

IN THE MATTER

of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of the proposed Waikato District Plan ("**Proposed
Plan**")

**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED
HEARING 22 – INFRASTRUCTURE**

15 OCTOBER 2020

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1. INTRODUCTION

1.1 These legal submissions are presented on behalf of KiwiRail Holdings Limited ("**KiwiRail**") in relation to the notified Chapter 6 (Infrastructure and Energy objectives) and Chapter 14 (Infrastructure and Energy) (together, "**Infrastructure and Energy**") of the Proposed Plan.

KiwiRail in the Waikato District

1.2 KiwiRail is responsible for the management and operation of the national railway network. Its role includes managing railway infrastructure and land, as well as rail freight and passenger services within New Zealand. KiwiRail is also the Requiring Authority for land designated "Railway Purposes" (or similar) in District Plans throughout New Zealand.

1.3 The North Island Main Trunk Line and the East Coast Main Trunk pass through the Waikato District. The Hautapu and Rotowaro Branch Lines also run within the District. The railway network plays a critical role in supporting the social and economic wellbeing of the District and the wider Waikato Region.

KiwiRail's approach to Infrastructure and Energy

1.4 KiwiRail supports the overall intent of the Infrastructure and Energy provisions of the Proposed Plan. Many of the matters addressed in the Proposed Plan are critical to KiwiRail's business, including the ongoing operation and development of the rail corridor, as regionally significant infrastructure, throughout the Waikato District. The Council officer has recommended a number of amendments to the Proposed Plan in response to KiwiRail's submission. KiwiRail supports the majority of those recommendations, as identified in Ms Butler's evidence.¹

1.5 The key outstanding issues for KiwiRail relate to the Council officer's recommendations in relation to KiwiRail's submissions seeking:

- (a) the addition of new provisions regarding rail noise and vibration in various zones;² and
- (b) to amend the permitted activity standards for earthworks associated with infrastructure within Significant Amenity Landscapes, High or

¹ Evidence of Pam Butler (29 September 2020) at Appendix A.

² Section 42A Report Hearing 22 – Infrastructure – D0 Infrastructure and Energy Overall, at [291(a)].

Outstanding Natural Character Areas of the coastal environment, Outstanding Natural Features or Outstanding Natural Landscapes ("**Landscape and Natural Character Areas**").³

- 1.6 These outstanding issues are addressed in these legal submissions and in the evidence filed on behalf of KiwiRail, as follows:
- (a) **Pam Butler**, Senior RMA Advisor, KiwiRail. Ms Butler's evidence addresses KiwiRail's role in the Waikato District, the relevant changes sought by KiwiRail through the Proposed Plan, KiwiRail's submission points that have been accepted by the Council officer in the section 42A report, and those submission points that remain outstanding.
 - (b) **Dr Stephen Chiles**, Acoustic Engineer, Chiles Limited. Dr Chiles' evidence was submitted jointly by KiwiRail and Waka Kotahi NZ Transport Agency ("**Waka Kotahi**"), and addresses matters relating to the effects of rail and road noise and vibration, including reverse sensitivity effects.
- 1.7 In our submission, and for the reasons provided in the evidence of Ms Butler and Dr Chiles, KiwiRail's relief is consistent with the purpose and principles of the RMA, and is the most appropriate means of achieving the objectives and policies of the Proposed Plan as a whole.

2. RAIL NOISE AND VIBRATION

- 2.1 As set out in the evidence of Ms Butler, a key concern for KiwiRail in respect of the Proposed Plan is to ensure the development of sensitive activities near the rail corridor does not give rise to reverse sensitivity effects that may compromise the safe and efficient operation of the railway network, and that sensitive land uses are protected from the effects of rail noise and vibration.⁴
- 2.2 The relief sought in KiwiRail's submission seeks to manage the potential for such effects by requiring new or altered (not existing) buildings containing sensitive activities in proximity to the rail corridor to appropriately mitigate against rail noise and vibration.⁵

³ Section 42A Report Hearing 22 – Infrastructure – D3 14.3 General Infrastructure at [117(h)].

⁴ Evidence of Pam Butler at 4.1.

⁵ Evidence of Pam Butler at 4.5.

Reverse sensitivity and the rail corridor

- 2.3 Reverse sensitivity is a well-established planning principle, and is an adverse effect for the purposes of the RMA.⁶
- 2.4 It refers to the susceptibility of established effects-generating activities (which cannot internalise all of their effects) to complaints or objections arising from the location of new sensitive activities nearby. As reverse sensitivity is an adverse effect under the RMA,⁷ in preparing and promulgating the Proposed Plan the Council has a positive duty under Part 2 and section 74 to avoid, remedy or mitigate such effects.
- 2.5 As has been acknowledged by the Council officer in the section 42A report, reverse sensitivity is a significant issue for transport infrastructure, including the rail network.⁸ The Environment Court has also recognised the importance of protecting regionally significant infrastructure from reverse sensitivity effects, and has declined applications for resource consent where developments have the potential to give rise to such effects.⁹
- 2.6 In the context of rail, reverse sensitivity effects arise where sensitive activities (such as dwellings) locate in close proximity to the rail corridor. As explained in Ms Butler's evidence, the potential for reverse sensitivity effects is particularly apparent in the context of rail noise and vibration.¹⁰ Trains are large, travel at speed, and are powered by diesel locomotives. All of these factors create noise and vibration effects in and around the rail corridor, which cannot be internalised. The evidence of Ms Butler and Dr Chiles provide examples of reverse sensitivity issues arising in the context of rail noise and vibration throughout New Zealand.¹¹

⁶ See *Affco New Zealand v Napier City Council* NZEnvC Wellington W 082/2004, 4 November 2004 at [29] as cited in *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673 at [60].

⁷ *Ngatarawa Development Trust Ltd v Hastings District Council* EnvC W17/04, 14 April 2008 at [22].

⁸ Section 42A Report Hearing 22 – Infrastructure – D0 Infrastructure and Energy Overall, at [289].

⁹ See, for example, in the context of airport noise, *Gargiulo v Christchurch City Council* NZEnvC Christchurch 137/2000, 17 August 2000, where the Environment Court declined an application for subdivision consent within the 50 dB Ldn contour for Christchurch International Airport on the basis that there was potential for serious reverse sensitivity effects.

¹⁰ Evidence of Pam Butler (7 November 2019) at paragraphs 4.1 to 4.7.

¹¹ Evidence of Pam Butler at paragraph 4.3; Evidence of Stephen Chiles at paragraph 3.4.

- 2.7 KiwiRail has duties under the RMA to use the best practicable option to ensure that noise and vibration effects do not exceed a reasonable level,¹² and to avoid, remedy or mitigate adverse effects on the environment.¹³ However, a balance must be struck between the onus on the existing lawful emitter (here, KiwiRail) to manage its effects, and district plans providing appropriate controls on the development of new sensitive activities in proximity to the rail corridor.¹⁴
- 2.8 The Environment Court has provided guidance as to when controls on surrounding land are an appropriate way to resolve the tension between the need to enable the ongoing operation of established, effects-generating activities, on the one hand, and to mitigate effects on surrounding land uses, on the other. In order to justify imposing land use controls on adjoining activities, the effect-emitting activity "must be of some considerable economic or social significance, locally, regionally or nationally."¹⁵
- 2.9 While the appropriate outcome will depend on the circumstances and relevant planning regime in each case, the Court has noted that the RMA does not require that total internalisation of effects is achieved.¹⁶ There is a greater expectation of internalisation for newly established activities than older activities, and the main concern is to ensure that adverse effects beyond the boundary are not unreasonable.¹⁷
- 2.10 The rail network is a long-established lawful activity in the District and the Waikato Region more broadly, and it is of local, regional and national importance. Full internalisation of the effects of the network's use cannot reasonably be achieved due to the nature of rail activities. While KiwiRail constantly seeks to ensure it operates its corridor in a way to internalise effects as far as is reasonably practicable, it is unable to fully internalise the levels of noise or vibration from the use of its tracks.
- 2.11 Therefore, in order to ensure that the adverse effects of rail noise and vibration beyond the rail corridor are appropriately managed, KiwiRail submits that land

¹² RMA, s 16.

¹³ RMA, s 17.

¹⁴ *Re Christchurch City Council* [2019] NZEnvC 54 at [41]-[42]; *Ngatarawa Development Trust v Hastings District Council* EnvC Wellington W17/08, 14 April 2008 at [23].

¹⁵ *Ngatarawa Development Trust Ltd v Hastings District Council* EnvC W17/04, 14 April 2008 at [24].

¹⁶ *Waikato Environmental Protection Society Inc v Waikato Regional Council* [2008] NZRMA 431 (EnvC) at [184].

¹⁷ *Waikato Environmental Protection Soc Inc v Waikato Regional Council* [2008] NZRMA 431 (EnvC) at [185]-[186], following *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48 (EnvC) and *Wilson v Selwyn District Council* EnvC Christchurch C23/04, 16 March 2004.

use controls should be included in the Proposed Plan for new or altered sensitive activities proposing to locate adjacent to, or near, the rail corridor.

- 2.12 Good planning controls to appropriately manage reverse sensitivity effects are critical to ensuring that the safe and efficient operation of the railway network is not unduly constrained as a result of complaints from sensitive uses, as well as ensuring that the effects of rail noise and vibration are appropriately mitigated.

Relief sought and response to section 42A report

- 2.13 As set out in the evidence of Ms Butler¹⁸ and Dr Chiles,¹⁹ KiwiRail seeks that new provisions be inserted into the Proposed Plan requiring new or altered buildings containing noise sensitive activities located within 100m of the rail corridor to be appropriately mitigated in relation to rail noise and vibration.²⁰
- 2.14 KiwiRail's submission sought that these provisions apply district-wide by amending the Infrastructure and Energy chapter of the Proposed Plan or, alternatively, amending the provisions of the relevant zone chapters to include the provisions. KiwiRail supports the Council officer's recommendations in terms of the amendments made to the majority of the relevant zones to include the controls sought in its submission.²¹ KiwiRail also agrees with the recommendation to exclude these provisions from the Industry, Industry Heavy and Reserve Zones.²² However, KiwiRail disagrees with the recommendation to exclude these provisions from applying in the Business and Business Town Centre Zones.²³
- 2.15 The Council officer has agreed that provisions specific to noise and vibration generated by the road and rail networks are appropriate in the other relevant zones, recognising that both networks "are nationally significant infrastructure and require protection against reverse sensitivity effects."²⁴ As set out in evidence of Dr Chiles and Ms Butler, the general sound insulation and ventilation controls that apply in the Business and Business Town Centre

¹⁸ Evidence of Pam Butler at paragraph 4.6.

¹⁹ Evidence of Stephen Chiles at paragraph 4.1.

²⁰ Submission 968.51

²¹ Section 42A Report Hearing 22 – Infrastructure – D0 Infrastructure and Energy Overall, at [288].

²² Section 42A Report Hearing 22 – Infrastructure – D0 Infrastructure and Energy Overall, at [286].

²³ Section 42A Report Hearing 22 – Infrastructure – D0 Infrastructure and Energy Overall, at [289].

²⁴ Section 42A Report Hearing 22 – Infrastructure – D0 Infrastructure and Energy Overall, at [289].

Zones are not adequate to address the effects of rail noise and vibration. In our submission, the existing provisions in Appendix 1.6 of the Proposed Plan, which currently provide the standards for acoustic insulation in the Business and Business Town Centre Zones, would be inappropriate to control the effects of rail noise and vibration.

- 2.16 As explained in the evidence of Dr Chiles, the internal design sound level in Appendix 1.6 is inadequately defined and ambiguous. There are also no vibration controls and no alternative compliance pathways. By contrast, the provisions proposed by KiwiRail for sensitive activities near the rail corridor set out robust requirements, while allowing flexibility so that compliance can be demonstrated in the most efficient manner for different circumstances.²⁵ The acoustic standards sought by KiwiRail have also been specifically designed and developed to ensure that noise and vibration effects associated with the rail corridor are appropriately managed.
- 2.17 By applying these controls to the other relevant zones, the Council officer has acknowledged that they are both necessary and appropriate to manage the effects of rail noise and vibration. As explained in Ms Butler's evidence, there is no justification for distinguishing between the Business and Business Town Centre Zones and other zones in applying these provisions.²⁶ The Business and Business Town Centre Zones both enable sensitive uses as permitted activities, and should therefore include the same acoustic controls as other zones that enable such uses.
- 2.18 KiwiRail continues to seek that these controls be applied across all relevant zones where the development of sensitive activities is enabled in proximity to the rail corridor, including the Business and Business Town Centre Zones. In our submission, the provisions sought by KiwiRail are necessary and appropriate to ensure the ongoing safe and efficient operation of the railway network is not compromised by reverse sensitivity effects, and that sensitive land uses are protected from the effects of rail noise and vibration in terms of health and amenity.

Response to submitter evidence

- 2.19 Kāinga Ora has asserted that the relief sought by KiwiRail is not an appropriate planning response to managing the issue of reverse sensitivity in the context

²⁵ Evidence of Stephen Chiles at paragraph 6.4.

²⁶ Evidence of Pam Butler at paragraph 4.17.

of rail noise and vibration, in terms of section 32 of the RMA.²⁷ We disagree with the reasoning of Kāinga Ora in this regard.

- 2.20 In our submission, the relief sought by KiwiRail is reasonable, appropriate and necessary to ensure that rail noise and vibration effects are effectively managed, in terms of both effects on sensitive land uses and the potential for reverse sensitivity effects on the rail network. It is also not novel.
- 2.21 Under sections 32 and 32AA of the RMA, KiwiRail must demonstrate that the noise and vibration provisions sought through its submission are the most appropriate way to achieve the objectives of the Proposed Plan, including by:
- (a) identifying other reasonably practicable alternatives for achieving the relevant objectives;
 - (b) assessing the efficiency and effectiveness of the provisions in achieving those objectives; and
 - (c) identifying and assessing the benefits and costs of the provisions.
- 2.22 The evidence provided by Kāinga Ora does not include any discussion of the relevant objectives of the Proposed Plan in assessing the appropriateness of KiwiRail's relief. Instead, Kāinga Ora provides a generic assessment of the acoustic controls proposed by KiwiRail against undefined criteria. Section 32 does not call for an assessment of the general appropriateness of provisions. It is a contextual analysis, requiring examination of the extent to which a set of provisions are the most appropriate *way to achieve the objectives of the relevant plan*.²⁸
- 2.23 The relief sought by KiwiRail gives effect to a range of objectives in the Proposed Plan.²⁹ These objectives provide for the management of noise and vibration effects from the operation of the rail corridor, in terms of avoiding, remedying or mitigating such effects on neighbouring land uses, as well as protecting the railway network from potential reverse sensitivity effects. Relevant objectives include:
- (a) Objective 4.4.1, which directs that the health and wellbeing of people and communities are protected from adverse effects;

²⁷ Evidence of Philip Stickney on behalf of Housing New Zealand Corporation (Planning) dated 29 September 2020.

²⁸ RMA, s32(1)(b).

²⁹ Evidence of Pam Butler at paragraph 4.16.

- (b) Objective 6.1.6, which seeks that infrastructure is protected from reverse sensitivity effects, and that its construction, operation, maintenance, repair, replacement and upgrading is not compromised; and
- (c) Objective 6.4.1, which directs that infrastructure be provided for and integrated with subdivision, use and development.

2.24 In our submission, the relief sought by KiwiRail is the most appropriate way to achieve the above objectives, as it provides land use controls that will protect the railway network from potential reverse sensitivity effects, and mitigate the effects of rail noise and vibration on sensitive activities in proximity to the rail corridor while still allowing development to occur where appropriate.

Reasonably practicable alternatives to relief sought by KiwiRail

2.25 Section 32 of the RMA requires the identification of other reasonably practicable alternatives for achieving the objectives of the Proposed Plan set out in paragraph 2.23. Possible alternatives to the relief sought by KiwiRail that are reasonably practicable in terms of section 32 include:

- (a) maintaining the provisions included in the notified version of the Proposed Plan (ie do nothing); or
- (b) amending the Proposed Plan in the way recommended by the Council officer (ie including KiwiRail's proposed provisions in some zones but not others).

2.26 We assess the efficiency and effectiveness of these options against the relief sought by KiwiRail in turn below.

Notified provisions

2.27 As notified, the Proposed Plan contained some provisions seeking to manage the interface between new sensitive land uses and the effects of rail noise and vibration. These included:

- (a) a requirement for buildings containing sensitive land uses to be set back at least 5 metres from the rail corridor in the Residential, Rural, Country Living and Village Zones;³⁰

³⁰ Chapter 16 Residential Zone – 16.3.9.2 P1(a)(i); Chapter 22 Rural Zone – 22.3.7.2 P1(a)(i); Chapter 23 Country Living Zone – 23.3.7.2 P1(a)(i); Chapter 24 Village Zone – 24.3.6.2 P1(a)(i).

- (b) non-complying activity status for sensitive land uses in other zones, including the Industrial, Industrial Heavy and Reserve Zones;³¹ and
- (c) a requirement for dwellings in the Business and Business Town Centre Zones to meet prescribed internal noise levels (provided in Appendix 1 to the Proposed Plan).³²

2.28 Relying on the notified provisions, without the amendments sought by KiwiRail, could be considered efficient, to the extent that less action will be required from applicants (in terms of there being fewer provisions that they must comply with), and the number of consent applications could be less where new sensitive activities are not required to comply with the acoustic standards. This, in turn, could mean that less resourcing is likely to be required from the Council (in terms of reviewing consent applications and monitoring or enforcing compliance).

2.29 However, this option is far less effective than KiwiRail's proposed relief in achieving the objectives of the Proposed Plan. Fewer acoustic controls within the Proposed Plan will allow for a greater number of people to be exposed to the effects of rail noise and vibration, which could, in turn, result in greater adverse health and amenity effects and increase the potential for reverse sensitivity effects arising from complaints or objections from those affected. The potential for such effects will be even more likely, and their extent even greater, where the few controls that are in place are not tailored to effectively manage the effects of rail noise and vibration.

2.30 In our submission, the potential for efficiency resulting from fewer acoustic controls is outweighed by the reduced efficacy in implementing the clear and directive objectives of the Proposed Plan.

Council officer recommendation

2.31 The Council officer has recommended that the acoustic controls sought by KiwiRail be included in the Residential, Rural, Country Living and Village Zones, but excluded from the Business, Business Town Centre, Industry, Industry Heavy and Reserve Zones.

2.32 This option is reasonably efficient, as the acoustic controls sought by KiwiRail would still apply but would be limited to certain zones. Fewer landowners will

³¹ Chapter 20 Industrial Zone – 20.1.3 NC1; Chapter 21 – 21.1.3 NC1; Chapter 25 – 25.1.3 NC1.

³² Chapter 17 Business Zone – 17.3.6 P1(a)(ii); Chapter 18 Business Town Centre Zone – 18.3.8 P1(a)(iii).

therefore be subject to these controls, which could result in lower compliance costs for both landowners and the Council.

- 2.33 For the reasons set out above, however, excluding KiwiRail's proposed relief from the Business and Business Town Centre Zones is not an effective way to achieve the objectives of the Proposed Plan. The Business and Business Town Centre Zones both include enabling provisions in relation to sensitive land uses, with a number of such uses being listed as permitted activities.³³ Without additional controls designed to address the effects of rail noise and vibration, sensitive uses in these zones will not be adequately mitigated against such effects. Such an outcome is not the most efficient and effective way to achieve the objectives of the Proposed Plan.

Relief sought by KiwiRail

- 2.34 The provisions sought by KiwiRail, if included in the Residential, Rural, Country Living, Village, Business and Business Town Centre Zones, provide the most efficient and effective way to achieve the objectives of the Proposed Plan.

- 2.35 In terms of efficiency, as explained in Dr Chiles' evidence, the controls sought by KiwiRail do not represent the most restrictive option in terms of acoustic standards imposed on sensitive activities. Rather, the criteria are set at a moderate level to provide reasonable protection for such activities from the effects of rail noise and vibration. As explained in the evidence of Dr Chiles:

- (a) The indoor noise limits sought by KiwiRail are only proposed to apply to a noise effects area within 100 metres from the rail corridor. While this will not capture all adverse rail noise effects (ie those that extend beyond 100m from the railway), it will address the most significant effects and avoid land use controls being imposed on properties unnecessarily.³⁴
- (b) The maximum rail noise level to be met in bedrooms is 35 dB $L_{Aeq(1h)}$, which is higher (ie more lenient) than the limit recommended by the World Health Organisation.³⁵ Dr Chiles' evidence confirms that this a pragmatic approach that will address the most significant effects of

³³ Rules 17.1.2 P4 and P10, and Rules 18.1.2 P2 and P7. Education facilities and child care facilities are also permitted in the Business Zone – see Rules 17.1.2 P5 and P6.

³⁴ Evidence of Stephen Chiles at paragraph 4.3(a).

³⁵ The World Health Organisation, Environmental noise guidelines for the European region, 2018, recommend a criterion of 44 dB L_{night} but applied outside buildings and averaged over the night period for a year, resulting in internal sound levels of approximately 30 dB.

rail noise and vibration, without imposing undue constraints on development of noise sensitive activities.³⁶

- (c) The proposed indoor vibration limit would only apply within 60 metres of the railway corridor, which means that some rail vibration effects will not be addressed through these controls. However, Dr Chiles' considers this to be a practical approach that will sufficiently address the most significant effects and is consistent with a Norwegian Standard NS 8176:2017.³⁷

2.36 The rules sought by KiwiRail do not seek to completely restrict the development of sensitive activities in proximity to the railway corridor. KiwiRail's relief provides an efficient and pragmatic means of protecting sensitive land uses from rail noise and vibration, and do not impose an unreasonable control on persons seeking to develop near the railway corridor. It reflects an integrated approach to planning that seeks to allow development to occur in a way that appropriately manages the potential effects of, and effects on, the ongoing use and operation of the rail corridor.

2.37 In our submission, the relief sought by KiwiRail is also the most effective way to implement the objectives of the Proposed Plan, as it will ensure that all zones in which sensitive land uses are enabled as permitted activities include provisions requiring such uses to be mitigated against the effects of rail noise and vibration. The efficacy of the provisions sought by KiwiRail is illustrated by their inclusion in a number of other second generation district plans throughout New Zealand, including Christchurch, Dunedin, Tauranga, Hamilton, Palmerston North and Hutt City.

2.38 KiwiRail's proposed acoustic controls also give effect to the Waikato Regional Policy Statement ("**WRPS**"). The WRPS contains a number of objectives and policies that seek to protect infrastructure from adverse effects associated with inappropriate land use and development. These are discussed in detail in the evidence of Ms Butler.³⁸ In our submission, the provisions sought by KiwiRail are necessary to ensure that the Proposed Plan gives effect to these aspects of the WRPS in accordance with section 75(3) of the RMA.

³⁶ Evidence of Stephen Chiles at paragraph 4.3(b).

³⁷ Evidence of Stephen Chiles at paragraph 4.3(c).

³⁸ Evidence of Pam Butler at paragraphs 7.1 to 7.3.

Costs and benefits of relief sought by KiwiRail

- 2.39 Kāinga Ora has asserted that relief sought by KiwiRail "disproportionately places costs on the community".³⁹ However, Kāinga Ora has not provided any evidence as to why the potential increased cost of construction associated with additional acoustic controls is such that the cost to the community will be disproportionate to any benefit.
- 2.40 As set out in Annexure B to Mr Wood's evidence for Waka Kotahi, the cost of the mitigation measures sought by KiwiRail and Waka Kotahi has been independently assessed by Acoustic Engineering Services Limited. This assessment found that the installation of such measures would typically result in a 0% to 2% increase in construction costs for new dwellings.⁴⁰ This percentage is also applicable for additions to buildings where all building components are newly made.
- 2.41 KiwiRail submits that this percentage increase in cost is not disproportionate to the benefits of the proposed acoustic controls, which include protection of the health and amenity of sensitive land uses in accordance with WHO guidelines and international standards for noise and vibration, as well as mitigating the risk of potential reverse sensitivity effects on the railway corridor.

Response to rebuttal evidence

- 2.42 The rebuttal evidence for Kāinga Ora raises concerns regarding the ambiguity of the term "alteration" in the context of the outdoor noise control sought by Waka Kotahi.⁴¹ KiwiRail is not seeking the inclusion of that control, however the term "alteration" is also used in the controls for internal noise that are jointly sought by KiwiRail and Waka Kotahi.
- 2.43 Ms Butler, for KiwiRail, and Mr Wood, for Waka Kotahi, have developed a revised set of provisions to resolve the concern raised by Kāinga Ora. These are set out in Appendix A to Ms Butler's summary statement.

³⁹ Evidence of Philip Stickney at paragraph 5.22.

⁴⁰ Evidence of Mike Wood for Waka Kotahi NZ Transport Agency, Annexure B, Attachment 1; Acoustic Engineering Services Limited, Report Reference AC20063 – 01 – R2: Cost of traffic noise mitigation measures, 12 June 2020.

⁴¹ Rebuttal Evidence of Philip Stickney on behalf of Kāinga Ora (6 October 2020) at paragraph 3.4(a).

3. EARTHWORKS ASSOCIATED WITH REGIONALLY SIGNIFICANT INFRASTRUCTURE

3.1 KiwiRail's submission sought amendments to some of the permitted activity standards that apply to earthworks associated with infrastructure within Landscape and Natural Character Areas, as follows:

- (a) Rule 14.3.1.3(3)(b)⁴² – KiwiRail seeks that this rule be amended to provide for the use of clean fill in addition to aggregate or metal on any access track or associated with laying underground infrastructure; and
- (b) Rule 14.3.1.3(3)⁴³ – KiwiRail seeks that earthworks associated with regionally significant infrastructure are exempted from the limits for works within ONFs and ONLs.

3.2 The Council officer has recommended the rejection of KiwiRail's submission points that sought amendments to Rule 14.3.1.3(3)(b) and Rule 14.3.1.3(3).⁴⁴ The recommendation was made on the basis that the notified permitted activity standards are appropriate and are designed to facilitate activities with no or minimal adverse effects.⁴⁵ KiwiRail disagrees with the conclusion of the Council officer in this regard.

3.3 KiwiRail supports the objective of the Proposed Plan's provisions relating to Landscape and Natural Character Areas, however, in some areas these controls are proposed where existing regionally significant infrastructure, such as the railway network, is already in located.⁴⁶ However, in imposing these controls, it is critical that the Proposed Plan appropriately provides for necessary works associated with the operation, maintenance, repair or upgrading of this infrastructure within Landscape and Natural Character Areas.

3.4 The changes sought by KiwiRail are intended to ensure that these standards appropriately enable critical operational, maintenance, repair and upgrading

⁴² The numbering of Rule 14.3.1.3 is different in the section 42A report version of the Proposed Plan to that set out in the notified version. Under the section 42A version, the relevant provisions are Rule 14.3.1.3(j) and (l).

⁴³ The numbering of Rule 14.3.1.3 is different in the section 42A report version of the Proposed Plan to that set out in the notified version. Under the section 42A version, the relevant provisions are Rule 14.3.1.3(j), (m)-(o).

⁴⁴ See Section 42A Report Hearing 22 – Infrastructure – D3 14.3 General Infrastructure at [117(h)].

⁴⁵ See Section 42A Report Hearing 22 – Infrastructure – D3 14.3 General Infrastructure at [103]-[106].

⁴⁶ Evidence of Pam Butler at paragraph 6.3.

works on those parts of the railway corridor located within these areas.⁴⁷ This is consistent with the objectives and policies of the Proposed Plan, which provide that:

- (a) infrastructure is to be developed, operated, maintained and upgraded to enhance the wellbeing of the District;⁴⁸
- (b) the development, operation, maintenance, repair, replacement, upgrading and removal of infrastructure is provided for throughout the District by recognising the functional and operational needs of infrastructure, as well as its locational, route and design constraints;⁴⁹
- (c) the efficiency and effectiveness of regionally significant infrastructure is to be protected;⁵⁰ and
- (d) the construction, maintenance, upgrading and operation of the transport network is promoted.⁵¹

3.5 In our submission, the provisions sought by KiwiRail are necessary to ensure that the Proposed Plan gives effect to these objectives and policies.

4. CONCLUSION

4.1 KiwiRail supports the resource management outcomes sought by the Council through the Proposed Plan.

4.2 However, KiwiRail seeks that the Commissioners amend the Proposed Plan as follows:

- (a) insert new provisions requiring all new buildings, and alterations to existing buildings, containing sensitive activities that are located within 100m of the rail corridor to be appropriately mitigated in relation to noise and vibration;⁵² and
- (b) amend the permitted activity standards that apply to earthworks associated with infrastructure within Landscapes and Natural Character Areas to enable KiwiRail to undertake critical operation,

⁴⁷ Submissions 968.82 – Rule 14.3.1.3(3).

⁴⁸ Objective 6.1.1.

⁴⁹ Policy 6.1.2.

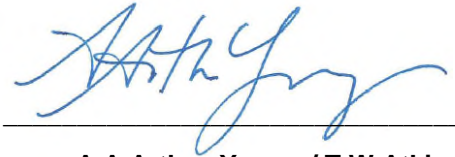
⁵⁰ Policy 6.1.17.

⁵¹ Policy 6.5.2.

⁵² Submission numbers 986.51 - 986.52.

maintenance, repair and upgrading works on those parts of the railway corridor located within these areas.⁵³

DATED 15 October 2020

A handwritten signature in blue ink, appearing to read 'A A Arthur-Young / T W Atkins', positioned above a horizontal line.

A A Arthur-Young / T W Atkins
Counsel for KiwiRail Holdings Limited

⁵³ Submission 986.82 – Rule 14.3.1.3(3).