise limit (as determined in accordance with the relevant noise standard set out in the Table in subregulation (1)) that is the greater of—
 - (i) 45 dB; or
 - (ii) the background sound level plus 5 dB.
- (3) An owner or operator of a wind energy facility who is a party to a wind turbine noise agreement that is in force is taken to have complied with the relevant noise standard in relation to the noise emitted to the premises specified in the agreement if the wind turbine noise emitted to the premises complies with the noise limit set out in subregulation (2)(a) or (b), as applicable.

131C Duties on operators of wind energy facilities

- (1) An operator of a wind energy facility must ensure that wind turbine noise complies with the noise limits set out in the relevant noise standard.
- (2) The operator 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).

131D Post-construction noise assessment

- (1) An operator of a wind energy facility that commences operation on or after 1 June 2022 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 facility complies with the noise limits set out in accordance with NZS 6808:2010.
 - (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 prepared under subregulation (3) to the Authority within 10 business days of its completion.
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131E Noise management plan

- (1) An operator of a wind energy facility must prepare and implement a noise management plan for the wind energy 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) assessing compliance with—
 - (i) the noise limits set out in the relevant noise standard; or
 - (ii) the applicable alternative monitoring point criteria if the assessment of the wind turbine noise is conducted at an alternative monitoring point;
 - (c) reducing wind turbine noise in the event non-compliance is detected with—
 - (i) the noise limits set out in the relevant noise standard; or
 - (ii) the applicable alternative monitoring point criteria if the assessment of the wind turbine noise is conducted at an alternative monitoring point;
 - (d) 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 reports 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) This regulation applies on and from 1 July 2022.
 - (2) 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.
 - (3) 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;
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- (c) details of any maintenance activities undertaken (including any unscheduled servicing events);
 - (d) details of any noise remediation actions undertaken.
- (4) A statement under this regulation must demonstrate whether or not the wind turbine noise complied with—
- (a) the noise limits set out in the relevant noise standard; or
 - (b) the applicable alternative monitoring point criteria if the assessment of the wind turbine noise is conducted at an 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 the 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 limits set out in the relevant noise standard; or
 - (ii) the applicable alternative monitoring point criteria if the assessment of the wind turbine noise is conducted at an 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 each report prepared under paragraphs (b) and (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 set out in the relevant noise standard; or
- (b) the applicable alternative monitoring point criteria if the assessment of the wind turbine noise is conducted at an alternative monitoring point.

Subdivision 2—Transitional provisions—Environment Protection Amendment Regulations 2022

131I Definition

In this Subdivision—

amending Regulations means the Environment Protection Amendment Regulations 2022.

131J Transitional provision—wind turbine noise agreements

- (1) This regulation applies to a wind turbine noise agreement which—
 - (a) was entered into under regulation 131A as in force immediately before the commencement of the amending Regulations; and
 - (b) on 1 June 2022 is still in force.
- (2) On and from 1 June 2022, a wind turbine noise agreement to which this regulation applies—
 - (a) continues in force as if the agreement had been entered into under regulation 131A as substituted by the amending Regulations; and
 - (b) may be amended or revoked as if the agreement had been entered into under regulation 131A as substituted by the amending Regulations.

131K Transitional provision—relevant noise standards

- (1) This regulation applies to a wind energy facility that is the subject of a wind turbine noise agreement which—
 - (a) was entered into between 1 November 2021 and 31 May 2022 under regulation 131A as in force immediately before the commencement of the amending Regulations; and
 - (b) on 1 June 2022 is still in force.
 - (2) Despite regulation 131B(2)(a), on and from 1 June 2022, if an agreement for a wind energy facility to which this regulation
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applies does not specify a noise limit or specifies a different noise limit to the noise limit referred to in regulation 131B(2)(b), the relevant noise standard for the facility is to be read as if the noise limit set out in that standard in relation to noise emissions to the premises of the relevant landowner were—

- (a) the noise limit (as determined in accordance with the relevant noise standard set out in the Table in regulation 131B(1)) that is the greater of—
 - (i) 45 dB; or
 - (ii) the background sound level plus 5 dB.

131L Transitional provision—post-construction noise assessments

- (1) A post-construction noise assessment that was conducted under regulation 131D as in force immediately before the commencement of the amending Regulations is taken, on and from 1 June 2022, to be a post-construction noise assessment conducted under regulation 131D as substituted by the amending Regulations.
 - (2) A report prepared under regulation 131D(3)(a) as in force immediately before the commencement of the amending Regulations is taken, on and from 1 June 2022, to be a report prepared under regulation 131D(3)(a) as substituted by the amending Regulations.
 - (3) A report in relation to a post-construction noise assessment prepared under regulation 164(ca)(i) as in force immediately before the commencement of the amending Regulations
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is taken, on and from 1 June 2022, to be a report prepared under regulation 164(ca)(i) as substituted by the amending Regulations.

131M Transitional provision—noise management plans

- (1) This regulation applies to a noise management plan which—
 - (a) was prepared for a wind energy facility in accordance with regulation 131E as in force immediately before the commencement of the amending Regulations; and
 - (b) on 1 June 2022 is still in force.
- (2) A noise management plan to which this regulation applies—
 - (a) continues in force as if the plan had been prepared under regulation 131E as substituted by the amending Regulations; and
 - (b) may be amended or revoked as if the plan had been prepared under regulation 131E as substituted by the amending Regulations.
- (3) A report in relation to a noise management plan prepared under regulation 164(ca)(ii) as in force immediately before the commencement of the amending Regulations is taken, on and from 1 June 2022, to be a report prepared under regulation 164(ca)(ii) as substituted by the amending Regulations.

131N Transitional provision—operators of wind energy facilities

On and from 1 June 2022, any duty or requirement imposed on an operator of a wind energy facility under Division 5 of

Part 5.3, as in force immediately before the commencement of the amending Regulations, is taken to be a duty or requirement imposed under this Division as substituted by the amending Regulations."

9 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 noise assessment conducted for a wind energy facility was conducted in accordance with the relevant noise standard; 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

Endnotes

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

² Reg 5: 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 6(4), which substitutes the definition of <i>NZS 6808:1998</i> in regulation 4 of 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
Regulation 6(4), which substitutes the definition of <i>NZS 6808:2010</i> in regulation 4 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