BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE WESTERN BAY OF PLENTY DISTRICT COUNCIL

IN THE MATTER	of the Resource Management Act 1991 (**RMA**)
AND	
IN THE MATTER	of Proposed Plan Change 92 to the Western Bay of Plenty District Plan First Review - Ōmokoroa and Te Puke Enabling Housing Supply and Other Supporting Matters (PC 92)

STATEMENT OF EVIDENCE IN REPLY OF ANNA MARIE PRICE ON BEHALF OF WESTERN BAY OF PLENTY DISTRICT COUNCIL - (PLANNING)

SECTIONS 19 & 20 – COMMERCIAL AND COMMERCIAL TRANSITION ZONES

SECTION 4C - AMENITY

6 SEPTEMBER 2023

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INTRODUCTION

1. My name is Anna Marie Price.

2. My qualifications and experience are detailed at page 6 of the Introduction section of the Section 42A Report for PC 92 dated 11 August 2023 (the **section 42A report**).

3. As also recorded in the section 42A report, I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023 and I agree to comply with it. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state I am relying on the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my expressed opinion.

SCOPE OF REPLY EVIDENCE

4. I prepared the following sections of the section 42A report:

   (a) Introduction

   (b) Te Puke Zoning Maps

   (c) Sections 19 & 20 – Commercial and Commercial Transition

   (d) Section 21 – Industrial (co-author)

   (e) Section 4C - Amenity

5. I have reviewed the following statements of evidence provided in support of submissions and in response to the section 42A report:

   (a) Ara Poutama – Department of Corrections – Sean Grace

   (b) Jace Investments and Kiwi Green NZ Ltd – Richard Coles

   (c) Kāinga Ora – Susannah Tait

   (d) Kāinga Ora – Lezel Beneke

   (e) Kāinga Ora – Phillip Osbourne

(f) KiwiRail – Catherine Heppelthwaite

(g) KiwiRail – Michael Brown

(h) KiwiRail - Stephen Chiles

(i) Retirement Villages Association of New Zealand – John Collyns

(j) Retirement Villages Association & Ryman Healthcare – Nicola Williams

(k) Ryman Healthcare – Matthew Brown

6. My evidence in reply addresses matters raised in the written evidence circulated on behalf of the submitters as it relates to the topics that I addressed in the section 42A report. For some topics there was no written evidence received from submitters, or any written evidence received from submitters was in support, so I have not addressed that topic further in this statement of reply evidence.

7. I cover the following sections in this statement:

(a) Sections 19 & 20 – Commercial and Commercial Transition

- Topic 1 - Policies
- Topic 2 - Community corrections activities
- Topic 3 - Retirement village provisions
- Topic 4 -Building heights in the Ōmokoroa Commercial Zone

(b) Section 4C – Amenity

- Topic 2 – Indoor rail noise and vibration
- Topic 2 - Noise sensitive activities

SECTION 19 & 20 COMMERCIAL AND COMMERCIAL TRANSITION

TOPIC 1 – Policies (19.2.2) of the Commercial Zone

8. The original submission of Retirement Villages Association and Ryman Healthcare requested new policies. The evidence of Ms Nicki Williams (para 42) requests one new policy be inserted related to ‘aging

population'. The evidence of Mr John Collyns at paragraph 87 provides further discussion to support the request for a 'large sites policy' and states that large sites in residential areas are rare and as such other large sites in commercial zones that provide good amenity and access to services should be available for retirement villages.

9. This matter was previously addressed in the section 42A report, and more detail on this topic can be found at page 2 of the Commercial Zone section. In summary, I did not support the requested new policies specific to retirement villages due to the limited size of the existing Commercial Zones in Ōmokoroa and Te Puke and because in my view the commercial zoned land that exists in both centres should remain available for commercial activities.

10. The evidence presented by Mr Collyns does not consider the existing Commercial Zones in Te Puke and Ōmokoroa in terms of size and land ownership in relation to their request.

11. Ōmokoroa Commercial Zone is 7.9ha and in one land holding, with an existing resource consent that allows a range of activities (not including retirement villages) and which is currently being given effect to. As such there are no large sites which would be suitable or available for retirement village development in the Ōmokoroa Commercial Zone. A resource consent has also recently been granted for a retirement village on a site of 17.6ha on nearby Prole Road which provides for 153 villas, two apartment buildings each containing 48 apartments, a care complex for 71 beds, communal resident facilities and a café (open to the public). There is also an existing retirement village on an approximately 9.2ha site off Anderley Ave which provides for over 150 villas. Given the size of the existing and consented retirement villages in Ōmokoroa in these examples, the existing Commercial Zone would not be of a sufficient size to provide for large sites suitable for retirement village developments of this scale.

12. The Te Puke Commercial Zone is approximately 15.2ha which includes approximately 4ha of Council owned reserve land. The largest site in Te Puke Commercial Zone is 3.5ha, and is owned by Council as reserve (Jubilee Park). The balance of the commercial zone is made up of two commercial properties between 0.9ha - 1ha, with all other commercial

properties less than 3000m^2. As there are a lack of large sites within the existing Te Puke Commercial Zone that could be suitable for a retirement village, and multiple land owners over small sites, it could make it difficult to secure multiple properties for a retirement village development on large sites as sought by the submitter.

13. The evidence of Mr Collyns considers that sites appropriate for retirement villages are rare due to size and location requirements in existing residential areas. However, on analysis of the Ōmokoroa and Te Puke Commercial Zones, in my opinion large sites suitable for retirement villages would also appear unavailable in these existing Commercial Zones.

14. The evidence of Ms Williams considers the inclusion of the proposed policy in relation to 'aging population' would provide a clear policy framework from retirement villages in the Commercial Zones.

15. I have considered the policy related to 'aging population' and in my opinion it is unnecessary to include an additional policy specific to retirement villages in the Commercial Zone. I remain of the view that due to the size of these existing zones and the potential size of any expansion or new commercial zones for the planned population of Ōmokoroa and Te Puke, the priority is to enable commercial activities and as such I do not support the request to insert the new policies.

Topic 3 - Rule 19.3.3 – Restricted Discretionary Activities in the Commercial Zones – Retirement Villages

16. The original submission by the Retirement Villages Association and Ryman Healthcare sought for a permitted activity status for retirement villages, and for a restricted discretionary activity status for the construction of retirement villages. The evidence of Ms Williams requests that retirement villages are provided for as a restricted discretionary activity in the Commercial Zone, with specific matters of discretion in order to better integrate with the current structure of the District Plan.

17. This matter was previously addressed in the section 42A report (Commercial Zone section) and more detail on this topic can be found at page 4 (related to permitted activity) and page 7 (related to restricted discretionary activity). In summary, I did not support the requested permitted and restricted discretionary activity status because in my

opinion given the context of the Ōmokoroa and Te Puke commercial zones, these areas should be retained for commercial activities, and that retirement villages are of such a scale that they should continue to be considered under the non-complying activity status.

18. I have considered the request to insert 'retirement villages' as a restricted discretionary activity and the associated matters of discretion (noting the submitter's written evidence no longer pursues the permitted activity status). Based on my analysis of the existing size of the Commercial Zones in Ōmokoroa and Te Puke, and the potential for expansion or new areas of Commercial Zones based on the planned populations I do not support the request and my assessment has not changed for the reasons outlined in my Section 42A report.

Topic 2 - Rules 19.3.1 and 20.3.1 - Permitted activities in the Commercial and Commercial Transition Zones - Community Corrections Activities

19. The evidence of Mr Grace for Ara Poutama at paragraph 7.1 requests that the National Planning Standard definition for "community corrections activities" be included and provided for as a permitted activity in the Commercial Zone, however Mr Grace explains that the submitter no longer intends to pursue its relief in the Commercial Transition Zone and Industrial Zone.

20. This matter was previously addressed in the section 42A report and more detail on this topic can be found at page 3 of the Commercial Zone section. In summary, I did not support the requested change because the existing definition of "commercial services" in the Operative District Plan (ODP) already provides for government agencies which would include community corrections activities (as Ara Poutama is a government agency). As "commercial services" is a permitted activity in the Commercial Zone, I did not consider a separate activity for community corrections activities is required as this would create duplication.

21. I do not disagree with Mr Grace's evidence in that community corrections activities are a compatible and appropriate activity in commercial zones. However, I do not support the submitter's request for a new definition and permitted activity specifically for "community corrections activities". In my opinion the existing definition and permitted activity is clear that it provides

for the requested activity as previously outlined in the Section 42A Report. I do not recommend any changes. If a specific activity was to be listed for Ara Poutama then it could be argued that every government agency would also require a specific permitted activity rule in the ODP to cover agency specific activities.

22. In my view, the request could more appropriately be addressed as part of any relevant future district-wide plan changes if considered necessary at that time.

Topic 4 – Rule 19.4.1(a)(iii) – Activity Performance Standards – Building height in the Commercial Zone – Ōmokoroa

23. The evidence of Mr Richard Coles for Jace Investments and Kiwi Green NZ Ltd generally supports the recommended proposed new rule for ‘bonus’ height[1], however requests that the word “enclosed” is removed and reference is made instead to ‘underground or under-croft car parking’. This is due to the design of the Ōmokoroa Town Centre taking advantage of the natural slope of the site and buildings being able to provide partially enclosed or under-croft parking below ground level, rather than fully enclosed below ground.

24. This matter was previously addressed in the section 42A report and more detail on this topic can be found at page 9 of the Commercial Zone section. In summary, I did support the requested changes in the original submission, however made my own recommendation to the rule wording to ensure it was easily measurable at the time of building or resource consent.

25. I have been on the site of the Ōmokoroa Town Centre and I understand the natural contour and how buildings may be designed to follow. I support the request made in the evidence of Mr Coles to allow for under-croft or partially enclosed underground parking areas and recommend the following changes to Rule 19.4.1(a)(iii) as shown below (in blue text):

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[1] Where additional building height is allowed in exchange for underground and / or under-croft car parking, to reduce at-grade car parking areas.

Amend Rule 19.4.1(a)(iii) with alternative wording as follows:

iii. **Ōmokoroa Commercial Zone Stage ~~2~~ 3 Structure Plan Area**

~~The maximum building/structure height in the Ōmokoroa Stage 2 Structure Plan area shall be 11m and no provision is made for additional non-habitable space above the 11m height limit.~~

~~The maximum building/structure height in the Ōmokoroa Stage 3 Structure Plan area shall be 20m, except where buildings locate all parking and servicing requirements enclosed below ground level, in which case the 11m maximum height limit; shall be 23m.~~

The maximum *building/structure height* in the Ōmokoroa Stage 3 *Structure Plan* area shall be 20m, except where *buildings* provide for parking enclosed, or partially enclosed/under-croft, below *ground level* in an area which is equal to the gross floor area of the above ground building, in which case the maximum *height* shall be 23m. In addition, visitor parking, servicing and loading requirements can be provided on-site at ground level in accordance with Section 4B.

For the purposes of this rule:

- Only the ground floor of the above ground building shall be included in the calculation of gross floor area; and
- The area for parking enclosed below ground level is inclusive of any areas required for manoeuvring, storage, stairwells, access and ramps.
- For any partially enclosed or undercroft parking areas the length of the exposed parking area must be screened in accordance with Rule 4C.5.3.1, except for where vehicle access is required.

26. It is noted that this same rule is also repeated in the Section 14A – Ōmokoroa Medium Density Residential Precinct, Rule 14A.4.1(b)(ii)(c). While this particular rule was not submitted on by Jace Investments and Kiwi Green NZ Ltd seeking the same wording, I recommend that Rule 14A.4.1(b)(ii)(c) be updated to match Rule 19.4.1(a)(iii) recommended above as a consequential amendment. This will appropriately ensure that the bonus height requirement is carried across consistently into the Ōmokoroa Medium Density Residential Precinct.

Topic 4 – Rule 19.4.1(a)(iii) – Activity Performance Standards – Building height in the Commercial Zone – Increase in height for Te Puke & Ōmokoroa Commercial Zones

27. The evidence of Ms Suzannah Tait for Kāinga Ora states that Te Puke and Ōmokoroa should have their Commercial Zone heights increased to 24.5m. Ms Tait confirms that the High Density Zone sought in Kāinga Ora's original submission for Te Puke is no longer being pursued, but is for Ōmokoroa Stage 3C (considered in the Reply evidence of Mr Hextall). In lieu of pursuing the High Density Zone for Te Puke, Ms Tait, supported by the evidence of Mr Phillip Osbourne, is now seeking additional height from 11m to 24.5m with specific supporting rules for daylight, minimum dwelling size and outlook space. The same is sought for Ōmokoroa Commercial Zone. Kāinga Ora's original submission did not seek changes to these rules however.

28. In his rebuttal evidence Mr Hextall (page 27) considers this request in detail as it relates to both Ōmokoroa and Te Puke. However, in summary he does not support the proposed changes requested by Kāinga Ora as he considers it more appropriate that the request for Te Puke is addressed through the Te Puke Spatial Plan project, which has commenced. This will provide a more comprehensive approach and ensure more meaningful engagement with the community and stakeholders.

SECTION 4C – AMENITY

Topic 2 – Indoor Rail Noise and Vibration

29. KiwiRail have sought new rail noise and vibration controls through their primary submission and now supported by the evidence of Ms Catherine Heppelwaite and Mr Chiles. These requests also included a new definition for "noise sensitive activities". The acoustic evidence of Mr Chiles provides additional technical explanation for the requested rail noise and vibration provisions.

30. This matter was previously addressed in the section 42A report and more detail on this topic can be found at page 6 of the Section 4C Amenity section. In summary, I did not support the requested change as the original submission did not include any special analysis of the rail line through Ōmokoroa and Te Puke or how the requested provisions relate

to the specific environment. There is also an existing rule 4C.1.3.2(c) which protects potentially noise sensitive activities in all zones which would include protection from rail noise.

31. The evidence of Mr Chiles bases the requested 100m setback on a report prepared by Marshall Day (Ontrack rail noise criteria reverse sensitivity guidelines, 22/10/09). This report is not attached to the evidence of Mr Chiles and was not provided in their original submission or when we met with KiwiRail to discuss their submission.

32. The evidence of Mr Chiles (para 7.4) describes the 100m setback as being calculated in relation to noise received over a flat area without screening, and would appear to be a nationwide approach. While I agree there is merit in a rule in relation to indoor rail noise, I question whether the 100m setback is appropriate.

33. The proposed 100m setback appears to be a nationwide approach and assumes flat land with no screening. This is not always the case in Ōmokoroa and Te Puke. The railway line is located in a cutting through much of these residential areas, which the evidence of Mr Chiles does not specifically address, and there are many existing dwellings, or other obstructions which could result in noise reductions.

34. The rule proposed by KiwiRail also includes a second limb for "at least 50m" from the rail designation, which suggests that at 50m, if there is a noise barriers in the way (which is not defined), if it blocks the line of sight from a window or door to a point 3.8m above the rail line, there is no longer a noise issue. A landowner needing to prove that there is a noise barrier (and what this is) and that the barrier blocks the line of site (from all windows and doors) to all points 3.8m above the railway tracks would require an assessment (potentially involving a surveyor) and could become an onerous and costly exercise.

35. There are also other further submissions which do not support the rule as requested as outlined in my Section 42A Report.

36. In summary I do not support the rule in relation to indoor rail noise as requested by KiwiRail. However, I accept there could be a pragmatic approach that balances of protection to KiwiRail and enabling

development. This also reflects the current ODP wording and definitions for activities, which do not appear to have been considered in the rule wording from KiwiRail. It would be inconsistent with existing terms in the ODP and Plan Change 92 to use the terms used in the KiwiRail requested rule and this could cause interpretation problems for future uses.

37. As a pragmatic approach to the request I recommend that the setback is measured 50m (not 100m) from the centreline of the railway tracks, due to the evidence assumption (para 7.4-7.5 of Mr Chiles' evidence) that noise is to be an issue at 100m from the tracks not taking into account the possible noise reductions due from the topography around the railway lines, closed doors/windows, and the location of other buildings.

38. The designation boundary varies in width, with the edge being at least 20m from the tracks and extending to 30m in some areas. As the noise source is from the tracks, I consider it appropriate to instead measure the 50m provision from noise source, rather than the designation boundary. The evidence (para 7.4) also measures sound levels at a distance from the tracks so this is consistent.

39. I have also removed reference to 'all points 3.8m above the rail tracks' as this could be difficult and costly to measure by a surveyor, and reference to 'noise barrier' as it is unclear what this is or what would qualify as a noise barrier to Plan users.

40. I also do not support the requested "noise sensitive activities" definition as again it uses terms which are inconsistent with the ODP and Plan Change 92 terms. The ODP already contains references to potentially noise sensitive activities, but specifically lists those relevant to the rule. Including a definition as suggested by KiwiRail could result in unintended consequences in other rules of the ODP.

41. I recommend the following additions to Rule 4C.1.3.2(c) as shown below (in blue text):

c. Noise sensitivity

i. For potentially noise-sensitive activities such as commercial *offices*, *places of assembly*, veterinary facilities, *medical or scientific facilities* ~~and~~, *dwellings* and *accommodation facilities*, and *education* *facilities* in the Ōmokoroa Mixed Use

Residential Precinct, an acoustic design certificate shall be provided at the time of building consent demonstrating the *building* has been designed so that the internal noise limits set out in the following table are not exceeded;

ii. Where windows and doors must be closed in order to meet the internal noise standards, an alternative means of ventilation shall be provided which meets all relevant requirements of the Building Code.

	Sound Level Not to be Exceeded	
	Daytime period	**Night time period**
	LAeq	***LAeq***
Offices not accessory to any industry, storage or warehousing	45dB	N/A
Residential units (habitable spaces)	45dB	30dB

iii. In Ōmokoroa and Te Puke, any new building or addition to an existing building located within 50m of the centreline of a railway track, which contains a *dwelling, accommodation facility, education facility, place of assembly*, or *medical or scientific facility* shall meet the following requirements:

(a) The building is to be designed, constructed and maintained to achieve an internal design level of 35 $dBL_{Aeq(1h)}$ for bedrooms and 40 $dBL_{Aeq(1h)}$ for all other habitable rooms. Written certification of such compliance from a suitably qualified and experienced acoustic engineer shall be submitted with the building consent application for the building concerned.

(b) Where the windows of the building are required to be closed to achieve compliance with the aforementioned noise limits, alternative means of ventilation shall be provided in compliance with clause G4 of the New Zealand Building Code or any subsequent equivalent clause.

42. Mr Chiles also provides further evidence to support KiwiRail's request for the new vibration provision. However, the proposed rule still requires a high level of building and foundation design to be a permitted activity and does not require certification from an expert. This could also limit the ability for multi level medium density development within 60m for the railway line due to the cost of compliance with the requirement. Ms Heppelthwaite (para 9.4) and Mr Brown (para 6.16) have provided an alternative to the vibration control provisions, being a "Rail Vibration Alert Overlay" as an absolute minimum requirement. This would alert owners of properties adjacent to the rail corridor and put them on notice of potential vibration effects.

43. In my opinion this would be an appropriate solution and I therefore recommend that a 60m line (from the centre line of the railway tracks) be provided as a non-statutory layer on Council planning maps (in the online ePlan). It is noted that this would not form a layer on the District Plan Maps, as it would have no associated District Plan rules (unlike all other overlays in the District Plan Maps) and is instead only a layer advising property owners to potential effects. As such I also do not support the evidence of Ms Heppelwaite requesting new wording in the Explanatory Statement of 4C.1 regarding the Rail Vibration Alert Overlay and the proposed overlay does not have any associated rules or statutory considerations. Having reference to the "Overlay" could result in confusion to Plan users.

44. The evidence of Ms Suzannah Tait for Kāinga Ora makes further recommended changes to Rule 4C.1.3.2(c) (for reasons set out in her paragraph 15.2). While there are some points in Ms Tait's evidence that I agree with, because the further amendments to this rule sit outside of what is proposed above for rail noise and seek to alter rules that apply District wide, in my opinion these would be more appropriately addressed in a district-wide review to ensure consistency across the District. For that reason, I do not support the request made at paragraph 15.3 of Ms Tait's evidence.

Anna Marie Price
6 September 2023