

**BEFORE THE WAIKATO DISTRICT COUNCIL HEARINGS PANEL**

**IN THE MATTER** of the Resource Management Act 1991  
("RMA")

**AND**

**IN THE MATTER** of the Proposed Waikato District Plan  
("Proposed Plan")

**Summary Statement of Pam Butler Senior RMA Adviser**

**Submitter: KiwiRail Holdings Ltd, submitter 986**

**HEARING 22 – Infrastructure**

**1. INTRODUCTION**

1.1 My name is Pam Butler and I am the Senior RMA Advisor for KiwiRail Holdings Limited ("KiwiRail"). My qualifications and experience are set out in my primary evidence. This summary statement will focus on the following key outstanding issues for KiwiRail, as discussed in my primary evidence:

- (a) addition of new provisions relating to rail noise and vibration in various zones;<sup>1</sup>
- (b) amendments to Policy 6.1.7 – Reverse sensitivity;<sup>2</sup> and
- (c) amendments to permitted activity standards for earthworks.<sup>3</sup>

**2. SUMMARY OF EVIDENCE**

**Rail noise and vibration**

2.1 A particular concern for KiwiRail is the potential for reverse sensitivity issues to arise where sensitive land uses are allowed to locate in proximity to the railway corridor. It is critical that KiwiRail is able to operate the rail network as required to meet demand.

2.2 While KiwiRail is mindful of its neighbours and aware of its RMA obligations, it is not possible to internalise these effects (in particular rail noise and vibration) in all cases. By way of example, KiwiRail's noise complaints database shows that there is a correlation between urban development near the rail corridor and the number of noise complaints received.<sup>4</sup>

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<sup>1</sup> Evidence of Pam Butler (29 September 2020) at Appendix A.

<sup>2</sup> Evidence of Pam Butler (29 September 2020) at [5.2] and [5.3].

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

<sup>4</sup> Evidence of Pam Butler (29 September 2020), at [4.4] and [4.5].

- 2.3 My evidence sets out the new provisions relating to rail noise and vibration that KiwiRail seeks be inserted into the Proposed Plan.<sup>5</sup> These provisions, which would apply in certain zones, require new buildings or alterations to existing buildings for a sensitive land use within 100 metres of the railway corridor boundary to be mitigated against rail noise and vibration. In my view, these provisions strike the appropriate balance between the onus on existing lawful emitters to manage their effects and the onus on new sensitive activities to protect themselves against such effects.
- 2.4 The Council officer has recommended that KiwiRail's submission be accepted in part, with provisions similar to those sought by KiwiRail proposed to be added to the Residential, Rural, Country Living and Village Zones.<sup>6</sup> However, the Council officer has not recommended that the provisions extend to other zones addressed in KiwiRail's submission. KiwiRail supports the Council officer's view in relation to the Industrial, Industrial Heavy and Reserve Zones, but KiwiRail does not support the Council officer's conclusions regarding the Business and Business Town Centre Zones.<sup>7</sup> The requirements and acoustic standards included within the Business and Business Town Centre Zones are not sufficient to manage the adverse effects associated with rail noise and vibration.
- 2.5 The acoustic standards sought by KiwiRail have been specifically developed to ensure that noise and vibration effects from rail activities are appropriately managed. In my opinion, there is no justification for relying on other more general noise provisions in the Business and Business Town Centre Zones when these rail-specific controls have been included in other zones. I remain of the view that the acoustic controls sought by KiwiRail should also apply in these zones, as both zones include provisions that enable the development of sensitive uses as permitted activities. KiwiRail therefore seeks the amendments to the Proposed Plan as set out in my evidence.<sup>8</sup>
- 2.6 KiwiRail supports the addition of new Section 7 to Appendix 1 of the Proposed Plan. I agree with Dr Chile's that the recommended provisions should be amended to appropriately provide for noise and vibration associated with both the railway and state highway networks.

### **Reverse sensitivity policy**

- 2.7 KiwiRail's submission sought that Policy 6.1.7 be amended to include reference to existing and planned infrastructure.<sup>9</sup> The Council officer has recommended that KiwiRail's submission be rejected, and proposed a number of recommended amendments to Policy 6.1.7.<sup>10</sup>

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<sup>5</sup> Evidence of Pam Butler (29 September 2020) at [4.6] and [4.10].

<sup>6</sup> Section 42A Report Hearing 22 – Infrastructure – D0 Infrastructure and Energy Overall at [290] and [291(a)].

<sup>7</sup> 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.

<sup>8</sup> Evidence of Pam Butler (29 September 2020) at [4.17].

<sup>9</sup> Submission 986.35.

<sup>10</sup> Section 42A Report Hearing 22 – Infrastructure – D13 Chapter 6 at [219].

2.8 KiwiRail has reviewed the Council officer's amendments and is satisfied that Policy 6.1.7 will protect the continued operation of the rail network from potential adverse reverse sensitivity effects, and ensure that the construction of any future rail infrastructure is not compromised by such effects. On this basis, KiwiRail accepts the Council officer's recommendation.

### **Earthworks associated with regionally significant infrastructure**

2.9 KiwiRail's submission seeks amendments to some of the permitted activity standards that apply to earthworks associated with infrastructure located within Landscape and Natural Character Areas, Significant Amenity Landscapes, High or Outstanding Natural Character Areas of the coastal environment, Outstanding Natural Features or Outstanding Natural Landscapes. The Council officer recommended that KiwiRail's submission be rejected.<sup>11</sup>

2.10 KiwiRail supports the objective of the Proposed Plan's provisions relating to Landscape and Natural Character Areas. However, it is critical that controls designed to protect these areas appropriately provide for necessary works associated with regionally significant infrastructure. As notified, Rule 14.3.1.3(3)(b) and Rule 14.3.1.3(3)(c)-(e) will restrict KiwiRail's ability to carry out these works, which are essential to the safe and efficient operation of the rail network.<sup>12</sup>

2.11 I consider that it is appropriate that the Proposed Plan includes provisions that enable KiwiRail to carry out essential works within Landscape and Natural Character Areas.

## **3. RESPONSE TO REBUTTAL EVIDENCE**

3.1 I have reviewed the rebuttal evidence of Mr Stickney, for Kāinga Ora, as well as the rebuttal evidence provided by the Council officer. My responses are set out below.

### **Council rebuttal**

3.2 I support the Council officer's conclusions regarding the appropriateness of the provisions sought by KiwiRail and Waka Kotahi to manage noise and vibration effects associated with their activities, including the amendments proposed by Dr Chiles in his primary evidence.<sup>13</sup>

3.3 However, I disagree with the Council officer's view in relation to the application of these provisions to the Business and Business Town Centre Zones. The Council officer maintains the view that the provisions sought by KiwiRail and Waka Kotahi should not apply in these zones due to the other acoustic standards that apply to dwellings within these zones.<sup>14</sup> For the reasons set out in my primary evidence and summarised above, KiwiRail continues to seek that the noise and vibration controls also apply in those zones.

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<sup>11</sup> See Section 42A Report Hearing 22 – Infrastructure – D3 14.3 General Infrastructure at [117](h).

<sup>12</sup> Evidence of Pam Butler (29 September 2020) at [6.4].

<sup>13</sup> Section 42A Report Hearing 22 – Infrastructure – Rebuttal Evidence at [11]-[12] and [18]-[22].

<sup>14</sup> Section 42A Report Hearing 22 – Infrastructure – Rebuttal Evidence at [17].

### **Kāinga Ora rebuttal**

- 3.4 In his rebuttal, Mr Stickney raises concerns regarding the ambiguity of the term "alteration" in the context of the outdoor noise control sought by Waka Kotahi for new buildings or alterations to existing buildings containing activities sensitive to noise.<sup>15</sup> Although KiwiRail is not seeking the same outdoor noise control as Waka Kotahi, the controls relating to internal noise levels, sought by both KiwiRail and Waka Kotahi, also apply to alterations to existing buildings containing sensitive activities.
- 3.5 KiwiRail agrees that the scope of the term "alteration" could be refined to provide greater clarity regarding which alterations are captured. I agree with the amendments proposed by Mr Wood, for Waka Kotahi, to make it clear that the noise and vibration controls sought by KiwiRail only apply to alterations that relate to the development of habitable rooms that contain noise sensitive activities. These amendments are set out in **Appendix A** to my summary statement.

### **4. CONCLUSION**

- 4.1 I support the majority of the Council officer's recommendations on KiwiRail's submission points outlined in my primary evidence. Where KiwiRail does not accept the Council officer's recommendations on its submission points, I request the Proposed Plan be amended as set out in my primary evidence and further refined in this summary statement. I consider that the changes sought by KiwiRail are consistent with the purposes of the RMA and appropriately give effect to the objectives and policies of the WRPS and the Proposed Plan.

**Pam Butler**

**15 October 2020**

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<sup>15</sup> Rebuttal Evidence of Philip Stickney on behalf of Kāinga Ora (6 October 2020) at [3.4(a)].

## APPENDIX A

Further amendments shown in **red**

### Rules 16.3.9.2, 22.3.7.2, 23.3.7.2 and 24.3.6.2

P1	[...]
P2	(a) Any new building or alteration to an existing building, <b>where the alteration will create a habitable room</b> , for a sensitive land use within 100m of a state highway or legal boundary of a rail corridor must comply with Section 7 of Appendix 1 – Acoustic Insulation.
RD1	Any new building or alteration to an existing building, <b>where the alteration will create a habitable room</b> , for a sensitive land use within 100m of a state highway or legal boundary of a rail corridor that does not comply with the condition of Rule [...]

### Rules 17.3.4.X and 18.3.X

P1	(a) Any new building or alteration to an existing building, <b>where the alteration will create a habitable room</b> , for a sensitive land use within 100m of a state highway or legal boundary of a rail corridor must comply with Section 7 of Appendix 1 – Acoustic Insulation.
RD1	Any new building or alteration to an existing building, <b>where the alteration will create a habitable room</b> , for a sensitive land use within 100m of a state highway or legal boundary of a rail corridor that does not comply with the condition of Rule [...]

### Section 7 of Appendix 1 – Acoustic Insulation

	<u>Activity sensitive to noise near a State Highway or Rail Corridor</u>
<u>All zones – at any point within 100 metres from the legal boundary of any State Highway or rail network</u>	<u>Activity status: Permitted</u> 1. <u>Indoor noise</u> <u>Any new building or alteration to an existing building, where the alteration will create a habitable room, that contains an activity sensitive to noise [...]</u> [...] 3. <u>Indoor vibration</u> <u>Any new buildings or alterations to existing buildings, where the alteration will create a habitable room, containing an activity sensitive to noise [...]</u>

### New definition – Habitable room

**Habitable room:** Means any room that is part of a building used for any noise sensitive activity, apart from those rooms used solely for the purposes of an entrance, passageway, toilet, bathroom, laundry, garage or storeroom.