

## Before Independent Hearing Commissioners In Ngāruawāhia

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Under the Resource Management Act 1991

In the matter of submissions and further submissions by the NZ Transport Agency on the Proposed Waikato District Plan

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### Legal submissions for the NZ Transport Agency (Waka Kotahi)

Dated: 15 October 2020

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## 1 Introduction

1.1 The NZ Transport Agency (**Waka Kotahi**) lodged a large number of submissions and further submissions on the Infrastructure topic in the Proposed Waikato District Plan (**PWDP**). Waka Kotahi generally supports the amendments to the transportation provisions set out in the revised s42A report but has the following two remaining concerns:

- a **Trip generation rules for new development** – Waka Kotahi strongly supports the inclusion of appropriate trip generation rules for high traffic generating activities within district plans, as well as the inclusion of clear guidance as to the information that needs to be provided for resource consent applications. The proposed provisions provide a practical and workable means of ensuring that the adverse effects of high traffic generating activities are appropriately assessed and plan readers are aware of the level of transportation assessment that needs to be undertaken.
- b **Rules to protect sensitive activities from road traffic noise and vibration alongside state highways** – The health effects of noise and vibration from transportation corridors are well established and widely accepted by acoustic consultants. Waka Kotahi has requested the replacement of the existing ‘no build’ setbacks established in the PWDP with new permitted activity standards for activities within 100m of the state highway carriageway. Both Waka Kotahi and KiwiRail have invested a considerable amount of work into the proposed rules. Waka Kotahi has also produced a lengthy and comprehensive s32 analysis to support its proposed approach. The s42A report writer largely recommends accepting Waka Kotahi and KiwiRail’s proposed provisions.

1.2 Neither the trip generation rules nor the reverse sensitivity rules are novel or new. Similar provisions have been adopted in district plans around the country as outlined by Mr Wood, Dr Chiles and Mr Swears. Waka Kotahi considers that the rules are critical to ensure the efficient operation of the state highway network and to manage the potential health effects of transport noise in relation to those living and working adjacent to the state highway network.

## 2 Scope of submissions

2.1 These submissions address the following matters:

- a Waka Kotahi’s statutory objectives and functions;

- b Waka Kotahi's position in relation to the trip generation rules and ITAs;
- c Waka Kotahi's position in relation to noise and vibration issues; and
- d The statutory framework.

### **3 Waka Kotahi's statutory objectives and functions**

3.1 Waka Kotahi is a Crown entity with the sole powers of control and management for all purposes of all State highways.<sup>1</sup> The key objectives, functions, powers, and responsibilities of Waka Kotahi are derived from the Land Transport Management Act 2003 (**LTMA**). Section 95(1) of the LTMA requires Waka Kotahi to:

- a Contribute to an effective, efficient, and safe land transport system in the public interest;<sup>2</sup> and
- b Manage the state highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with the LTMA and the Government Roadway Powers Act 1989.<sup>3</sup>

3.2 Section 96(1)(a) of the LTMA also requires Waka Kotahi to exhibit a sense of social and environmental responsibility when meeting its statutory obligations and undertaking its functions under the LTMA. In addition, the current Government Policy Statement on Land Transport 2018/19-2027/2028 has a strategic priority to reduce the negative effects of transport recognising the public health benefits of reducing the harmful effects of land transport related noise.

3.3 Toitū Te Taiao Our Sustainability Action Plan builds on the GPS and sets out the commitment of Waka Kotahi to environmental sustainability and public health in the land transport sector. The Plan states that approximately 38,000 people are exposed to high levels of noise from state highways and major local roads in Aotearoa – many more are exposed if we use European standards.<sup>4</sup>

### **4 Trip generation and ITAs**

4.1 Mr Wood has considered Ports of Auckland's evidence and proposes some amendments to the trip generation and ITA provisions as set out in his summary statement.<sup>5</sup> Waka Kotahi's approach is predicated on the following premises:

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<sup>1</sup> Section 93(2) LTMA.

<sup>2</sup> Section 95(1)(a), LTMA.

<sup>3</sup> Section 95(1)(c), LTMA.

<sup>4</sup> Toitū Te Taiao Our Sustainability Action Plan, page 29.

<sup>5</sup> Annexure A of Mr Wood's summary statement.

- a Equivalent car movements (**ECM**) is a more appropriate measure than the trip generation rates used by the notified version of the PWDP because it caters for the effects associated with heavy vehicles.<sup>6</sup>
- b The thresholds for permitted activities should relate to both the level of ECM generated by the activity and the type of road used to access that activity.<sup>7</sup>
- c ITAs are a critical tool to enable Waka Kotahi and the Council to consider the impact of high trip generating activities on the adjacent road network and any mitigation required. As noted by Mr Wood, mitigation options may include not just physical works but also initiatives to influence behaviour change including opportunities for walking, cycling and new technology.<sup>8</sup> The PWDP provisions should be clear about the level of information and assessment that needs to be provided with applications for resource consents for high traffic generating activities.

4.2 Mr Wood and Mr Swears have acknowledged Mr Arbuthnot's concerns that the rule will significantly lower the maximum permitted traffic generation from the Horotiu Industrial Precinct which was settled by the Environment Court.<sup>9</sup> They agree that the Horotiu Industrial Precinct should be exempt from Waka Kotahi's proposed rules and the Environment Court endorsed rules should apply. Similarly, Waka Kotahi does not oppose the inclusion of different rules for other areas where specific traffic generation rules are in place as the result of Environment Court proceedings or other circumstances where a detailed transportation assessment has already been carried out.

## 5 Noise and vibration

5.1 As explained by Mr Wood and Dr Chiles, it is well established and accepted that noise and vibration from transportation networks has the potential to cause adverse health and amenity effects on people living nearby.<sup>10</sup> These health effects have been recognised by the World Health Organisation (**WHO**) in various guidelines<sup>11</sup> including WHO's Environmental noise guidelines for the European region, 2018. Exposure to high levels of noise is linked to health issues such as obesity, hypertension and heart disease, stress and anxiety.<sup>12</sup> There is widespread agreement amongst the acoustic profession with the information

<sup>6</sup> Mr Wood's summary statement, paragraph 3.2 and Mr Swears EIC paraps 4.1(d), 7.7.

<sup>7</sup> Mr Swears EIC, paragraph 5.18.

<sup>8</sup> Mr Wood's EIC, paragraph 6.2(b).

<sup>9</sup> Mr Wood's summary statement, paragraph 3.10, Mr Swears' summary statement, paragraph 3.8.

<sup>10</sup> Mr Woods' EIC, Appendix B, Section 2.

<sup>11</sup> WHO Guidelines for community noise, 1999; WHO Night noise guidelines for Europe, 2009; WHO Buren of disease from environmental noise, 2011.

<sup>12</sup> Dr Chiles' EIC, paragraph 2.2.

published by WHO, regarding the effects of road and rail noise on people and communities.<sup>13</sup> Waka Kotahi's "Guide to the management of effects on noise sensitive land uses near to the state highway network (2015)" describes how Waka Kotahi works with local authorities, landowners and developers to manage reverse sensitivity effects in relation to noise sensitive activities adjacent to state highways.

- 5.2 Waka Kotahi's submissions<sup>14</sup> requested new rules to protect new sensitive activities establishing adjacent to existing or planned state highways from road traffic noise and vibration. The new rules would also apply to alterations to existing sensitive activities. As discussed by Mr Wood in his evidence, the proposed rules are intended to replace the notified "no build" setbacks within the PWDP.<sup>15</sup>
- 5.3 Dr Chiles explains in his evidence that the current rules in the Operative Waikato District Plan provide that constructing or altering buildings is a non-complying activity within 25m of state highways.<sup>16</sup> This rule addresses only the most significant noise and vibration effects from state highways. Similarly, the notified PWDP contains rules requiring sensitive land uses to be set back 35m from the edge of the state highway designation in the Rural, Countryside Living and Village zones and 25m in the Residential zone.<sup>17</sup>
- 5.4 As Dr Chiles notes, the PWDP already contains insulation and ventilation requirements for sensitive land uses seeking to establish in a wide range of noisy environments but not adjacent to roads or railways. Given the well accepted health effects of noise and vibration from roads outlined above, it is illogical and inconsistent from the perspective of protecting human health for the PWDP to contain land use controls for sensitive activities near a range of other sources but to largely omit controls near road and rail networks.<sup>18</sup>
- 5.5 The proposed new rules were attached to Mr Wood's evidence as Annexure A, and an updated version is provided in Mr Wood's summary statement dated 15 October. In a nutshell, new or altered buildings within 100m of a state highway that contain noise sensitive activities will be permitted provided that compliance is achieved with specified standards. The standards provide alternative mitigation responses which allow flexibility to respond to the circumstances of each specific site whilst ensuring health is protected. This approach recognises that there is not

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<sup>13</sup> Dr Chiles' EIC paragraph 2.1.

<sup>14</sup> Submission numbers 742.244 and 742.182.

<sup>15</sup> Mr Wood's EIC, paragraph 5.1.

<sup>16</sup> Dr Chiles' EIC, paragraph 3.4.

<sup>17</sup> Mr Wood's EIC, paragraph 5.14.

<sup>18</sup> Dr Chiles' EIC, paragraph 3.6.

a 'one size fits all' solution and the appropriate mitigation will depend on a wide range of factors such as building design, orientation and topography.

- 5.6 Unlike the existing rules in the notified PWDP where a resource consent for a discretionary activity is required, this approach provides for activities that do not comply with the permitted activity standards to be assessed as a restricted discretionary activity.
- 5.7 A very thorough section 32 analysis has been developed by Waka Kotahi in support of the proposed approach as discussed further in paragraphs 6.7 and 6.8 below.

*Section 42A report*

- 5.8 The updated 42A report dated 13 October 2020 recommends accepting Waka Kotahi's submission subject to the following:
- a The s42A report writer does not agree that the noise rules relating to sensitive activities should apply to the Business Zone on the basis that there are already adequate acoustic insulation provisions in the Business Zone. Mr Wood's view remains, that the current rules in the Business Zone are inadequate to address road noise and vibration due to ambiguity around the internal design sound level, and the lack of ventilation requirements.
  - b The s42A report writer does not agree with the new Outdoor Noise rule proposed by Waka Kotahi, in the evidence in chief of Mr Wood. The s42A report writer considers the provisions would be better placed in the subdivision chapter of the plan. Mr Wood remains of the view outlined in his evidence in chief that the Outdoor Noise rule as proposed should be included within the noise provisions, in Appendix I – Acoustic Insulation.
  - c The s42A report writer does not agree that Objective 6.16 and Policy 6.1.7 which address reverse sensitivity effects should specifically reference "existing and planned" infrastructure. Mr Wood remains of the view that it would be beneficial to include reference to "existing and planned" infrastructure to ensure consistency with the Waikato Regional Policy Statement and ensure that state highway corridors which are subject to a designation, but where the road has not yet been constructed, are covered.

*Kāinga Ora's rebuttal evidence*

- 5.9 Mr Wood's summary statement contains a response to the matters raised in Kāinga Ora's rebuttal evidence. After considering that evidence, Mr Wood has suggested an amendment to the rules to clarify what is covered by an "alteration" to a building. The proposed amendment makes it clear that creation of additional, new habitable rooms is covered and provides a definition of "habitable room".
- 5.10 While Mr Styles acknowledges that there is a need to manage the noise and vibration effects of land transport on activities sensitive to noise,<sup>19</sup> there is disagreement between Dr Chiles and Mr Styles regarding the appropriate way to manage these effects. Dr Chiles notes while some district councils around the country use smaller distances for these types of controls, the Waikato District has relatively high traffic volumes and all its state highways are relatively well used.<sup>20</sup> Both Dr Chiles and Mr Wood remain of the view that Waka Kotahi's proposed rules are appropriate and provide a pragmatic way to manage adverse effects on human health from noise and vibration and in addition, potential reverse sensitivity effects, with several different alternative mitigation measures available.

## 6 Statutory framework

### *Sections 74(1) and 75 RMA*

- 6.1 The Council **must** prepare and change its district plan **in accordance with** the matters listed in 74(1). Section 75 sets out the requirements for the contents of district plans. The statutory framework for considering district plans and plan changes was set out in *Colonial Vineyards Limited v Marlborough District Council*.<sup>21</sup> Each of the matters relevant to the rules proposed by Waka Kotahi is addressed is addressed below.

### *Functions under section 31 (section 74(1)(a))*

- 6.2 District plan provisions **must** be designed to **accord with** and **assist the** local authority to carry out its functions under section 31. Section 31(b) requires councils to control any actual or potential effects of the development of land on the environment. The trip generation and ITA rules will provide the Council with the means to assess and control any transportation effects resulting from high traffic generating land use activities.
- 6.3 Section 31(d) confers the function of controlling emission of noise and the mitigation of the effects of noise on Council. It is well established in caselaw that

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<sup>19</sup> Mr Styles' EIC, paragraphs 1.2(a) and

<sup>20</sup> Dr Chiles rebuttal, paragraph 3.5.

<sup>21</sup> [2014] NZEnvC 55.

these effects include reverse sensitivity effects and that councils may make rules for the purpose of controlling such effects.<sup>22</sup>

*Relevant NPS (section 75(3))*

- 6.4 District plan provisions must give effect to any national policy statement. The new NPS-UD is now in force. Mr Stickney argues that the reverse sensitivity rules proposed by Waka Kotahi will “potentially erode the potential of the outcomes expressed in the NPS-UD to be realised”.<sup>23</sup> Mr Stickney provides no evidence that such development potential will in fact be “eroded”. The rules proposed by Waka Kotahi do not prevent urban development but simply require mitigation to address the potential health effects on sensitive activities seeking to establish adjacent to existing state highway corridors.
- 6.5 Mr Stickney’s analysis cherry-picks the aspects of the NPS-UD objectives that support an increase in urban development potential but completely overlooks other critical aspects of these objectives including the requirement in Objective 1 to create “well functioning urban environments” that “enable people to provide for their... health and safety”. Waka Kotahi’s proposed noise and vibration rules will assist in achieving that outcome. Waka Kotahi’s approach is consistent with section 14 of the Kāinga Ora Homes and Communities Act 2019 which requires Kāinga Ora to provide housing solutions that provide “good quality, warm, dry and healthy rental housing”.

*Section 32 requirements*

- 6.6 Section 32 requires an examination of:
- a The extent to which the objective(s) of the proposal are the most appropriate way to achieve the purpose of the Act. No changes to the objectives are proposed.
  - b Whether the policies and methods of the proposal are the most appropriate way to achieve the objective(s) by:
    - i Identifying other reasonably practicable options for achieving the objectives;

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<sup>22</sup> See for example, *Auckland Regional Council v Auckland City Council* [1997] NZRMA 205.

<sup>23</sup> Mr Stickney’s EIC, paragraph 5.34.



- ii Assessing the efficiency and effectiveness of the policies and methods in achieving the objectives; and
- iii Giving reason for deciding on the proposed policies and methods.

6.7 The s32 assessment of the noise and vibration rules attached to Mr Wood's evidence<sup>24</sup> is extremely comprehensive. It contains a methodical analysis of the rules against each of the requirements of s32. Significant time and costs have been invested into preparing the assessment and instructing independent consultants to quantify the cost of various traffic noise insulation measures.

6.8 The s32 report prepared by the Council contains an analysis of the trip generation rules contained in the notified version of the PWDP. As noted by Mr Wood in his evidence, the Council's s32 report already contains an analysis of the objectives and policies in the PWDP relating to traffic effects from new development and the notified trip generation rule. In his view, similar costs and benefits apply to the rules proposed by Waka Kotahi. Mr Wood's evidence is that Waka Kotahi's rules provide the correct balance between ensuring that small scale development that result in a very low level of adverse effects can proceed without the need for unnecessary resource consents and ensuring that development that accesses roads higher in the road hierarchy and/or is of a scale that may generate adverse traffic effects is appropriately assessed.

## **7 Witnesses**

7.1 Waka Kotahi has lodged the following evidence in support of its submission:

- a Transportation – Mr Swears;
- b Noise and Vibration – Dr Chiles; and
- c Planning and Corporate – Mr Wood.

7.2 All three experts have also prepared summaries of their evidence to assist the Hearing Panel and are available to answer questions.

## **8 Conclusion**

8.1 As already noted above, Waka Kotahi generally supports the Infrastructure chapter but seeks the inclusion of two key rules in the PWDP.

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<sup>24</sup> As noted by Mr Wood in his EIC at 5.16 (footnote 12), the s32 report has been provided in draft format and is currently going through internal review process.

- 8.2 Waka Kotahi is not asking for a prohibition on development within 100m of a state highway. It simply asks that such development is designed in a way that will ensure that the potential health effects identified by the WHO and widely recognised by various district councils around New Zealand are addressed when new development is proposed.
- 8.3 Similarly, Waka Kotahi seeks the inclusion in the PWDP of workable and readily understandable trip generation thresholds that directly relate to the road hierarchy and allow potential transportation effects to be assessed by Council and Waka Kotahi. Waka Kotahi's proposed provisions also contain clear directions as to what level of transport assessment needs to be included with resource consent applications to ensure that any potential effects on the transportation network can be assessed.

Dated this 15<sup>th</sup> day of October 2020

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