

BEFORE THE INDEPENDENT HEARING PANEL

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

AND

IN THE MATTER a submission by KiwiRail Holdings Limited (submitter S442 and further submitter FS236) (**KiwiRail**) on Te Tai o Poutini Plan ("**Plan**")

**MINUTE 59 - MEMORANDUM OF COUNSEL ON BEHALF OF
KIWIRAIL HOLDINGS LIMITED**

14 FEBRUARY 2025

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MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of KiwiRail Holdings Limited ("**KiwiRail**") in response to Minute 59 issued by the Panel dated 4 February 2025, which invited further comments from submitters in response to the Reporting Officer's s42A Addendum Report #2 on Noise ("**Addendum**").¹
2. The Addendum was accompanied by appendices that recommended changes to provisions based on the outcomes of expert conferencing and a memorandum from the Council's noise expert (Mr Peakall). The matters KiwiRail was invited to respond to are:²
 - (a) whether the noise and vibration setbacks requested by KiwiRail should be measured from the designation boundary, rather than the edge of the tracks of the railway line;
 - (b) whether an overlay could be produced that does not apply to unaffected properties;
 - (c) whether apparent mapping anomalies can be addressed;
 - (d) why KiwiRail's relief in relation to overlays and setbacks do not take into account topography, compared to the recommended Road Noise Overlay, which does; and
 - (e) detail train volumes on the Rapahoe line.

Measurement from the designation boundary is the most appropriate to cover affected properties

3. Mr Peakall considers that because of the nature of the designation, measuring the overlay from its boundary results in an overly conservative approach whereby noise and vibration insulation must be undertaken in areas where it is not realistically required.³ Mr Peakall also raised concerns about a limited array of anomalies with the maps provided by KiwiRail which mean additional area is included that should not be part of the overlay.⁴

¹ Reporting Officer's s42A Addendum Report #2 on Noise, authored by Ms Ruth Evans, dated 31 January 2025.

² Ibid, pp 6-11.

³ Addendum, page 9 and "Potential Kiwirail Overlay", p 2.

⁴ "Potential Kiwirail Overlay", authored by Mr Peakall, dated 23 January 2025 and appended to the Addendum, p 1-2.

4. The supplementary statement of evidence of Ms Heppelthwaite attached as **Appendix A** sets out why, from a "good planning" perspective, the noise and vibration overlay sought by KiwiRail should be measured from the rail designation boundary not the rail tracks.
5. It is critical that the Plan measures the overlay from the designation boundary, not the existing tracks. Within its rail corridor designation, KiwiRail can use the entirety of the designated land for rail activities. KiwiRail can move existing, or lay new, track anywhere within the designation boundary at any time as may be required for operational reasons – including for sidings, shunts or additional tracks.
6. If the overlay was measured from the rail tracks as they exist today, it would not adequately provide for KiwiRail's use of its designation for the life of the Plan. This is short sighted and has real world consequences, and will mean people will be adversely affected by noise and vibration arising from the railway.
7. Dr Chiles' evidence is the 100 metre overlay from the designation boundary is not a conservative approach; if anything, a 100 metre overlay width is, in some cases, likely to be too narrow. Dr Chiles' evidence is that setting a distance for the application of controls that includes most land affected by rail noise and vibration would ideally extend 200 metres from railways.⁵
8. A distance of 100 metres therefore represents a reasonable compromise if the aim is to capture the most affected sites without requiring assessment where building treatment is less likely to be required. However, measuring the overlay from the rail tracks means even less land is included in the overlay than the compromise position.
9. To appropriately avoid, remedy and mitigate adverse effects for the life of the Plan, it is important the overlay is measured from the boundary of the designation, rather than the current location of the rail tracks.
10. The measurement of noise and vibration overlays from the designation boundary has been confirmed by Councils and the Environment Court in a number of planning processes.⁶ Taking this approach in the Plan is following common practice and ensures planning consistency.

⁵ Statement of Evidence of Stephen Chiles on behalf of KiwiRail Holdings Limited, dated 6 August 2024 at Appendix A at [7.2] and [9.13].

⁶ Ms Heppelthwaite's supplementary statement sets out examples from district plans throughout the country.

Purported anomalies in mapping

11. Ms Heppelthwaite's evidence explains the process of providing the mapping to Ms Evans and Mr Peakall and the steps taken to "smooth out" the mapped overlay. In our submission the mapping provided by KiwiRail represents the land most affected by railway sound and vibration, which require the application of noise and vibration controls.

Topography

12. The Council Officers also query why KiwiRail's relief in relation to overlays and setbacks do not take into account topography nor take account of buildings screening effects, compared to the recommended Road Noise Overlay.
13. It is not correct the rail provisions do not take account of topography. Contrary to Mr Peakall's statement,⁷ the rail overlay does take account of building screening effects. The provisions proposed by KiwiRail allow for a permitted activity pathway where topography, such as hills, or structures, such as buildings, block line-of-sight from buildings located over 50 metres from the railway tracks. The proposed provisions set out by the Reporting Officer provide a building used by a noise sensitive activity will be permitted (without requiring acoustic treatment) where it:⁸

is at least 50 metres from any railway network, and is designed so that a noise barrier completely blocks line-of-sight from all parts of doors and windows to all points 3.8 metres above railway tracks

14. Accordingly, the KiwiRail proposed provisions, agreed to by the Council Officers, do take into account topography and building screening effects. This enables the particular characteristics of a property to be taken into account, and where appropriate screening is provided, the activity will be permitted without requiring acoustic treatment.
15. With respect to the comparison to the modelling provided for the Road Noise Overlay, Ms Heppelthwaite comments on the basis on which NZTA modelling takes into account topography as compared to the KiwiRail mapped lines. With respect to the taking of a modelling approach versus a mapping approach, KiwiRail's experience is modelled contours rather than mapping distance from rail is time consuming and unnecessary, and provides no material benefit. For example, after undertaking a lengthy and costly modelling process for the

⁷ "Potential Kiwirail Overlay", authored by Mr Peakall, dated 23 January 2025 and appended to the Addendum, p2.

⁸ Proposed provision NOISE - R3.2

Whangarei District, the resulting noise contour around the North Auckland Line to the south of the Whangarei extended further than 100 metres from the track virtually everywhere, and was therefore limited to 100 metres regardless. The 100 metres proposed in the rail overlay has robust evidential basis, and is pragmatic, and effective.

16. In response to the question "whether an overlay could be produced that does not apply to unaffected properties", in our submission, the overlay proposed by KiwiRail will not extend to unaffected properties. For the reasons set out above the 100 metres is appropriate, and the design of the rules proposed by KiwiRail allows for topography and screening to be accounted for.

Rapahoe Line

17. With respect to the request for information relating to the potential use of the Rapahoe Line, KiwiRail expects additional volumes onto the Rapahoe line within the next two years. In terms of volume, and based on signed contractual terms with a key rail client, a train will run on alternate days at a minimum, with this anticipated to increase into the future.

DATED: 14 February 2025



A A Arthur-Young / K L Gunnell
Counsel for KiwiRail Holdings Limited

APPENDIX A

Before the Hearings Commissioners

Under the Resource Management Act 1991 (the **RMA**)

In the matter of

a submission by KiwiRail Holdings Limited (submitter S442 and further submitter FS236) (**KiwiRail**) on Noise and Signs

and in the matter of Te Tai o Poutini Plan

Supplementary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited

Dated 14 February 2025

1 INTRODUCTION

- 1.0 My Primary Statement sets out my qualifications, commitment to comply with the Environment Court's Code of Conduct for Expert Witnesses (2023).
- 1.1 My Primary Statement describes KiwiRail's relief which includes seeking provisions for noise controls within 100 metres of the rail corridor, and vibration controls within 60 metres of the rail corridor ("**Rail Noise and Vibration Overlay**").
- 1.2 This statement responds to Minute 59 of the Independent Hearing Panel dated 4 February 2025, which invited further comment from submitters in response to the Reporting Officer's s42A Addendum Report #2 on Noise (**Addendum**).¹ The Addendum was accompanied by a memo prepared by Mr Peakall of Marshall Day Acoustics.²
- 1.3 In relation to the relief sought by KiwiRail, the Addendum³ includes the noise and vibration provisions generally agreed between the Reporting Planner and Mr Peakall. An outstanding area of disagreement is in relation to the measurement point for the Rail Noise and Vibration Overlay, with the Reporting Planner viewing rail tracks as the appropriate measuring point as compared to the rail designation boundary (as sought by KiwiRail). My preferred provisions are set out at **Attachment A**.
- 1.4 The Reporting Planner also makes comments in relation to the mapping provided by KiwiRail for the Rail Noise and Vibration Overlay. I respond to these comments in my statement below.

2 BOUNDARY IS MOST APPROPRIATE MEASURING POINT

- 2.0 I continue to support the measurement of the Rail Noise and Vibration Overlay from the rail designation boundary, not from the edge of the railway tracks.
- 2.1 Measuring noise and vibration controls from a designation boundary as opposed to railway tracks is a commonly accepted approach for

¹ Reporting Officer's s42A Addendum Report #2 on Noise, authored by Ms Evans, dated 31 January 2025.

² "Potential Kiwirail Overlay", authored by Mr Peakall, dated 23 January 2025 and appended to the Addendum.

³ Appendix 2 - Joint Witness Statement (Noise Chapter) appended to the Addendum.

mitigation and has been accepted by Councils and the Environment Court across the country. The table below contains examples from a selection of other district plans (bold my emphasis).

Plan	Provisions
Wellington	<p>NOISE -S4 sets out the acoustic insulation requirements for High Noise Areas</p> <p>NOISE-S5 sets out the acoustic insulation requirements for Moderate Noise Areas.</p> <hr/> <p>HIGH NOISE AREA means</p> <p>...</p> <p>b. 40m of a Railway designation, except where the railway is in a tunnel;</p> <p>MODERATE NOISE AREA means</p> <p>...</p> <p>b. The area between 40m and 100m of a Railway designation, except where the railway is in a tunnel;</p>
Kapiti	<p>NOISE-R14</p> <p>1. Any new or altered <i>habitable room</i> within a <i>building</i> that houses any <i>noise sensitive activity</i> (including rooms used for hospital recovery; but excluding rooms used for <i>visitor accommodation</i>, which is not <i>temporary residential rental accommodation</i>, outside of <i>residential zones</i>) on a <i>subject site</i> within any of the following:</p> <p>...</p> <p>e. within 100m of the boundary of a designation for rail corridor purposes; and</p>
Waikato	<p>NOISE-R44 Construction of a new building containing a sensitive land use within a State Highway or Rail Corridor Noise Control Boundary</p>

	New buildings are designed, constructed and maintained to ensure that any part of the building located within the State Highway or Rail Corridor Noise Control Boundary and containing an activity listed in Table 28 APP1
Selwyn	NOISE- R3 Noise Sensitive Activities within the State Highway and Railway Network Noise Control Overlays
Christchurch	6.1.7.2 Activity standards Sensitive activities near roads and railways a. The following activity standards apply to new buildings, or alterations or additions to existing buildings, intended for a sensitive activity: i. External sound insulation - Any new building intended for a sensitive activity, and any alteration or addition to an existing building intended for a sensitive activity, located within 80 metres of the boundary of any state highway or railway designation , or within 20 metres of the edge of the nearest marked traffic lane of a collector road, or within 40 Schedules to Decision 247 Supplementary Definitions decision and minor corrections metres of the edge of the nearest marked traffic lane of a Main Distributor, Local Distributor or Arterial road, shall either:
Western Bay of Plenty	4C.1.3.2 Noise Limits c. Noise sensitivity iii. In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 50m of the railway designation boundary , which contains ...

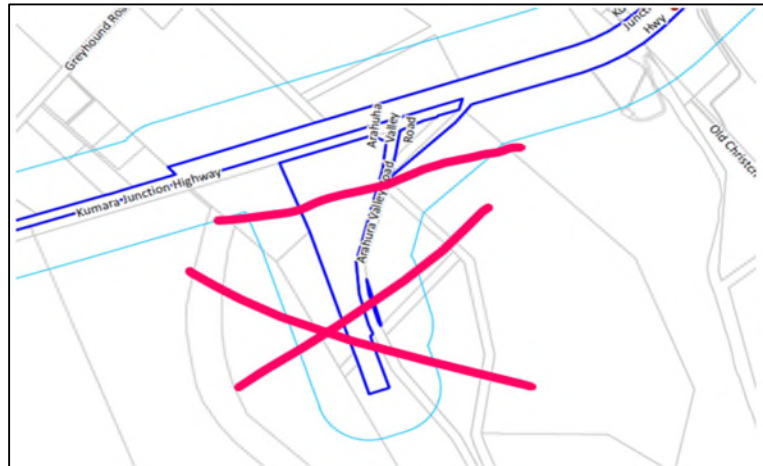
- 2.2 A key reason these rules are based on the measurement from the boundary of the rail designation is that rail track may move within the boundary. This is a whole of plan review process and the TTPP needs to account for ten years of development. This was acknowledged by Ms Evans in the Addendum; "measuring from the edge of the designation will account for tracks moving within the designation, as well as providing a set point to inform the mapping layer [...] [rail] track may move, and create noise effects on sensitive activities that were previously outside the 100m setback".⁴
- 2.3 Measuring from the designation boundary provides greater certainty as to what point the controls are applied from and future-proofs against movement of the railway tracks within the designation. In addition, the proposed provisions enable a site-specific response (design) as an outcome which will ensure mitigation is matched with likely effects.

3 OVERLAY MAPPING

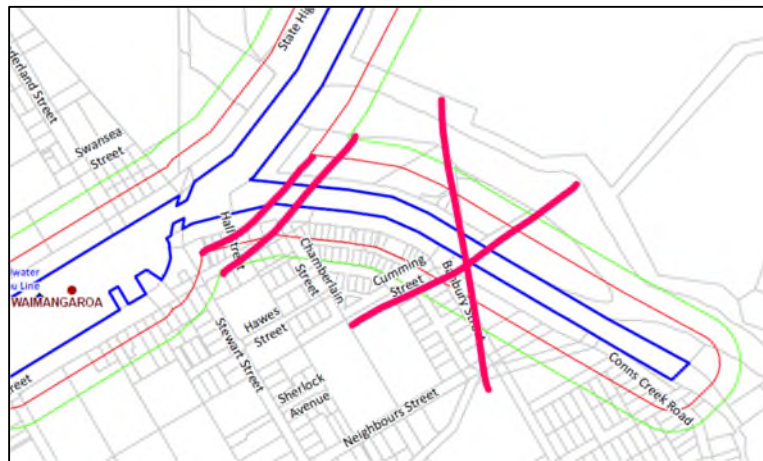
- 3.0 Mr Peakall has raised concerns about a limited array of anomalies with the maps provided by KiwiRail which mean additional area is included that should not be part of the overlay. Prior to supplying the mapping layer to Council officers, and with technical mapping support from KiwiRail's geospatial specialist and Team Lead Planning (Ms Grinlinton-Hancock), I made a detailed review of the designation, existing KiwiRail activities and land use (via aerial photograph) relative to draft noise and vibration overlays.
- 3.1 Examples of areas where the noise and vibration lines were adjusted were shared with Ms Evans and Mr Peakall and some are included below for reference (pink crosses reflect areas to be excluded from the overlays and pink lines showing where overlay should be located).

⁴ Addendum, page 8.

Removal of Overlay on Hokitika Line



Removal of Overlay on Stillwater–Ngākawau Line



- 3.2 The maps provided to Ms Evans and Mr Peakall were adjusted to "smooth out" areas such as those shown above. The adjustment of the overlays balances the exclusion of areas that are unlikely to generate any significant effects with ensuring adjacent land uses are provided with sufficient protection.
- 3.3 Dr Chiles' evidence sets out that the 100 metre noise and 60 metre vibration overlays have been set by KiwiRail as a policy decision and that both noise and vibration can extend beyond these distances respectively.⁵ Put another way, regardless of where the limits are set, there will always be variability in effects experienced.

⁵ Statement of Evidence of Stephen Chiles on behalf of KiwiRail Holdings Limited, dated 6 August 2024 at [6.5] and [7.2] and Appendix A at [9.13].

4 TOPOGRAPHY

- 4.0 Ms Evans comments the NZTA road noise contours taking into account topography, and KiwiRail's mapped lines not, this difference simply reflects the sophistication of the modelling currently available (NZTA has been able to undertake detailed terrain modelling as part of establishing its mapped layer).
- 4.1 Further, as has been pointed out in other district plan change processes, there are still limitations to using NZTA's modelled Road Noise Corridor.⁶

Cath Heppelthwaite
14 February 2024

⁶ For example, the Officer's written right of reply for Hearing 6/7 – Noise and Light of the Far North Proposed District Plan dated 6 December 2024 at [98] sets out that various factors—such as speed limit changes, road surface alterations, and road realignments—could impact the model's accuracy if not updated frequently.

Attachment A: Preferred Provisions.

Black Text: *Noise - recommended amendments to provisions - post hearing addendum version 31-1-25* with all changes accepted.

Red underline and ~~strikethrough~~: Preferred changes

NOISE - R3

Acoustic Insulation Requirements for New or Altered Buildings for Use by a Sensitive Activity

Activity Status Permitted

Where:

1. The building will be used by a sensitive activity and is located within the Road Noise Overlay shown on the planning maps where: [...]
2. ~~100m of the edge of the tracks of a railway line where any new or altered habitable room used for a sensitive activity and/or space used for sleeping:–~~ The building will be used by a sensitive activity and is located within the Rail Noise Overlay shown on the planning maps and:
 - i. ~~it is must be~~ designed, constructed and maintained to achieve a maximum internal noise level of 35 dB LAeq (1h). Compliance must be achieved based on an assumption of 70 LAeq (1h) at a distance of 12m from the railway track and shall be deemed to reduce at a rate of 3 dB per doubling of distance up to 40m, or
 - ii. it is at least 50 metres from any railway network, and is designed so that a noise barrier completely blocks line-of-sight from all parts of doors and windows to all points 3.8 metres above railway tracks
3. The building will be used by a sensitive activity and is located within the Rail Vibration Overlay shown on the planning maps and 60m of the edge of the tracks of a railway line where any new or altered habitable room and/or space used for sleeping must be designed, constructed and maintained to achieve vibration limits not exceeding 0.3mm/s (Class C criterion Maximum Weighted Velocity, Vw,95);
4. The 50 dBA Noise Contour boundary of Franz Josef Heliport or the 55 dB [...]