

**BEFORE THE INDEPENDENT COMMISSIONERS**

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

**AND**

**IN THE MATTER** on Proposed Plan Change 92 ("**PC 92**") to the  
Operative Western Bay of Plenty District Plan  
("**District Plan**")

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**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED**

**7 SEPTEMBER 2023**

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## 1. SUMMARY

- 1.1 KiwiRail is a State-Owned Enterprise responsible for the construction, maintenance and operation of New Zealand's rail network. KiwiRail is also a requiring authority under the RMA and holds designations for railway purposes throughout New Zealand, including the East Coast Main Trunk line, which passes through the Western Bay of Plenty District.
- 1.2 KiwiRail's rail network is an asset of national and regional significance. The rail network is critical to the safe and efficient movement of freight and passengers throughout New Zealand and forms an essential part of the national transportation network and wider supply chain.
- 1.3 KiwiRail supports urban development around transport nodes and recognises the benefits of co-locating housing near transport corridors. However, such development must be planned and appropriately managed, with the safety and wellbeing of people and the success of the rail network in mind.
- 1.4 KiwiRail has submitted on PC 92 to ensure there is appropriate management of the interface between urban development and lawfully established, critical infrastructure such as the national railway network. This is critical to support development of our urban environments, and to ensure that critical transport networks are not undermined by the increasing growth and housing intensification enabled by PC 92.
- 1.5 KiwiRail seeks the following relief:
  - (a) retention of the identification of the rail corridor as a qualifying matter as proposed by Council;
  - (b) retention of Rule 14A.4.1(d)(ii)(b) providing a boundary setback for buildings and structures on sites adjoining the rail corridor. This rule as notified requires a 10-metre setback, however KiwiRail would accept a 5-metre setback;
  - (c) inclusion of a new matter of discretion in Rule 14A.7.4 designed to direct the Council, when assessing a resource consent application to reduce the rail setback, to consider whether or not there remains sufficient space within the site to undertake maintenance;
  - (d) inclusion of a district-wide noise standard to apply to new noise sensitive activities within 100 metres of the rail corridor;

- (e) inclusion of a new definition for "noise sensitive activity"; and
- (f) inclusion of a vibration "alert layer" which is an information layer only (ie has no rules or standards attached to it) to signal to property owners that higher levels of vibration may be experienced in the area due to its proximity to the rail corridor.

## 2. NOISE CONTROLS VS SETBACK CONTROLS

2.1 KiwiRail is seeking two types of controls through PC 92: noise and vibration controls; and boundary setback controls. The s42A report conflates these controls by suggesting that a 10-metre setback protects against rail noise and vibration effects.<sup>1</sup> This is incorrect.

2.2 The **boundary setback control** seeks to avoid health and safety issues caused by people entering the rail corridor because they do not have enough space on their own properties. A boundary setback requires a physical distance between a building and the property boundary with the railway corridor. This ensures people can use and maintain their land and buildings safely without needing to encroach onto the rail corridor. Any encroachment onto the rail corridor has the potential to result in injury or death for the person encroaching, not to mention stopping railway operations.

2.3 **Noise and vibration provisions** are controls requiring acoustic insulation to be installed in new or altered sensitive uses within 100 metres of the railway corridor and the application of a vibration "alert layer". Rail operations can create adverse health and amenity effects on occupiers within 100 metres of the rail corridor.<sup>2</sup> The noise and vibration provisions sought by KiwiRail ensure new development is undertaken in a way that achieves a healthy living environment for people locating within proximity to the railway corridor, and minimises the potential for complaints about the effects of the rail network.

2.4 We expand on the relief sought below.

## 3. RAIL NOISE AND VIBRATION

3.1 The s42A report identifies the rail corridor as an existing qualifying matter in the context of the 10-metre setback and implies that the noise and

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<sup>1</sup> Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, p 6.

<sup>2</sup> Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [7.10].

vibration provisions sought by KiwiRail therefore cannot be included in PC 92.<sup>3</sup>

- 3.2 This is incorrect. In addition to Council's ability to include qualifying matters, section 80E of the RMA gives the Council discretion to amend or include "related provisions".<sup>4</sup> This discretion is broad. By reference to the express use of the terms "amend or include", there is clearly scope to introduce new, or alter existing, provisions in a district plan through an intensification planning instrument ("IPI"). Other than requiring that such provisions must "support" or be "consequential" on the mandatory requirements, Parliament did not limit the scope of this power.
- 3.3 While neither "support" nor "consequential" are defined in the RMA, these terms invoke the need for a connection between the related provisions and the mandatory requirements. In our submission, this can (and must) include provisions to manage the interface between intensification and infrastructure. The implementation of the Medium Density Residential Standards ("MDRS") and policies 3 and 4 of the National Policy Statement for Urban Development ("NPS-UD") will result in more people living near the rail corridor in Te Puke and Ōmokoroa.
- 3.4 As a consequence, provisions to mitigate the effects of intensification (such as the noise and vibration controls sought by KiwiRail) are both necessary and appropriate to support the implementation of the MDRS and NPS-UD, as well as being consequential to greater intensification. This approach is also entirely consistent with other councils across New Zealand which have accepted noise controls as being within scope of an IPI plan change.<sup>5</sup>
- 3.5 In a few other IPI processes, some parties have sought submissions from KiwiRail regarding the applicability of a recent Environment Court decision *Waikanae Land Company Ltd v Kāpiti Coast District Council*.<sup>6</sup>
- 3.6 The facts in that case concerned the addition of an existing site to Schedule 9 - Wāhi Tapu Areas. The Court considered this amendment **precluded** the operation of the MDRS on the site and therefore could not be considered to "support" or be "consequential on" the MDRS.

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<sup>3</sup> Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, p 6.

<sup>4</sup> Resource Management Act 1991, s80E(2).

<sup>5</sup> See for example the Interim Guidance on Matter of Statutory Interpretation and Issues Relating to the Scope of the Relief Sought by Some Submissions dated 12 June 2023 from the Auckland IHP under Plan Change 78 p14, where the IHP found that "the range of lawfully acceptable "related provisions" able to be included in an IPI is likely to be extensive" and did not raise scope issues in relation to changing, removing or introducing new noise controls.

<sup>6</sup> [2023] NZEnvC 056.

- 3.7 KiwiRail's relief does not preclude the operation of the MDRS. The noise insulation control sought by KiwiRail will apply as a permitted activity standard. Compliance with the standard avoids consenting requirements (supporting intensification under the MDRS) while at the same time managing effects on the rail corridor as a qualifying matter (which is a relevant basis for the application of the related provisions under section 80E(2)(d) and (e)). The "preclusion" identified in *Waikanae* does not occur.
- 3.8 KiwiRail's relief is also clearly consequential on the intensification enabled adjacent to parts of the rail corridor by the application of the MDRS, compared to that under the existing District Plan. Intensification significantly increases the number of sensitive activities which may be undertaken compared to the existing District Plan. KiwiRail's relief proposes a way to manage the reverse sensitivity effects of that increased intensification on the rail corridor, while still allowing the MDRS to apply.
- 3.9 In our submission, the Panel clearly has scope to include the acoustic provisions sought by KiwiRail in PC 92.

#### **KiwiRail's approach to noise and vibration controls**

- 3.10 A key concern for KiwiRail in respect of the District Plan provisions is to ensure that the development of sensitive activities (particularly dwellings) near the rail corridor does not cause ongoing disturbance and adverse health effects to communities surrounding the rail corridor or constrain the use and development of the corridor as a result of reverse sensitivity effects.
- 3.11 Reverse sensitivity is a well-established legal concept. It is an adverse effect under the RMA.<sup>7</sup> It refers to the susceptibility of lawfully established activities (which cannot internalise all their effects) to complaints arising from the location of new sensitive activities near those lawfully established activities. The location of sensitive activities can place significant constraints on the operation of established activities, as well as their potential for growth and development in the future.
- 3.12 The Courts have recognised the importance of protecting regionally significant infrastructure from reverse sensitivity effects, and have declined applications for developments which have the potential to give rise to such effects.<sup>8</sup> The vulnerability of an activity to reverse sensitivity effects is

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<sup>7</sup> See *Affco New Zealand v Napier City Council* NZEnvC Wellington W 082/2004, 4 November 2004 at [29] as cited in *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673 at [60].

<sup>8</sup> *Kāinga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218.

enough to warrant the implementation of protections for the activity in question. Most recently, in relation to noise controls in areas near the rail corridor in Drury, the Court said:<sup>9</sup>

The setbacks [applying noise controls] for activities sensitive to noise sensibly ensure that consideration is given both to the receiving activities and also ensure the noise generating activities (such as the rail corridor and Waihoehoe Road) are not unduly constrained.

- 3.13 KiwiRail is a responsible infrastructure operator that endeavours to avoid, remedy or mitigate the adverse rail noise and vibration effects it generates, through its ongoing programme of upgrades, repairs and maintenance work to improve track conditions. However, the nature of rail operations means that KiwiRail is unable to fully internalise all noise and vibration effects within the rail corridor boundary.<sup>10</sup> In any case, KiwiRail is not required to internalise all its effects, as the RMA is not a "no effects" statute.
- 3.14 Accordingly, a balance needs to be struck between the onus on the existing lawful emitter (here, KiwiRail) to manage its effects, and the District Plan providing appropriate controls for the development of new sensitive activities in proximity to the rail corridor. Prudent, forward-thinking planning plays a key part in setting community expectations around effects from the rail corridor by setting reasonable standards of treatment. If land is able to be developed with substandard mitigation, this has the potential to put both sensitive activities and the lawful operation of the rail corridor at risk. Reverse sensitivity effects can manifest in a number of ways, including through restrictions on operations of the rail network (such as night-time movements or train volumes). It is appropriate and responsible planning to ensure developers build with adequate acoustic mitigation in place where they choose to establish near the rail corridor.
- 3.15 KiwiRail therefore seeks the inclusion of a district-wide noise standard to manage noise sensitive activities within 100 metres of the rail corridor in order to reduce adverse health and amenity effects. The evidence of Dr Chiles sets out the technical basis for this rule.<sup>11</sup>
- 3.16 The Reporting Planner considers that the District Plan already contains a rule (Rule 4C.1.3.2(c)) which protects noise sensitive activities in all zones,

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<sup>9</sup> *Kāinga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218 at [77].

<sup>10</sup> Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [5.2].

<sup>11</sup> Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [7.4] – [7.6].

including protection from rail noise.<sup>12</sup> With respect, Rule 4C.1.3.2(c) is deficient and does not provide adequate protection for noise sensitive activities in proximity to the rail corridor nor adequately mitigate reverse sensitivity effects on rail operations.

3.17 It is also potentially more onerous than the rule sought by KiwiRail. This is because it applies blanket wide across the district rather than being triggered by proximity to a noise generator. This creates uncertainty for plan users as to when the rule is triggered and acts to require acoustic certification when may be unnecessary.<sup>13</sup> As set out in Dr Chiles' evidence, Rule 4C.1.3.2(c) appears to impose an unwarranted cost in that it requires all houses to have acoustic design certificates regardless of their individual noise environment.<sup>14</sup>

3.18 The rule sought by KiwiRail (set out in **Appendix 1**) addresses the deficiencies identified in the evidence of Dr Chiles and Ms Heppelthwaite. It provides certainty to plan users about where and what acoustic insulation controls apply, and is much more efficient than the current plan rule by only requiring those buildings within 100 metres from the rail corridor to assess the need for controls. As set out in the evidence of Dr Chiles and Ms Heppelthwaite, KiwiRail's proposed noise control provisions allow for site-specific variation to be taken into account when applying the controls.<sup>15</sup>

3.19 Rules with similar provisions have been adopted in a number of other district plans around the country.<sup>16</sup> The approach is not novel or unusual and has been well tested throughout planning processes over a number of years.

#### *Definition of noise sensitive activities*

3.20 KiwiRail seeks a new related definition for "noise sensitive activity" to support the application of the district-wide rail noise standard outlined above. KiwiRail's proposed wording is based on provisions that are commonly used in plans throughout the country.

3.21 As set out in the evidence of Ms Heppelthwaite, the current plan provisions do not have a definition of noise sensitive activities but rather include a

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<sup>12</sup> Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, p 7.

<sup>13</sup> Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, p 7.

<sup>14</sup> Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [6.2].

<sup>15</sup> Statement of Evidence of Catherine Heppelthwaite dated 25 August 2023 at [9.3]; Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [8.3].

<sup>16</sup> For example Christchurch, Dunedin, Auckland Unitary Plan (Drury Centre and Waihoehoe Precinct), Whangārei, Hamilton, Selwyn, Invercargill, Whakatane.

description of potential noise sensitive activities within Rule 4C.1.3.2(c).<sup>17</sup> This description is broadly worded and, unusually, includes noise generating activities such as sports fields (which are included in the definition of places of assembly). This results in uncertainty as to which activity the noise control is applied to.

- 3.22 The definition proposed by KiwiRail will ensure that the controls target activities that are truly sensitive to noise. This will assist in plan coherency by ensuring there is no confusion around the interpretation and application of the noise controls.

### **Ventilation**

- 3.23 KiwiRail's standard noise controls include ventilation and heating and cooling provisions to ensure that the acoustic installation installed under those controls is not undermined by insufficient ventilation. This is because for acoustic insulation to work, windows need to be kept shut. If there is insufficient ventilation, people are forced to open their windows and are then exposed to the noise from the rail corridor.<sup>18</sup>

- 3.24 The District Plan provisions require compliance with the ventilation provisions of the New Zealand Building Code.<sup>19</sup> However, the air change provisions in the Building Code are at such a low threshold that they do not provide adequate ventilation compared to recommended guidelines with windows closed.

- 3.25 KiwiRail would expect to see higher air changes (at a minimum 2 air changes per hour, with KiwiRail typically seeking 6 air changes) to enable thermal comfort and ventilation with the windows closed. This provision was inadvertently not included in the relief sought by KiwiRail, however KiwiRail urges the Council to amend the ventilation provisions. Prudent and robust plan provisions would provide for a higher frequency of air changes than the minimum required by the Building Code where acoustic insulation is required.

### **Vibration alert layer**

- 3.26 In its submission, KiwiRail sought the introduction of vibration controls for new and altered sensitive activities within 60 metres of the rail corridor to manage the adverse health and amenity effects on those near the rail corridor, while also protecting the rail corridor against reverse sensitivity effects. These controls are based on the evidence of Dr Chiles that rail

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<sup>17</sup> Statement of Evidence of Catherine Heppelthwaite dated 25 August 2023 at [10.10 (g) and (h)] and [10.15].

<sup>18</sup> Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [6.5].

<sup>19</sup> Rule 4C.1.3.2(c)(ii).



vibration can cause adverse health effects on people living nearby up to 100 metres.<sup>20</sup>

- 3.27 The Reporting Planner expressed concern around how vibration controls can be implemented from a practical perspective.<sup>21</sup> While Ms Heppelthwaite and Dr Chiles continue to support the inclusion of vibration controls in plans, KiwiRail would accept the inclusion of a rail vibration "alert layer" to resolve the Reporting Planner's concerns in this regard, acknowledging that the costs of managing rail vibration effects can vary significantly for developers.
- 3.28 This alert layer would apply to all properties within 100 metres on either side of the rail corridor designation boundary. KiwiRail considers this would provide greater coherency and efficiency for a layperson reading the District Plan to see one overlay extending to 100 metres for both noise and vibration. Dr Chiles' evidence is that adverse health effects from vibration extends up to 100 metres from the rail corridor.<sup>22</sup>
- 3.29 A vibration alert layer is an information layer to signal to property owners that higher levels of vibration may be experienced in the area due to its proximity to the rail corridor. There are no rules or other provisions associated with the vibration alert layer. Alert layers still provide some management of the effects, as landowners may be prompted when building new dwellings to consider incorporating vibration attenuation measures of their own accord or to locate new buildings outside the alert layer. New purchasers will also be alerted when purchasing a property that they may experience such effects.
- 3.30 **Attached at Appendix 1** is the wording sought by KiwiRail for the vibration alert layer to be included in the District Plan through PC 92, based on similar wording recently approved by the Environment Court.<sup>23</sup> Appendix 1 reflects KiwiRail's relief as outlined in Appendix A to the evidence of Ms Heppelthwaite, except for excluding the indoor railway vibration controls previously sought in KiwiRail's submission. This approach has also recently been agreed with Kāinga Ora in the Whangārei District Plan and the Precinct provisions relating to the Drury area in the Auckland Unitary Plan Operative in part.

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<sup>20</sup> Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [7.10] – [7.11].

<sup>21</sup> Section 42A Report – Section 4C – Amenity – Topic 2 – Indoor Railway Noise and Vibration, pp 6-7.

<sup>22</sup> Statement of Evidence of Dr Stephen Chiles dated 25 August 2023 at [7.10] – [7.11].

<sup>23</sup> *KiwiRail Holdings Limited v Whangārei District Council* [2023] NZEnvC 004.

#### **4. SETBACKS**

- 4.1 A setback provides a physical distance between a building and the railway corridor boundary. Without a sufficient setback, people painting their buildings, clearing gutters or doing works on their roof will need to go into the rail corridor. Heavy freight trains run on the railway lines through the Western Bay of Plenty District. If a person or object encroaches onto the rail corridor, there is a substantial risk of injury or death for the person entering the rail corridor. There are also potential effects on railway operations and KiwiRail workers, ranging from the stopping of trains affecting service schedules to creating a health and safety hazard for train operators and KiwiRail workers operating within the rail corridor.
- 4.2 A setback control has safety benefits for the users of the land adjoining the rail corridor and users of the rail corridor; and efficiency benefits for rail operations (and passengers who use rail services including those living in the intensified housing), by mitigating against the risk of train services being interrupted by unauthorised persons or objects entering the rail corridor.
- 4.3 Setbacks are a common planning tool used to ensure the safe and efficient operation of activities such as the rail corridor, particularly when it may come into conflict with adjacent land uses. They are not novel.
- 4.4 Activities that comply with the setback control would be permitted, while activities that do not comply would require resource consent as a restricted discretionary activity. KiwiRail has also sought the inclusion of a matter of discretion relating to setbacks to ensure the District Plan provisions provide direction to Council planners when considering an application for a reduction in the setback distance. The proposed setback controls would not create a "no build zone", but rather provide a nuanced approach to development along the rail corridor.
- 4.5 The District Plan currently contains a 10-metre setback, which has been included in the PC 92 provisions. This provides a generous amount of space for access to maintain buildings in properties adjoining the rail corridor. The retention of the 10-metre setback control enables Council to comply with its obligations under section 74(1)(b) of the RMA to enable people and communities to provide for their social, economic, and cultural well-being and their health and safety.
- 4.6 Despite recommending the retention of the 10-metre setback control, the s42A report considers that KiwiRail has not provided evidence that a 10-metre setback is needed to ensure that buildings can be used and

maintained without needing access over the rail corridor.<sup>24</sup> With respect, the safety issues arising from people interfering with a rail corridor should be obvious. Mr Brown's evidence sets out why there needs to be sufficient space required for scaffolding and movement in order to maintain buildings, in particular for taller buildings.<sup>25</sup> If not enough space is provided then the only option is for people to encroach onto the rail corridor with potentially significant consequences.

- 4.7 The setback is there to *prevent* people from being seriously or fatally injured from encroaching onto the rail corridor. It would be perverse for KiwiRail to have demonstrate injuries or deaths in order to support the inclusion of setback controls in the District Plan.
- 4.8 In terms of distances, while KiwiRail supports this Council's prudent approach to ensure safety by including a 10-metre setback in the PC 92 provisions, KiwiRail would accept a 5-metre setback as being sufficient to allow safe access and maintenance of buildings and structures on properties adjoining the rail corridor.
- 4.9 Kāinga Ora considers that a setback of 2.5 metres is sufficient but provides no technical basis for this. Kāinga Ora's evidence states that KiwiRail has on occasion agreed to a 2.5-metre setback with Kāinga Ora through negotiated planning processes.<sup>26</sup> This is correct, however Kāinga Ora has also accepted a setback of greater than 2.5 metres in other negotiated processes.<sup>27</sup> KiwiRail's evidence is that 2.5 metres is inadequate, and in particular a larger setback is necessary under the MDRS where three storey buildings are enabled as of right in applicable zones along the rail corridor, given that taller buildings often require additional equipment for maintenance.<sup>28</sup>
- 4.10 A setback of 5 metres ensures that there is sufficient space for landowners and occupiers to safely conduct their activities, and maintain and use their buildings, while minimising the potential for interference with the rail corridor. This allows for the WorkSafe Guidelines on Scaffolding in New Zealand to be complied with, as well as accommodating other mechanical

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<sup>24</sup> Section 42A Report – Ōmokoroa and Te Puke Part 2 (Definitions, Activity Lists, and Standards) – Topic 12 – Rule 14A.4.1(d) – Density Standards – Setbacks, p 34.

<sup>25</sup> Statement of Evidence of Michael Brown dated 25 August 2023 at [5.16].

<sup>26</sup> Statement of Evidence of Susannah Tait on behalf of Kāinga Ora at [13.2]. We understand this to be a reference to Whangārei District Plan Operative in Part – TRA R10 Minimum of 2 metres – 2.5 metres "mapped" setback accepted through the appeals process depending on zone or existing buffers (eg cycle path alongside rail corridor).

<sup>27</sup> 5 metres in Auckland Unitary Plan – Drury Centre (I450.6.15) and Waihoehoe (I452.6.11) Precincts and 3 metres in Marlborough Environment Plan – Rule 5.2.1.20.

<sup>28</sup> Statement of Evidence of Michael Brown dated 25 August 2023 at [5.16].

access equipment required for maintenance, and space for movement around the scaffolding and equipment.

- 4.11 Ms Heppelthwaite also considers that the setback is the most efficient outcome from a planning perspective.<sup>29</sup> The 5-metre setback proposed by KiwiRail protects people from the potential safety risks of developing near the railway corridor and allows for the continued safe and efficient operation of nationally significant infrastructure.

## **5. CONCLUSION**

- 5.1 In our submission, the relief sought by KiwiRail will most appropriately achieve the sustainable management purpose of the RMA, protect the health and amenity of residents within proximity to the rail corridor, and ensure the ongoing safe and efficient use and operation of the railway corridor as nationally significant infrastructure.

**DATED:** 7 September 2023

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<sup>29</sup>

Statement of Evidence of Catherine Heppelthwaite dated 25 August 2023 at [8.3].

## APPENDIX 1

Base text is taken from Appendix A – Planner's recommendation with changes accepted. All changes are in red text. New text is underlined and proposed deletions in ~~strike through~~.

### District Plan Maps

Insert mapping overlay which identifies a 100m buffer on each side of the railway designation boundary called "Rail Vibration Alert Overlay".

#### 14A.7.4 Matters of Discretion

Restricted Discretionary Activities

Non-Compliance with Setbacks In considering an application that does not comply with Activity Performance Standard 14A.4.1(d) Setbacks, Council shall consider the following:

Front yard

a.[.]

Side and rear yards

d. [...]

e. [...]

f. Whether the location and design of the building or structure provides for the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor.

#### 4C.1 Noise and Vibration

##### Explanatory Statement

[...]

~~Vibration from activities has not been an issue in the District.~~ In many cases Council can

manage vibration effects through the management of noise emissions or through the provisions of the Health Act. Specific standards to manage vibration are therefore not proposed. However, a Rail Vibration Alert Overlay has been applied which identifies the vibration-sensitive area within 100 metres each side of the railway designation boundary as properties within this area may experience rail vibration effects. No specific district plan provisions apply in relation to vibration controls as a result of this Rail Vibration Alert Area. The Rail Vibration Alert Overlay is to advise property owners of the potential vibration effects but leaves with the site owner to determine an appropriate response.

[...]

##### 4C.1.3.2 Noise Limits

a. [...]

b. [...]

c. Noise sensitivity [...]

ca. Indoor railway noise

Activity status: Permitted

(a) Any new building or alteration to an existing building or structure for a noise sensitive activity within 100m of the railway designation boundary.

Activity-specific standards:

1. Any new building or alteration to an existing building that contains a noise sensitive activity where the building or alteration:

(a) is designed, constructed and maintained to achieve indoor design noise levels resulting from the railway not exceeding the maximum values in Table X; or

(b) 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

Table X

<u>Building type</u>	<u>Occupancy/activity</u>	<u>Maximum railway noise level L<sub>Aeq(1h)</sub></u>
<u>Residential</u>	<u>Sleeping spaces</u>	<u>35 dB</u>
	<u>All other habitable rooms</u>	<u>40 dB</u>
<u>Education</u>	<u>Lecture rooms/theatres, music studios, assembly halls</u>	<u>35 dB</u>
	<u>Teaching areas, conference rooms, drama studios, sleeping areas</u>	<u>40 dB</u>
	<u>Library</u>	<u>45 dB</u>
<u>Health</u>	<u>Overnight medical care, wards</u>	<u>40 dB</u>
	<u>Clinics, consulting rooms, theatres, nurses' stations</u>	<u>45 dB</u>
<u>Cultural</u>	<u>Places of worship, marae</u>	<u>35 dB</u>

Activity status where compliance not achieved: Restricted Discretionary

4C.1.4.3 Restricted Discretionary Activity – Rail Noise

Council's discretion is restricted to the following matters:

(a) location of the building;

(b) the effects of any non-compliance with the activity specific standards;

(c) special topographical, building features or ground conditions which will mitigate noise impacts;

(d) the outcome of any consultation with KiwiRail.

## **Definitions**

**Amend the definition of "Qualifying Matter"**

“Qualifying matter” means one or more of the following:

- Ecological features listed in Appendix 1 (Schedule of Identified Significant Ecological Features) and identified on the District Plan Maps.

[...]

- Land within 10m of a railway corridor or designation for railway purposes ~~(for sites created by way of an application for subdivision consent approved after 1 January 2010).~~

- [...]

## **Consequential Change**

### **14A.4 Activity Performance Standards**

#### **d. Setbacks**

[...]

ii. This standard does not apply to:

[...]

- b. site boundaries with a railway corridor or designation for railway purposes ~~(for sites created by way of an application for subdivision consent approved after 1 January 2010)~~ in which case all yards shall be 10m.

## **New Definition**

Noise sensitive activity means any lawfully established:

a) residential activity, including activity in visitor accommodation or retirement accommodation, including boarding houses, residential visitor accommodation and papakāinga;

b) educational activity;

c) health care activity, including hospitals;

d) congregation within any place of worship; and

e) activity at a marae.