

Before Independent Hearing Commissioners

In Porirua

Under the Resource Management Act 1991 (the Act)

In the matter of a submission by the NZ Transport Agency (Waka Kotahi)
(submitter 82, further submitter 36) on the Proposed Porirua
District Plan

Legal submissions for the NZ Transport Agency (Waka Kotahi) – Hearing Stream 4 Noise and Vibration

Dated: 4 February 2022

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1 Introduction

1.1 The NZ Transport Agency (**‘Waka Kotahi’**) lodged submissions and further submissions¹ on the Proposed Porirua District Plan (**‘PDP’**) including submissions on the following topics within Hearing Stream 4:

- a Energy, Infrastructure and Transport topic: infrastructure and transport;
- b General District-Wide topic: light, signs and earthworks; and
- c General District-Wide topic: noise and vibration.

1.2 Waka Kotahi generally supports the amendments in the s42A report to the provisions covered by the topics listed in paragraphs 1.1(a) and (b) above. As set out in the Waka Kotahi evidence, there are some relatively minor issues remaining relating to those topics.² Those issues are adequately addressed in the evidence of Ms Jones (planning), Mr Braithwaite (planning issues relating to signs and lighting) and Mr Swears (transportation). Since they do not raise any legal issues, they are not covered in these submissions.

1.3 These legal submissions focus on noise and vibration issues. Waka Kotahi submits that a comprehensive and workable set of rules is required in the PDP to manage the adverse effects caused by new and altered buildings containing noise sensitive activities establishing near to existing state highways. Waka Kotahi generally supports the approach proposed by Council as recommended in the s42A report, but proposes some amendments to the provisions (in particular, NOISE-P4, NOISE-R5, Standards 1 and 3, and new Standards 3A and 7).

2 Scope of Submissions

2.1 These submissions address the following matters in relation to noise and vibration issues:

- a Waka Kotahi’s statutory objectives and functions;
- b The issue for noise sensitive activities establishing close to state highways;
- c The key changes sought by Waka Kotahi to the s42A report provisions;
- d The Kāinga Ora approach;

¹ Submission number 82 dated 20 November 2020, further submission number 36 dated 11 May 2021 and 16 June 2021.

² Claudia Jones EIC, 28 January 2022, Robert Swears EIC, 21 January 2022, and Luke Braithwaite EIC, 21 January 2022.

- e Outstanding issues from the noise conferencing;
- f The statutory framework;
- g Waka Kotahi witnesses; and
- h Concluding comments.

3 The statutory objectives and functions of Waka Kotahi

3.1 Waka Kotahi is a Crown entity with the sole powers of control and management for all purposes of all state highways.³ 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;⁴ 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 Roding Powers Act 1989.⁵

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.

3.3 In performing its functions, Waka Kotahi must give effect to the strategic priorities and transport outcomes set by the Government through the Government Policy Statement on Land Transport 2021/22-2030/31 ('**GPS**'). The GPS sets out four strategic priorities for the land transport system: safety; better travel options; improving freight connections; and climate change.⁶ The GPS also sets out the Minister of Transport's expectation that Waka Kotahi will have a greater role in long term, integrated planning, including:⁷

- a Encouraging consistent, good practice planning so that the interaction between transport use and land use is well managed;

³ Section 93(2), LTMA.

⁴ Section 95(1)(a), LTMA.

⁵ Section 95(1)(c), LTMA.

⁶ GPS, Overview section, page 6.

⁷ GPS, section 3.7.

- b Encouraging future-focused planning to provide certainty to the sector and communities; and
 - c Working collaboratively with local government to ensure that transport infrastructure effectively supports urban growth, including consideration of the extent to which urban development supports 'quality urban environments', improves transport choice, supports the reduction of greenhouse gas emissions, and is consistent with and has regard to spatial planning exercises.
- 3.4 *Arataki Our Plan for the Land Transport System 2021-2031* affirms Waka Kotahi's focus on reducing transport greenhouse gas emissions to tackle climate change and support the transition to a low-emission economy; and on improving public health as part of transitioning to a safe and healthy land transport system.
- 3.5 Toitū Te Taiao Our Sustainability Action Plan builds on the GPS and *Arataki* and sets out the commitment of Waka Kotahi to environmental sustainability and improving 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.⁸

4 The issue for noise sensitive activities establishing close to state highways

- 4.1 It is well accepted that noise and vibration from transportation networks has the potential to cause adverse health and amenity effects on people living nearby.⁹ These health effects have been recognised by the World Health Organisation ('WHO') in various guidelines including WHO's Environmental noise guidelines for the European region 2018.¹⁰ Exposure to high levels of sound from road networks can cause health effects including heart disease, hypertension, high annoyance, and sleep disturbance.¹¹ There is widespread agreement amongst the acoustic profession with the information published by WHO regarding the effects of road and rail noise on people and communities. Vibration from land-based transport is also associated with adverse effects such as annoyance and disturbance around existing road networks.¹²

⁸ Please note that the Toitū Te Taiao refers to the "European" standard but Dr Chiles notes that this should be a reference to the WHO standard. Toitū Te Taiao Our Sustainability Action Plan, page 29.

⁹ Dr Chiles' EIC, paragraph 4.1.

¹⁰ WHO Guidelines for community noise, 1999; WHO Night noise guidelines for Europe, 2009; WHO Bureau of disease from environmental noise, 2011.

¹¹ Dr Chiles' EIC, paragraph 5.3.

¹² Dr Chiles' EIC, paragraph 5.4.

- 4.2 The Waka Kotahi *Guide to the management of effects on noise sensitive land uses near to the state highway network (2015)* (which was reviewed by Dr Chiles)¹³ recognises the social, economic, and health benefits of managing interior working and living environments located near to state highways. Adverse effects, such as noise and vibration, can extend beyond the state highway boundary to affect sensitive receivers such as houses, schools and childcare facilities, hospitals, offices, hotels and motels.¹⁴ The guide notes that the management of noise is a shared responsibility:
- a Waka Kotahi is responsible for managing noise effects from new and altered roads (largely through designation conditions); and
 - b Landowners and developers are responsible for managing the noise effects of new noise sensitive activities seeking to establish adjacent to existing state highways.¹⁵
- 4.3 The guide sets out potential methods to manage the noise effects on new noise sensitive activities including the acoustic treatment of buildings.
- 4.4 Waka Kotahi has, for over a decade, also been working to ensure that district plans have a rational and consistent approach to road noise and vibration issues. Waka Kotahi and its consultants have worked with KiwiRail to draft the s32 report attached to Ms Heppelthwaite's evidence outlining the appropriate approach to controlling the health effects associated with noise sensitive activities locating close to existing state highways. The s32 report recommends a modelled noise contour line being established with activities 'inside' the contour being subject to specific requirements to provide health and amenity outcomes.
- 4.5 The notified PDP adopted an approach where new or altered buildings containing noise sensitive activities within a certain fixed distance of a state highway (distance depends on the speed limit) will be permitted if compliance is achieved with specified standards. The standards provide mitigation responses which allow flexibility to respond to the circumstances of each specific site, but ensuring that health and amenity is protected. Resource consent is required if any standard is not complied with.
- 4.6 The Waka Kotahi submission requested a replacement suite of rules and standards based on the assessment contained in the s32 report undertaken by Waka Kotahi as part of its work on various district plans throughout the country.

¹³ Dr Chiles' EIC, paragraph 1.4.

¹⁴ Ibid, page 2.

¹⁵ Dr Chiles EIC, paragraph 1.4

The submission sought a fixed distance approach, but the key change sought was to enable the utilisation of modelling information once it became available (by way of an advice note).

- 4.7 The s42A report rejected the replacement suite of rules and standards proposed by Waka Kotahi and instead recommended largely retaining the notified provisions. In light of Mr Smeaton's concerns regarding the Waka Kotahi replacement suite not 'fitting' the PDP format, Waka Kotahi revisited the issue and agreed to work with the existing provisions recommended in the s42A report, with some suggested amendments to the wording. Dr Chiles' view was that was that although the modelling approach is to be preferred, where modelling is not available, fixed distances also provide an effective control.¹⁶

5 Key changes sought by Waka Kotahi to the s42A report provisions

- 5.1 In terms of the objectives and policies, the key change Waka Kotahi has requested is the addition of the word 'health' in NOISE-P4 so that it reads "enable noise sensitive activities...when they minimise the potential for health and reverse sensitivity effects from noise, having regard to...".¹⁷ The addition of 'health' to NOISE-P4 is consistent with NOISE-O1 and the community outcomes specified in section 2.3 of the Greater Wellington Regional Policy Statement 2013 ('RPS') focusing on the protection of community health.

- 5.2 **Attachment A** of Ms Heppelthwaite's evidence contains an updated set of provisions, showing the changes requested by Waka Kotahi to the rules and standards set out in the s42A report. The key changes are:

NOISE-R5

- a Amendments to make it clearer that the rule applies to both new and altered buildings;
- b An increase to the fixed distance from 80m to 100m for speeds greater than 70km/h;¹⁸ and

¹⁶ Dr Chiles' EIC, paragraph 7.10.

¹⁷ Ms Heppelthwaite's EIC, paragraph 6.9 and Attachment A.

¹⁸ Dr Chiles' EIC, paragraph 7.7-7.10. Dr Chiles states that the 100m fixed distance appears to be agreed between him and Mr Lloyd, and there is no justification provided for the 80m distance in Mr Lloyd's evidence or the s42A report.

- c An amendment requiring compliance with two new standards proposed by Waka Kotahi (standard 3A and S7).¹⁹

NOISE-S1 (indoor design noise level)

- d Amendments to S1(1)(a) and (b) so that it applies to any noise sensitive activities (not just habitable rooms within buildings),²⁰ and so that the standard applies to all additions to buildings (by removing the 50m² minimum);²¹
- e Amendments to S1(2) to include other noise sensitive activities in addition to 'habitable room' and to include a 45dB noise level for libraries, clinics, consulting rooms, operating theatres and nurses stations;²² and
- f Deletion of the matters of discretion and replacement with matters relating to location, effects on health and amenity, and consultation.²³

Noise-S3 (mechanical ventilation)

- g New requirements for adjustable ventilation, equivalent volumes of spill air, and cooling and heating that is controllable by the occupant;²⁴ and
- h Deletion of the matters of discretion and replace with matters relating to location, effects on health and amenity, and consultation.²⁵

New NOISE-S3A (vibration)

- i New standard to control vibration, which applies to noise sensitive activities within 20m of the State highway;²⁶ and
- j New matters of discretion relating to effects on health and amenity, consultation, and special topographical/building features.

New NOISE-S7 (outdoor living spaces)

¹⁹ Addressed further in paragraphs 5.2(i) to (l) of these submissions, and in Dr Chiles' EIC, paragraphs 7.11 and 7.12 (outdoor) and 7.17-20 (vibration). Also see Ms Heppelthwaite's EIC, Attachment A.

²⁰ Dr Chiles EIC, paragraph 7.13.

²¹ Heppelthwaite EIC, paragraph 6.10-11.

²² Dr Chiles EIC, paragraph 7.13.

²³ Ms Heppelthwaite EIC, Attachment A.

²⁴ Dr Chiles EIC, paragraph 7.14-16. Dr Chiles states that with the notified version of NOISE-S3, residents would either have thermal discomfort with windows closed, or excessive noise with windows open, therefore he recommends mechanical ventilation requirements to provide thermal comfort to enable residents choice to open windows.

²⁵ Ms Heppelthwaite's EIC, Attachment A.

²⁶ Dr Chiles' EIC paragraph 7.17-7.20. Dr Chiles considers this is a pragmatic control to address the most severe effects on a community basis.

- k New standard to control outdoor living spaces associated with noise sensitive activities within 100m of the State highway for a 70km/h or higher speed limit and 50m of the State highway for a 70km/h or less speed limit;²⁷ and
- l New matters of discretion relating to location, alternative mitigation, reverse sensitivity, consultation and special topographical/building features.²⁸

6 The Kāinga Ora approach

6.1 Ms Williams' argument appear to be two-fold:

- a First, Ms Williams asserts that there is no evidence to demonstrate manifestation of reverse sensitivity effects on these networks. On this basis she requests that the objectives and policies relating to reverse sensitivity are deleted (along with all of the rules in the PDP that seek to protect the health of the occupants of noise sensitive activities seeking to establish next to the state highway).²⁹
- b Second, Ms Williams argues that although there may be some 'other effects' as set out in Mr Styles' evidence, she considers that the burden should not be placed on the receiving environment to manage the effects of the state highway on adjoining land uses with no corresponding requirement for onsite management of operational effects of the network.³⁰ She suggests that Waka Kotahi could reseal affected sections of corridor using smooth surfaces rather than chip seal, implement monitoring and maintenance measures to ensure that any imperfections or potholes in road surfaces are rectified, implement acoustic fences, and have regard to noise generation when setting speed limits.

6.2 Mr Styles clearly takes a different view in many respects, agreeing in expert conferencing that:

- a Existing noise and vibration effects from the state highway would not be controlled by the rules set out in the Noise provisions in the PDP, and that the rules only manage the establishment of new and altered activities sensitive to noise;³¹

²⁷ Ms Heppelthwaite's EIC, Attachment A.

²⁸ Ms Heppelthwaite's EIC, Attachment A.

²⁹ Ms Williams' EIC, paragraph 5.18.

³⁰ Ms Williams' EIC, paragraphs 5.18 and 12.5.

³¹ Road and Rail Noise and Vibration JWS, 1 February 2022, paragraph 8.

- b Controls on new and altered sensitive activities near existing state highways are warranted;³²
 - c A modelling approach would be preferable,³³ but on the basis of Dr Chiles' evidence that modelling is not available and not readily produced, if a fixed distance is used (as in the PDP) then 50m for lower speed areas (less than 70km/h) and 100m for higher speed areas (70km/h or more) is appropriate;³⁴
 - d In terms of the performance standards, the noise limits in Waka Kotahi's submission represent pragmatic controls consistent with NZ guidance;³⁵ and
 - e Controlling outdoor noise is also important from a health and amenity perspective.³⁶
- 6.3 Waka Kotahi is responsible for the maintenance and operation of around 11,000km of state highway. The s32 report attached to Ms Heppelthwaite's evidence estimates a cost of at least \$150m to comprehensively manage noise exposure for approximately 50% of persons currently exposed to noise above 64dB LAeq(24) from existing state highways. We understand from Dr Chiles that the remaining 50% would likely exceed a further \$150m, as it would likely involve treating individual buildings, and the cost is therefore difficult to estimate.
- 6.4 Putting aside the fact that Waka Kotahi has advised that there is simply no funding available for such a programme, there are also very significant practical issues associated with undertaking the work including:³⁷
- a Retrofitting acoustic barriers is limited by available land and/or ground conditions, creating potential visual dominance and shading issues, requires ongoing maintenance costs, and may not be effective for buildings of more than one storey;
 - b Low road noise surface cannot be laid directly on existing roads and requires rebuilding of the structural pavement; and
 - c Low noise road surfaces can provide a noise reduction, but at highway speeds is often not sufficient to reduce sound to below the WHO guidelines.

³² Road and Rail Noise and Vibration JWS, 1 February 2022, paragraph 10.

³³ Road and Rail Noise and Vibration JWS, 1 February 2022, paragraph 13

³⁴ Road and Rail Noise and Vibration JWS, 1 February 2022, paragraphs 15 and 16.

³⁵ Road and Rail Noise and Vibration JWS, 1 February 2022, paragraph 19.

³⁶ Road and Rail Noise and Vibration JWS, 1 February 2022, paragraph 20.

³⁷ Page 31 of the s32 report attached to Ms Heppelthwaite's EIC.

- 6.5 With respect, Ms Williams' suggestion that Waka Kotahi is able to implement an 'easy fix' to address the currently affected noise sensitive activities lacks any credible basis. In contrast, the installation of acoustic insulation (for example) is a simple, practicable, readily achievable and cost effective method for protecting new noise sensitive activities from noise effects from existing state highways. Two thirds of the district plans for the 67 districts in New Zealand contain requirements for sound insulation when dwellings are located in proximity to major roads.³⁸
- 6.6 Kāinga Ora's suggestion that there is no cost analysis in relation to the rules is also entirely incorrect. Waka Kotahi has had the costs assessed as set out in Attachment 3 of the s32 report attached to Ms Heppelthwaite's evidence. The acoustic insulation costs amount to 2% or less of the overall building costs.³⁹ In contrast, Kāinga Ora provides no evidence on the likely costs or whether up to an additional 2% in building costs is likely to impact the viability of land located immediately adjacent to the state highway. Similarly, there is no analysis of the effect on the sale price of the developed land if the development does not incorporate appropriate acoustic insulation. There is simply no evidence that the proposed provisions, which have been adopted by numerous councils around New Zealand, will constrain development. Many developers are already implementing the acoustic insulation that the proposed plan provisions would require.
- 6.7 Waka Kotahi's proposed approach to new development provides certainty to developers that they will be able to develop their land immediately and at minimal cost, rather than having to wait for currently unfunded network upgrades to be undertaken by Waka Kotahi. Even if funding was available, and an effective retrofitting solution could be found, it is completely unrealistic to expect Waka Kotahi to be able to address ad hoc development adjacent to various sections of state highway across the country as and when particular developers wish to develop.
- 6.8 Ms Williams has asked the Hearing Panel to delete all the provisions seeking to protect the occupants of noise sensitive activities establishing adjacent to state highways from noise effects and provides no solution to address the adverse effects agreed by the acoustic experts. This approach is not consistent with other district plans or the outcomes anticipated by the RPS which includes protecting

³⁸ Acoustic Engineering Services Limited memorandum dated 12 June 2020, page 1, Attachment 3 to the Waka Kotahi s32 report.

³⁹ Acoustic Engineering Services Limited memorandum dated 12 June 2020, Attachment 3 to the Waka Kotahi s32 report.

physical health and the adverse effects of infrastructure. The relevant objectives and policies are discussed further in paragraph 8.10 onwards below.

7 Outstanding issues from the noise conferencing

7.1 The outstanding issues are:

- a Whether the PDP should include vibration controls. Mr Styles (for Kāinga Ora) and Mr Lloyd (for Council) consider there is insufficient evidence to demonstrate that there is an effect that justifies vibration controls, whereas Dr Chiles considers that controls for new sensitive activities within 20m of the state highway are warranted to control health and amenity effects.
- b Level of ventilation controls. Dr Chiles considers that a system requiring air flow above Building Code requirements, and thermal controls is appropriate. Mr Lloyd disagrees. Mr Styles agrees that controls over and above the Building Code are required and notes that his views are very similar to Dr Chiles with minor wording differences. However the JWS makes it clear that further detail on this issue would require expertise beyond acoustics engineering.

7.2 Dr Chiles will be able to answer questions in relation to the outstanding issues, but our understanding is that the provisions recommended in the s42A report will largely address Dr Chiles' concerns (subject to his concerns about the vibration and ventilation controls referred to at 7.1 above), even if the outstanding concerns in the JWS are not resolved in accordance with Dr Chiles' opinion.

8 Statutory framework

Sections 74(1) and 75 RMA

8.1 The Council must prepare and change its district plan in accordance with the matters listed in s74(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*.⁴⁰ 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))

⁴⁰ [2014] NZEnvC 5.

- 8.2 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.
- 8.3 Section 31(d) confers the function of controlling emission of noise and the mitigation of the effects of noise on Council. Clearly this function includes the control of the health effects associated with noise sensitive activities locating adjacent to existing state highway infrastructure. It is also well established in caselaw that these effects include reverse sensitivity effects and that councils may make rules for the purpose of controlling such effects.⁴¹

Relevant NPS (section 75(3))

- 8.4 District plan provisions must give effect to national policy statements. The National Policy Statement on Urban Development ('**NPS-UD**') is now in force. The overall purpose of the NPS-UD is to enable urban development capacity. Objective 1 requires well-functioning urban environments that enable people and communities to provide for (amongst other things) their health and safety.
- 8.5 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. The NPS-UD in Subpart 2 requires evidence-based decision making. Section 3.1.1 requires that local authorities, when making or changing plans in ways that affect urban development, to use evidence about land and development markets to assess the impact of different regulatory and non-regulatory options for urban development in order to achieve well-functioning urban environments, and meet capacity demands. Council has undertaken a s32 analysis of the provisions. As noted above, Waka Kotahi has also undertaken a comprehensive s32 analysis including an assessment of the likely costs. The costs are not significant and there is no evidence that the proposed provisions will hinder development of land.

Section 32 requirements

- 8.6 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.

⁴¹ See for example, *Auckland Regional Council v Auckland City Council* [1997] NZRMA 205.

- 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;
 - 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.

8.7 Council has prepared a s32 analysis assessing the proposed provisions. That analysis is comprehensive and complies with the requirements of s32. In addition, the s32 assessment of the noise and vibration rules attached to Ms Heppelthwaite's evidence is extremely comprehensive. It also contains a methodical analysis of the provisions against each of the requirements of s32. Significant time and cost has been invested into preparing the assessment and instructing independent consultants to quantify the cost of various traffic noise insulation measures.

8.8 Waka Kotahi's s32 report recommends a mapping approach, based on noise contour modelling. The s32 report is intended to apply nationwide for a consistent approach to the extent possible. An overlay would apply, and the suite of rules and standards would only apply to the land subject to the overlay. As noted above, Waka Kotahi has worked with the framework recommended in the s42A report.

8.9 Dr Chiles, along with the experts for Council and Kāinga Ora agree that a modelling approach would be preferable.⁴² However, Dr Chiles advised that noise contours for the Porirua District are not available and are still being worked on. Even when they are available, they would have limitations because it would be based on data from a single point in time (for example, prior to Transmission Gully opening). Mr Chiles acknowledges that he is not aware of an existing dataset that could be used.⁴³ In light of the difficulties with a modelled approach, the noise experts all agree that if fixed distances are used, providing for 50m and 100m distances (depending on speed limit) is appropriate. Waka Kotahi agrees with that approach.

Regional Policy Statement (section 75(3)(c))

⁴² Road and Rail Noise and Vibration JWS, 1 February 2022, paragraph 13.

⁴³ Road and Rail Noise and Vibration JWS, 1 February 2022, paragraph 14.

- 8.10 When preparing its district plan, the Council must give effect to the RPS.
- 8.11 Ms Heppelthwaite sets out a comprehensive assessment of the objective and policies in the RPS.⁴⁴ She concludes that the most relevant provisions are Section 2.3, Section 3.3, and Policy 8:
- a Section 2.3 Community Outcomes for the Wellington region: *Healthy community – Our physical and mental health is protected. Living and working environments are safe, and everyone has access to health care. Every opportunity is taken to recognise and provide for good health.*
 - b Section 3.3 Energy, infrastructure and waste: *[...] The efficient use and development of such infrastructure can be adversely affected by development. For example, land development can encroach on infrastructure or interfere with its efficient use. Infrastructure can also have an adverse effect on the surrounding environment. For example, the operation or use of infrastructure can create noise which may adversely impact surrounding communities. These effects need to be balanced to determine what is appropriate for the individual circumstances.*
 - c Policy 8 and its explanation: *Policy 8: Protecting regionally significant infrastructure – regional and district plans. District and regional plans shall include policies and rules that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure.*
- [Explanation] [...] Protecting regionally significant infrastructure does not mean that all land uses or activities under, over, or adjacent are prevented. The Wellington Regional Council and city and district councils will need to ensure that activities provided for in a district or regional plan are compatible with the efficient operation, maintenance, and upgrading (where effects are the same or similar in character, intensity, and scale) of the infrastructure and any effects that may be associated with that infrastructure. Competing considerations need to be weighed on a case by case basis to determine what is appropriate in the circumstances.*
- 8.12 As noted above, Ms Heppelthwaite proposes that NOISE-P4 is amended to include reference to ‘health effects’ in line with the RPS. She states that whilst the focus of Policy 8 of the RPS is reverse sensitivity, infrastructure can have noise effects which generate health effects and these effects need to be addressed for

⁴⁴ Catherine Heppelthwaite EIC, 21 January 2022.

the reasons set out in Dr Chiles' evidence. Further, Ms Heppelthwaite supports the s42A recommendation to amend Objective 2 on the basis that it aligns with Policy 8 of the RPS.

9 Witnesses

9.1 Waka Kotahi has lodged the following evidence in support of its submission in relation to noise and vibration issues:

- a Catherine Heppelthwaite (Planning); and
- b Dr Stephen Chiles (Noise and Vibration).

9.2 Both experts have also prepared summaries of their evidence to assist the Hearing Panel and are available to answer questions.

9.3 Dr Chiles attended expert witness conferencing on Tuesday 1 February with Mr Styles for Kāinga Ora, and Mr Lloyd for Council. An agreed statement was produced setting out points of agreement and disagreement.⁴⁵

10 Concluding comments

10.1 There is a high degree of alignment between the acoustic experts engaged by Kāinga Ora, Waka Kotahi, KiwiRail and the Council. The acoustic experts agreed in expert conferencing that:

- a Controls on new and altered sensitive activities near existing state highways are warranted;
- b The use of modelled contours in preference to fixed distances is preferable but given that there is no noise contour dataset if a fixed distance is to be used the proposed distances are appropriate; and
- c Controlling outdoor noise is important from a health and amenity perspective and that 57 dB LAeq (24 hr) is a pragmatic level.

10.2 In relation to this PDP the Hearing Panel's choice is very straightforward:

- a Address the issue now by adopting the plan provisions proposed by the Council Officers, supported by extensive s32 analysis and also supported by Waka Kotahi and KiwiRail; or

⁴⁵ Road and Rail Noise and Vibration JWS, 1 February 2022,

- b Delete the provisions, shelve the issue until later and hope that a solution can be found in the future once noise sensitive activities have been established.

4 February 2022

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