

**BEFORE INDEPENDENT COMMISSIONERS**

**AT PORIRUA**

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

**AND**

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

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**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED IN  
RELATION TO HEARING STREAM 4**

**4 FEBRUARY 2022**

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## 1. SUMMARY

- 1.1 These submissions are prepared on behalf of KiwiRail Holdings Limited ("**KiwiRail**") in relation to those aspects of the Proposed Plan being addressed in Hearing Stream 4.
- 1.2 KiwiRail is a State-Owned Enterprise responsible for the management and operation of the national railway network. The rail network is an asset of national and regional importance. Rail is fundamental to the safe and efficient movement of people and goods throughout New Zealand. Recognising the importance of rail network, the Government has invested and continues to invest in the maintenance and expansion of the rail network to meet future growth demands and improve transport network efficiency.
- 1.3 The North Island Main Trunk Line ("**NIMT**") passes through the Porirua District. The NIMT is a critical component of the rail network that will be subject to growth in use as New Zealand moves towards a low-carbon economy.<sup>1</sup> With this anticipated growth and forecast population growth in Porirua, KiwiRail is already undertaking a range of specific rail upgrades and projects to support the growth in the Porirua District, including the Wellington Metro Upgrade Programme and various works under the Porirua Area Capacity Enhancements project.<sup>2</sup>
- 1.4 KiwiRail recognises the increasing pressures for urban intensification, and in particular, housing. KiwiRail is not opposed to development along the railway network and recognises the benefits of co-locating people and businesses near transport corridors. However, such development must be managed carefully. This is necessary to ensure both the safe and efficient operation of the rail network and that any development near the rail corridor is appropriately managed in a way that minimises adverse effects on the health and amenity of our communities. The Proposed Plan is well advanced in terms of ensuring that there are planning tools in place to achieve this.
- 1.5 KiwiRail supports the overall intent of the Proposed Plan and the approach of the Council in relation to the Chapters that are the subject of this hearing. Through the Section 42A report, the Reporting Officer has recommended amendments to the Proposed Plan in response to KiwiRail's submission.

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<sup>1</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [3.2].

<sup>2</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [3.1]-[3.4].

KiwiRail supports most of those recommendations, as identified in Ms Grinlinton Hancock's evidence.<sup>3</sup> Kāinga Ora has submitted in opposition to a range of the provisions in the Proposed Plan which relate to management of development near the rail corridor.

1.6 These submissions will focus on the key outstanding issues relevant to this hearing stream, being:

(a) the noise and vibration controls in the Proposed Plan for new and altered sensitive activities near the rail corridor; and

(b) the extent of a physical building setback from the rail corridor.

1.7 In our submission, and for the reasons provided in the evidence of Ms Grinlinton-Hancock and Dr Chiles, KiwiRail's relief is consistent with the purpose and principles of the RMA, and is the appropriate means of achieving the objectives and policies of the Proposed Plan as a whole.

## **2. RAIL NOISE AND VIBRATION**

2.1 Trains are large, travel at speed, and are for the most part in New Zealand, powered by diesel locomotives. These factors create noise and vibration effects in and around the rail corridor, which cannot be completely internalised. KiwiRail works hard to be a good neighbour for those living in proximity to the rail corridor, particularly as population growth and urban intensification continues to place pressure on these spaces. Dr Chiles outlines various common methods used by KiwiRail to minimise these effects.<sup>4</sup>

2.2 However, the reality is that (even with these methods implemented) not all noise and vibration from train movements can reasonably be internalised within the boundaries of KiwiRail's designation. Nor is KiwiRail required to internalise all effects or mitigate them to such an extent that there are no residual effects beyond its designation boundaries. Simply put, the RMA is not a "no-effects" statute.

2.3 Noise and vibration from the rail network can result in:

(a) health and amenity effects for landowners adjacent to the rail corridor; and

<sup>3</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [4.2]-[4.3].

<sup>4</sup> Evidence of Stephen Chiles, dated 21 January 2022, at [5.1]-[5.2].

- (b) reverse sensitivity effects on the operation of the lawfully established rail corridor.

### Health and amenity effects

- 2.4 As Dr Chiles has outlined in his evidence, sound and vibration from rail networks have the potential to cause adverse health effects on people living nearby.<sup>5</sup> These effects are well recognised by bodies such as the World Health Organisation and are underpinned by robust scientific research.<sup>6</sup>
- 2.5 Dr Chiles' also discusses a research project from 2019 which specifically addressed the applicability of international data on noise annoyance to New Zealand.<sup>7</sup> This study found that international noise response curves are generally applicable for the New Zealand population, although the New Zealand population may be slightly more noise sensitive.<sup>8</sup>
- 2.6 Mr Styles on behalf of Kāinga Ora recognises the widely accepted research on the potential annoyance from rail noise and adverse health effects, if it is not managed carefully.<sup>9</sup>

### Reverse sensitivity effects

- 2.7 Reverse sensitivity is a well-established planning principle and is a commonly recognised adverse effect for the purposes of the RMA.<sup>10</sup> It refers to the susceptibility of lawfully established effects-generating activities (which often cannot internalise all their effects) to complaints or objections about their lawful activities arising from the location of new sensitive activities, typically residential dwellings, nearby.
- 1.1 In the context of rail, reverse sensitivity effects arise where sensitive activities (such as dwellings) locate near the rail corridor, which is a long-established lawful activity in the Porirua district and the Wellington region more broadly.
- 2.8 Case law has long established the relevance of reverse sensitivity as an effect on the environment under the RMA.<sup>11</sup> It is an effect that can be considered in

<sup>5</sup> Evidence of Stephen Chiles, dated 21 January 2022, at [4.1].

<sup>6</sup> Evidence of Stephen Chiles, dated 21 January 2022, at [4.2] and [4.4].

<sup>7</sup> Evidence of Stephen Chiles, dated 21 January 2022, at [4.3].

<sup>8</sup> Evidence of Stephen Chiles, dated 21 January 2022, at [4.3].

<sup>9</sup> Evidence of Jon Styles, dated 21 January 2022, at [4.2].

<sup>10</sup> *AFFCO New Zealand v Napier City Council* NZEnvC Wellington W082/2004, 4 November 2004 at [29] as cited in *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673 at [60].

<sup>11</sup> See for example (not solely in relation to noise but also to other off-site adverse effects) *Wilson v Selwyn District Council* [2005] NZRMA 76; *Winstone Aggregates Ltd v Papakura District Council* NZEnvC Auckland A 96/98.

its own right under the RMA and must be avoided, remedied or mitigated. 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.<sup>12</sup>

### **Response to the Section 42A report**

- 2.9 Given the adverse effects that arise from the operation of the rail corridor, the co-existence of rail and sensitive land-uses, like housing, needs to be well planned. This is not a controversial concept. While KiwiRail must continue to manage its operations well, planning documents need to play their part in setting community expectations around effects from the rail corridor and by including appropriate development controls for residents of adjoining land.
- 2.10 The Noise Chapter of the Proposed Plan, as notified, included noise and vibration controls for new and altered sensitive activities in proximity to the rail corridor. KiwiRail is generally supportive of those provisions, and in its submission sought that these provisions be retained.
- 2.11 The Reporting Officer has recommended amendments to the noise provisions which KiwiRail largely supports. In particular, and as explained in the evidence of Ms Grinlinton-Hancock, the proposed amendments to NOISE-O2,<sup>13</sup> NOISE-S2<sup>14</sup>, NOISE-S3<sup>15</sup> and the definition of Noise Sensitive Activity<sup>16</sup> are accepted by KiwiRail.
- 2.12 The key matters in contention relate to NOISE-P4, NOISE-R5 and NOISE-S4.
- NOISE-P4 – Reverse Sensitivity from State Highways and Rail Network*
- 2.13 KiwiRail sought that NOISE-P4 be retained as notified. As identified in the evidence of Ms Grinlinton-Hancock, this submission was accepted in part by the Reporting Officer. The Reporting Officer has recommended including two additional considerations to have regard to where noise activities are developed adjacent to the rail corridor, being:<sup>17</sup>

<sup>12</sup> 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.

<sup>13</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [6.8(86.58)].

<sup>14</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [6.8(86.61)].

<sup>15</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [6.8(86.62)].

<sup>16</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [6.8(86.65)].

<sup>17</sup> Section 42A report (Noise) at [76].

- (a) consideration of existing topographical features and the mitigation these provide; and
- (b) the ability to mitigate vibration effects.

2.14 KiwiRail supports the addition of topographical features. However, as outlined in Ms Grinlinton-Hancock's evidence, KiwiRail does not support the additional consideration for vibration.<sup>18</sup> The drafting of this provision is, in our submission, inherently uncertain. The "ability" to mitigate vibration could be influenced by a range of factors and there is a risk that this drafting could be used by developers to avoid necessary mitigation on the basis that it is simply too costly or complex to implement mitigation measures. In our submission, this consideration should not be included in NOISE-P4.

*NOISE-R5 – Buildings in proximity to the NIMT*

2.15 The as-notified Proposed Plan includes the following controls on new and altered buildings containing noise sensitive activities near the rail corridor:

- (a) an internal noise limit (S2)<sup>19</sup> and ventilation requirements (S3) for within 100m of the railway line; and
- (b) a vibration limit (S4) within 30 metres of the railway line.

2.16 NOISE-R5 enables noise sensitive activities to be constructed as a permitted activity provided they are setback at least 30 metres from the railway line and the noise mitigation measures in (a) are complied with. Any new or altered noise sensitive activities within 30 metres of the railway line require resource consent as a restricted discretionary activity provided the noise and vibration controls in (a) and (b) are complied with.

2.17 As the Council has appropriately recognised by including these provisions in the Proposed Plan, it is responsible and prudent planning for any new sensitive activities near the corridor to be built with adequate acoustic and vibration insulation in place. KiwiRail strongly supports this and sought that NOISE-R5 to be retained as notified.<sup>20</sup>

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<sup>18</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [6.8(86.59)]

<sup>19</sup> The noise experts for KiwiRail, Waka Kotahi, Kāinga Ora and the Council all agree that the noise limits that must be complied with are reasonable, Joint Witness Statement, dated 1 February 2022, at [22].

<sup>20</sup> Submission number 86.60.

- 2.18 Dr Chiles has explained in his evidence that the approach taken by KiwiRail in supporting the Proposed Plan provisions is a pragmatic approach. His expert opinion is that while the controls in the notified Proposed Plan are a good starting point, he would recommend additional controls including vibration controls over a distance of at least 60m and for ventilation to provide thermal comfort.<sup>21</sup>
- 2.19 The Reporting Officer recommended amendments to the notified provisions in response to submissions. While KiwiRail supported NOISE-R5 as notified, Ms Grinlinton-Hancock has proposed further amendments to the rule to make the framework more enabling. This is through the removal of the 30m setback and allowing noise sensitive activities to be constructed as a permitted activity within a 100m of the rail line provided they comply with the noise mitigation measures (outlined above). The amendments in Ms Grinlinton-Hancock's evidence had the unintended effect of extending the vibration control within 100m of the rail line (rather than 30m which KiwiRail supported in the notified version of the Proposed Plan).
- 2.20 A revised version of NOISE-R5 has been included in **Appendix A** which corrects this and includes further amendments to simplify the application of the rule for plan users. We also note that the noise experts have agreed that it would be beneficial for the rail source noise level to be specified in the Proposed Plan when certifying whether the NOISE-S2 has been complied with.<sup>22</sup> KiwiRail supports this and in our submission, this could be usefully included as an advice note to NOISE-S2.

*NOISE-S4 – Vibration standards*

- 2.21 The as-notified version of NOISE-S4 requires all habitable rooms within noise sensitive activities to comply with Class C of Norwegian Standard 8176E:2005. Compliance with the standard is required to be demonstrated through a design certificate from a suitably qualified and experienced professional being provided to Council prior to the construction of any noise sensitive activity.
- 2.22 KiwiRail sought for NOISE-S4 to be retained as notified.<sup>23</sup> The Section 42A report recommends the rejection of KiwiRail's submission point, and the removal of railway vibration standard NOISE-S4.<sup>24</sup> The Reporting Officer has recommended this based on Mr Lloyd's advice.

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<sup>21</sup> Evidence of Stephen Chiles, dated 21 January 2022, at [6.2]-[6.6].

<sup>22</sup> Joint witness statement dated 1 February 2022 at [23].

<sup>23</sup> Submission number 86.63.

<sup>24</sup> Section 42A report (Noise) at [96].

- 2.23 Mr Lloyd does not dispute that there is an effect to be managed or that some controls are needed. His evidence is that NOISE-S4 is not an "efficient" method as the mitigation measures present a significant hurdle to development which developers may not realise.<sup>25</sup> It is clear from the expert conferencing undertaken that Mr Lloyd is concerned to ensure that the developers are simply aware of what the planning provisions require.<sup>26</sup>
- 2.24 KiwiRail continues to support the inclusion of NOISE-S4. Dr Chiles has addressed this comprehensively in his evidence and considers that the proposed removal of NOISE-S4 is inappropriate as:<sup>27</sup>
- (a) there are clear adverse effects produced as a result of railway vibration that are required to be mitigated;
  - (b) the proposed mitigation is in accordance with recognised vibration standards (being NZS 8176); and
  - (c) the vibration controls sought by KiwiRail for the rail network already reflect a pared back approach and reducing these controls further by imposing no vibration controls at all would leave the significant effects on buildings within the vicinity of the rail corridor unmitigated.
- 2.25 KiwiRail considers that NOISE-S4 is appropriately included as a permitted activity standard and has proposed further amendments in **Appendix A** to make it clearer to plan readers that compliance with this standard is necessary for all new and altered noise sensitive activities within 30m of the rail line.

#### **Response to submitter evidence**

- 2.26 Kāinga Ora has asserted that the noise and vibration controls in the Proposed Plan provisions do not provide an appropriate planning response to managing the issue of reverse sensitivity in the context of rail noise and vibration.<sup>28</sup> We disagree with the reasoning of Kāinga Ora and respond to their evidence below.

*A proactive approach to manage reverse sensitivity effects is appropriate*

- 2.27 Ms Williams, on behalf of Kāinga Ora, contends there is insufficient evidence of instances where complaints have led to constraints on rail operations.<sup>29</sup> The

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<sup>25</sup> Evidence of Nigel Lloyd, dated 1 December 2021, at [58].

<sup>26</sup> Joint Witness Statement, dated 1 February 2022, at [29] and [30].

<sup>27</sup> Evidence of Stephen Chiles, dated 21 January 2022, at [7.3]-[7.8].

<sup>28</sup> Evidence of Karen Williams, dated 21 January 2022, at [12.3].

<sup>29</sup> Evidence of Karen Williams, dated 21 January 2022, at [12.7] and [13.18].



crux of Kāinga Ora's position appears to be that there should not be controls on the location of sensitive activities near the rail corridor given that there is no evidence of complaints leading to disruptions in the operation of the rail network. This is a troubling argument.

- 2.28 The case law is clear that the *vulnerability* of an activity to reverse sensitivity effects is enough to warrant the implementation of protections for the activity in question (in this case, sensitive activities locating near the rail corridor). As a result, it is appropriate to consider the prospects of conflict and complaints that will be received in relation to the activity, rather than rely on the actual complaints received.<sup>30</sup>
- 2.29 While KiwiRail does receive complaints about its lawful operations, it is prudent to ensure that there are planning provisions in place to manage the potential effects before they actually transpire. In our submission, it is not a good planning outcome or approach, to allow development to occur without appropriate mitigation, wait for complaints or for people to suffer adverse effects, and then require operators of nationally significant infrastructure providers to constrain their operations. We need to be proactively planning for our communities in a way that ensures that residents adjoining the rail corridor are living in high quality environments and that the ongoing operation of the rail corridor is enabled without undue constraint.
- 2.30 In any case, complaints are only one indicator of noise and vibration effects on people. For a long-established noise source such as the NIMT, it is common for people not to complain even when there is material disturbance and harm to health. There are also many reasons people do not complain (for example they do not want problems with their landlord). These are the health and amenity effects described above and further detailed in the evidence of Dr Chiles. In our submission, these effects need to be (and are) appropriately managed through the inclusion of planning controls in the Proposed Plan.

*The burden is not placed solely on the surrounding environment*

- 2.31 Ms Williams contends that the provisions of the Proposed Plan do not provide an expectation that KiwiRail will manage its impacts on the receiving environment, and that this will instead be borne "solely" by the surrounding community.<sup>31</sup>

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<sup>30</sup> *Foster v Rodney District Council* [2010] NZRMA 159 at [96].

<sup>31</sup> Evidence of Karen Williams, dated 21 January 2022, at [13.17].

- 2.32 It is correct that the noise rules in the Proposed Plan relate to the receiving environment – they do not control KiwiRail activities. KiwiRail's existing rail network is primarily located on designated land. Those planning tools are not the subject of this hearing. The noise experts all agreed that these matters would not be controlled by the Noise Chapter in the Proposed Plan.<sup>32</sup> This is not controversial.
- 2.33 However, this does not mean that the burden is "solely" placed on landowners within the wider community as Ms Williams suggests. The Environment Court has confirmed the RMA does not require total internalisation of effects, although effort must be taken to ensure adverse effects beyond boundaries are not unreasonable.<sup>33</sup> Under the RMA, KiwiRail must use the best practicable option to ensure that noise and vibration effects of its operations do not exceed a reasonable level, and to avoid, remedy or mitigate adverse effects on the environment.
- 2.34 However, as outlined in these submissions and KiwiRail's evidence, there will be residual effects that extend beyond the designation boundaries.<sup>34</sup> On this basis, it is important that there are land use controls in place to manage sensitive development near the rail corridor, to mitigate adverse effects that cannot be internalised by KiwiRail.
- 2.35 Mr Styles has suggested that the effects areas surrounding the designation boundaries should be mapped.<sup>35</sup> While all noise experts agree this would be preferable, currently, there is no suitable data available for this to occur.<sup>36</sup> The absence of available data to produce contours is not, in our submission, an appropriate basis to reject or water-down the provisions in the Proposed Plan which are necessary to ensure the ongoing operation of our national rail network and the health and wellbeing of our communities.
- 2.36 The provisions sought by KiwiRail are, in our submission, the most appropriate method to enable development to occur in a manner that protects the railway network from potential reverse sensitivity effects, and mitigates the effects of rail noise and vibration on sensitive activities and people living in proximity to the rail corridor.

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<sup>32</sup> Joint Witness Statement, dated 1 February 2022, at [8].

<sup>33</sup> *Waikato Environmental Protection Society Inc v Waikato Regional Council* [2008] NZRMA 431 (EnvC) at [184] – [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.

<sup>34</sup> Evidence of Stephen Chiles, dated 21 January 2022, at [5.1]-[5.2].

<sup>35</sup> Evidence of Jon Styles, dated 21 January 2022, at [7.22]

<sup>36</sup> Joint Witness Statement, dated 1 February 2022, at [21].

### 3. BUILDING SETBACKS FROM THE RAIL CORRIDOR

- 3.1 As an infrastructure asset of strategic importance to the country and the region, it is critical the rail corridor can operate safely and efficiently without interference. Ms Grinlinton-Hancock has explained that interference with the rail corridor from activities inadvertently entering the rail corridor poses a significant safety risk.<sup>37</sup>
- 3.2 As the Porirua continues to grow, and urban centres intensify, careful management of the interface between the rail corridor and adjacent land will only become more important. Recent amendments to the RMA, including those under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, are putting increasing pressure on this interface. Without appropriate planning protections in place, buildings of at least 3 storeys will become increasingly common on sites adjacent to the rail corridor, which has the potential to pose real safety risks.
- 3.3 An effective and pragmatic method of ensuring that the interface is managed appropriately is through the very common planning tool of a physical building setback. In its submission, KiwiRail sought that relevant zone standards in the Proposed include a 5-metre building setback (or no less than 4 metres) from the rail corridor.<sup>38</sup> This will ensure the safe and efficient operation of the rail network at the interface between the rail corridor and the neighbouring built environment, while minimising health, safety and amenity effects.
- 3.4 Both the Reporting Officer and Kāinga Ora appear to accept in principle the need for a building setback from the rail corridor. The Reporting Officer has stated that:<sup>39</sup>

I generally agree that a setback to ensure that access to buildings for maintenance is provided for without requiring access to the rail corridor is appropriate. This is consistent with the RPS Policy 8 which includes a requirement for district plans to include rules that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure.

- 3.5 The key issue is the extent of the building setback. The Reporting Officer has accepted KiwiRail's submission in part and recommended a 1.5m setback

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<sup>37</sup> Rebuttal evidence of Michelle Grinlinton-Hancock, dated 28 January 2022, at [2.2(a)-(b)].

<sup>38</sup> Submission number 86.56.

<sup>39</sup> Section 42A report (Infrastructure) at [691].

apply in all zones with relevant setback standards.<sup>40</sup> For different reasons, Kāinga Ora has confirmed it would accept a 2m setback in residential zones, or a 2.5m setback in mixed use/commercial zones.<sup>41</sup>

- 3.6 For the reasons set out below, in our submission neither the setback proposed by the Reporting Officer, nor that proposed by Kāinga Ora are appropriate in the Porirua context.

### **Response to Section 42A Report**

- 3.7 The Reporting Planner recommends a 1.5m setback on the basis that outdoor living space created by a building setback adjacent to the rail corridor would be contrary to the intention of the setback.<sup>42</sup> With respect, that is not the case. As outlined in the evidence of Ms Grinlinton-Hancock, the primary reason for a setback is to minimise the risk of interference in the rail corridor due to activities associated with buildings, such as construction and maintenance.<sup>43</sup>
- 3.8 A 1.5m setback does not provide sufficient room for building maintenance and cleaning to be undertaken safely. Closer buildings pose a greater risk in terms of railway interference.<sup>44</sup> Taller buildings also become more difficult to maintain and require additional equipment such as scaffolding, which often inadvertently and unsafely enters the rail corridor.<sup>45</sup>
- 3.9 The wider the setback, the lower the risk of objects or structures entering the rail corridor from neighbouring properties which could cause disruption to the network, or a collision or accident. In Porirua, the electrified railway line makes these risks more significant. Issues such as spray drift from water blasters could have significant consequences if they interfere with electrified lines.<sup>46</sup> It is difficult for a person to hear an approaching electric train.<sup>47</sup> Unless neighbouring buildings are sufficiently set back from the railway corridor, these are significant safety hazards.

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<sup>40</sup> Section 42A report (Infrastructure) at [691]-[697]; Appendix A, page 99.

<sup>41</sup> Evidence of Karen Williams, dated 21 January 2022, at [5.53].

<sup>42</sup> Section 42A report (Infrastructure) at [693].

<sup>43</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [5.3].

<sup>44</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [5.4].

<sup>45</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [5.3].

<sup>46</sup> Evidence of Michelle Grinlinton-Hancock, dated 21 January 2022, at [5.6(86.7)].

<sup>47</sup> Rebuttal evidence of Michelle Grinlinton-Hancock, dated 28 January 2022, at [2.2(a)].

### Response to submitter evidence

- 3.10 Kāinga Ora says it would support a 2m setback in residential zones and 2.5m setback in mixed-use/commercial zones.<sup>48</sup> The issues of a 1.5m setback outlined above equally apply in the case of a 2m or 2.5m setback and KiwiRail does not consider those distances to be sufficient.
- 3.11 Ms Williams considers that the safe, efficient, and effective operation of rail infrastructure must be balanced against the cost on landowners and the associated restriction on their development rights.<sup>49</sup> These are not the only costs to be considered. Ms Grinlinton-Hancock has provided evidence that even low probability collisions have significant consequences and costs, including injury, death, temporary track closure, damage to locomotives and freight, and impacts on supply chains.<sup>50</sup>
- 3.12 Reduced setbacks also have the potential increase the number of access permits that KiwiRail will be required to process, which results in cost to landowners and KiwiRail, including onsite safety personnel to be present, temporary track closure, and payment of access fees by landowners.<sup>51</sup> Ms Williams has failed to consider these costs.
- 3.13 In our submission, Kāinga Ora has failed to properly consider the long-term costs associated with a reduced setback, which will impact both the communities located adjacent to the rail corridor and the national rail network. In our submission, the alleged "cost saving" to developers of a reduced setback cannot reasonably be balanced against the significant safety risks that a reduced setback will expose communities adjacent to the rail corridor to. We would expect safety of these communities to be a central consideration under Kāinga Ora's statutory mandate to deliver urban environments that contribute to sustainable, inclusive and thriving communities.<sup>52</sup>
- 3.14 A larger setback will not sterilise development closer to the rail boundary. The building setback is a permitted activity standard. Where the permitted setback standard is not met, resource consent can still be sought as a restricted discretionary activity. Ms Grinlinton-Hancock confirms that KiwiRail is not opposed to buildings being located closer to the rail corridor where design can demonstrate that it is appropriate having regard to the safe and efficient

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<sup>48</sup> Evidence of Karen Williams, dated 21 January 2022, at [5.53].

<sup>49</sup> Evidence of Karen Williams, dated 21 January 2022 at [5.53].

<sup>50</sup> Rebuttal evidence of Michelle Grinlinton-Hancock, dated 28 January 2022, at [2.5].

<sup>51</sup> Rebuttal evidence of Michelle Grinlinton-Hancock, dated 28 January 2022, at [2.5]-[2.6].

<sup>52</sup> Evidence of Brendon Liggett, dated 21 January 2022, at [2.4].

operation of the rail network.<sup>53</sup> Even in complying with the permitted standards, the land could still be utilised for development, including for example garden sheds and water tanks.

- 3.15 Kāinga Ora relies heavily on settled parts of one appeal on Plan Changes in the Whangārei district to support a 2m or 2.5m setback of buildings and structures from the boundary. In our submission, it is not as straight-forward as simply picking up provisions agreed in one district and putting them in another.
- 3.16 The rebuttal evidence of Ms Grinlinton-Hancock is that it is inappropriate for those controls to be directly translated into the Proposed Plan without consideration for the Porirua context.<sup>54</sup> The Porirua network is electrified and has much greater traffic volumes, which poses a range of additional risks. In Porirua, the setback standards are also limited further due to the application of an exemption for eaves, external gutters and downpipes.<sup>55</sup> In practice, these contribute to a reduced setback of up to 0.75m because they limit the space available for maintenance or certain construction works on a building.
- 3.17 Adopting a setback of 1.5m as recommended by the Reporting Officer would result in an effective useable setback of 0.75m. A 2m or 2.5m setback as proposed by Ms Williams would also result in a very small setback area of 1.25m or 1.75m. These increase the likelihood of inference in the rail corridor and pose significant safety risks.
- 3.18 Mr Liggett has provided evidence that KiwiRail, Waka Kotahi and Kāinga Ora continue to engage regarding a consistent approach between the parties regarding management of effects at the rail corridor boundary across the country.<sup>56</sup> While KiwiRail supports a consistent approach, this is still being developed and the outcomes of any processes such as those in Whangārei and Waikato, are not relevant to this process.
- 3.19 The Panel is not required, nor is it helpful, to be considering matters from other plan change or review processes arising under different facts and circumstances. In our submission, the Panel's decision must be based on the evidence before it regarding the matters particular to the Porirua District, particularly those outlined in Ms Grinlinton-Hancock's evidence.

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<sup>53</sup> Rebuttal evidence of Michelle Grinlinton-Hancock, dated 28 January 2022, at [2.5]-[2.7].

<sup>54</sup> Rebuttal evidence of Michelle Grinlinton-Hancock, dated 28 January 2022, at [2.2]-[2.5].

<sup>55</sup> Rebuttal evidence of Michelle Grinlinton-Hancock, dated 28 January 2022, at [2.2(c)].

<sup>56</sup> Evidence of Brendon Liggett, dated 21 January 2022, at [4.5]-[4.6].

3.20 In our submission, the relief sought by KiwiRail is the most appropriate way to achieve the purpose of the Act and the objectives of the Proposed Plan.

**DATED:** 4 February 2022

**L J Rapley**  
Counsel for KiwiRail Holdings Limited

## Appendix A – Proposed amendments to Noise-R5

**Black** text – Reporting Officer's recommendations in the section 42A Report.  
**Blue** text – further amendments proposed by KiwiRail Holdings Limited with additions shown in underline and deletions in strikethrough.

NOISE-R5	<b>New buildings, change of use of existing buildings, and additions to existing buildings <del>ever 50m<sup>2</sup></del>, for use by a noise-sensitive activity or place of worship in proximity to State Highways and the North Island Main Trunk railway line</b>
<b>All zones</b>	<p>1. Activity status: <b>Permitted</b>  Where:  a. The building or part of the building for use by a noise sensitive activity or place of worship is within:</p> <ol style="list-style-type: none"> <li>i. 80m of the outer painted lane marking of a State Highway with a speed limit of greater than 70km/h;</li> <li>ii. 50m of the outer painted lane marking of a State Highway with a speed limit of 70km/h or less; or</li> <li>iii. 100m of the centre of a track that is part of the North Island Main Trunk railway line; and</li> </ol> <p><del>b. The building or part of the building for use by a noise sensitive activity or place of worship is not within:</del></p> <ol style="list-style-type: none"> <li><del>i. 40m of the outer painted lane marking of a State Highway with a speed limit greater than 70km/h;</del></li> <li><del>ii. 20m of the outer painted lane marking of a State Highway with a speed limit of 70km/h or less; or</del></li> <li><del>iii. 30m of the centre of a track that is part of the North Island Main Trunk railway line; and,</del></li> </ol> <p><del>eb. Compliance is achieved with:</del></p> <ol style="list-style-type: none"> <li><del>i. NOISE-S1;</del></li> <li><del>ii. NOISE-S2;</del></li> <li><del>iii. NOISE-S3.</del></li> </ol> <p><u>1A. Activity status: Permitted</u>  <u>Where:</u>  <u>a. The building or part of the building for use by a noise sensitive activity or place of worship is within 30m of the centre of a track that is part of the North Island Main Trunk railway line; and</u>  <u>b. Compliance is achieved with:</u></p> <ol style="list-style-type: none"> <li><u>i. NOISE-S4.</u></li> </ol>
<b>Residential Zones</b>	<p><del>2. Activity status: Controlled</del>  <del>Where:</del>  <del>a. Compliance is not achieved with NOISE-R5-1.b.iii</del></p> <p><del>Matters of control are limited to:</del></p> <ol style="list-style-type: none"> <li><del>1. The matters in NOISE-P4.</del></li> </ol> <p><del>Notification:</del></p> <ul style="list-style-type: none"> <li><del>• An application under this rule is precluded from being publicly notified in accordance with section 95A of the RMA.</del></li> <li><del>• When deciding whether any person is affected in relation to this rule for the purpose of section 95E of the RMA, the Council will give specific consideration to any adverse effects on Waka Kotahi New Zealand Transport Agency and KiwiRail Holdings Limited.</del></li> </ul>
<b>Rural Zones</b>  <b>Commercial and Mixed Use Zones</b>	<p><del>3. Activity status: Restricted discretionary</del>  <del>Where: a. Compliance is not achieved with NOISE-R5-1.b.iii;</del></p> <p><del>Matters of discretion are restricted to:</del></p> <ol style="list-style-type: none"> <li><del>1. The matters in NOISE-P4.</del></li> </ol>



<p>General Industrial Zone</p> <p>Open Space and Recreation Zones</p> <p>Special Purpose Zones</p>	<p>Notification:</p> <ul style="list-style-type: none"> <li>• <del>An application under this rule is precluded from being publicly notified in accordance with section 95A of the RMA.</del></li> <li>• <del>When deciding whether any person is affected in relation to this rule for the purpose of section 95E of the RMA, the Council will give specific consideration to any adverse effects on Waka Kotahi New Zealand Transport Agency and KiwiRail Holdings Limited.</del></li> </ul>
<p><b>All zones</b></p>	<p><u>24.</u> Activity status: <b>Restricted discretionary</b></p> <p>Where:</p> <p>a. Compliance is not achieved with <u>NOISE R5-1 and / or R51A NOISE-S1, NOISE-S2, or NOISE-S3,</u></p> <p>Matters of discretion are restricted to:</p> <p>1. The matters of discretion of <del>any infringed standard</del> <u>NOISE-S2, NOISE-S3 and NOISE-S4.</u></p> <p>Notification:</p> <ul style="list-style-type: none"> <li>• An application under this rule is precluded from being publicly notified in accordance with section 95A of the RMA.</li> <li>• When deciding whether any person is affected in relation to this rule for the purpose of section 95E of the RMA, the Council will give specific consideration to any adverse effects on Waka Kotahi New Zealand Transport Agency and KiwiRail Holdings Limited.</li> </ul>