

**BEFORE INDEPENDENT HEARING COMMISSIONERS
AT TAURANGA**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
KI TAURANGA**

**IN THE MATTER
AND**

of the Resource Management Act 1991

IN THE MATTER

**of the hearing of submissions on Proposed Plan
Change 92 (Ōmokoroa and Te Puke Enabling
Housing Supply and Other Supporting Matters)
(PC92) to the Operative Western Bay of Plenty
District Plan (WBOPDP)**

**STATEMENT OF REBUTTAL EVIDENCE OF LEZEL BENEKE
ON BEHALF OF KĀINGA ORA – HOMES AND COMMUNITIES**

(CORPORATE)

6 SEPTEMBER 2023

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1. INTRODUCTION

1.1 My name is Lezel Beneke. I hold the position of Principal Development Planner within the Urban Planning and Design Group at Kāinga Ora – Homes and Communities (**Kāinga Ora**). My experience and qualifications are set out in my Evidence in Chief (**EIC**), dated 25 August 2023. I am providing corporate rebuttal evidence on behalf of Kāinga Ora in respect of PC92.

2. SCOPE OF REBUTTAL EVIDENCE

2.1 This rebuttal statement of evidence focuses on the evidence provided on behalf of KiwiRail by Mr Michael Brown (corporate), Ms Catherine Heppelthwaite (planning) and Mr Stephen Chiles (acoustic) and the relief KiwiRail are seeking in respect of intensification in close proximity to the East Coast Trunk Line (**ECTL**), which passes through Ōmokoroa and Te Puke.

2.2 I refer to the rebuttal evidence of Ms Tait¹ and Mr Styles² who have provided expert planning and acoustic rebuttal evidence on behalf of Kāinga Ora.

Setback from KiwiRail boundary

2.3 Plan Change 92 (**PC92**) as notified includes a 10m setback from the ECTL. Further, the reporting officer within the s42A Report³ has recommended that the KiwiRail submission be accepted as the 10m metric is an existing setback in the Operative Western Bay of Plenty District Plan (**WBPD**).

2.4 Further, Mr Brown's evidence states that KiwiRail "*endorses the Council's approach to include a setback from the rail corridor in PC92.*" But further notes that "*KiwiRail generally seeks a 5-metre safety setback from the boundary of the rail corridor as being*

¹ Rebuttal evidence of Ms Susannah Tait on behalf of Kāinga Ora, dated 6 September 2023

² Rebuttal evidence of Mr Jon Styles on behalf of Kāinga Ora, dated 6 September 2023

³ S42A Report, Section 14A, Part 2

sufficient to enable landowners to use and maintain buildings safely while ensuring the provision of a safe and efficient rail network.”

2.5 I consider the proposed setback distance of 10m onerous relative to the potential adverse amenity effects the rule is seeking to manage. Building dominance and shadowing, for example, are largely controlled through height and height in relation to boundary controls – noting the Kāinga Ora recommended setback sought is 2.50m.

2.6 I draw attention to rules in other district plans across the country, which permits, of relevance, a minimum 1.50m or 1.00m⁴ setback for buildings from boundaries – irrespective of whether these boundaries adjoin a railway corridor or any other transport corridor. I draw attention to the Independent Hearing Panel’s report on Plan Change 2 of the Kāpiti Coast District Plan⁵ which notes:

“Mr Banks considered that a HIRB standard would provide sufficient space for this setback rather than introduce a new standard. He calculated that this would require a 4.6m setback from the boundary. While this is 0.4m less than sought by KiwiRail, Mr Banks considered that in keeping with good management of reverse sensitivity effects, KiwiRail could employ methods to minimise the risk. Examples that he gave include fencing, and monitoring of the rail corridor...The Panel agrees with Mr Banks’ recommendation that the HIRB standard can be relied upon to address KiwiRail concerns and that consideration be given to the management of activities within the corridor.”

2.7 The use of the proposed HIRB standards as one mechanism to allow for management of KiwiRail’s concerns is further endorsed within Ms Tait’s rebuttal evidence⁶. I agree with Ms Tait’s assessment which

⁴ Decisions version of PC56 – Hutt City Council Intensification Plan Change and Decisions version of PC2 – Kāpiti Coast District Plan IPI – noting that these PCs do not provide any additional controls for setbacks from railway corridors and relies on the MDRS setbacks and HIRB controls only.

⁵ <https://www.kapiticoast.govt.nz/media/jrmofuz1/ihp-report-to-kapiti-coast-district-council-on-pc2.pdf>, page 45, para 98 and 99

⁶ Rebuttal evidence of Ms Susannah Tait on behalf of Kāinga Ora, dated 6 September 2023, para 2.6

notes that if compliant with the HIRB standards and a 2.50m setback, a building adjacent to the railway corridor could be no higher than 8m and that this would assist in alleviating KiwiRail's safety concerns.

- 2.8 Kāinga Ora has been involved in numerous plan changes and plan reviews across Aotearoa and have been successful in confining KiwiRail's requested setback to 3.00m as a maximum. This is evident within the Whangārei District Plan (2.0m setback within residential zones and 2.5m setback within commercial zones), the Proposed New Plymouth District Plan Decisions Version (1.50m setback) and the Proposed Marlborough Environment Plan Decisions Version (3.0m setback agreed in consent order).

Noise and vibration controls

- 2.9 To manage potential reverse sensitivity effects on the rail corridor, KiwiRail is seeking to include new noise and vibration controls for noise sensitive activities. These controls would apply to a depth of 100m (noise) and 60m (vibration) from the designation edge.
- 2.10 The details of these proposed controls are set out in the evidence of Ms Heppelthwaite, which is supported by the evidence of Mr Chiles on behalf of KiwiRail.
- 2.11 Kāinga Ora oppose 'blanket' distance corridors from rail corridors provisions in District and Unitary plans – the effects as generated from rail activity require site specific assessment, with measurement and modelling to clearly identify what level of noise is experienced at what distance from the railway line, taking into account all of the factors that affect those noise levels, including topography, actual and predicted level of activity on the railway corridor, nature of use etc. It is only after doing this assessment that an assessment can be made of the actual likely potential effects on health and amenity. Kāinga Ora seeks that these effects are spatially modelled based on the actual effects, and, if they are to be regulated on the receivers, then they should be shown in the WBPDP.

- 2.12 Furthermore, considering that some of the existing environment around the railway corridor already includes residential activity, any ongoing use and development of this land for urban living is not considered by Kāinga Ora to be out of character.
- 2.13 It is acknowledged, however, that:
- (a) Unmitigated noise and vibration from railway activities and corridors has the potential to adversely affect the health and wellbeing of occupiers of noise sensitive land use activities adjacent to those corridors. This is outlined within Mr Chiles evidence for KiwiRail⁷; and
 - (b) In addition to other methods outside of the Plan, District Plan rules may be an appropriate mechanism to manage the potential for adverse effects of noise and vibration from railway corridors on noise sensitive land uses.
- 2.14 Where Kāinga Ora diverges with the position of KiwiRail, is with respect to:
- (a) Whether there is any evidential basis establishing a reverse sensitivity effect on the railway corridor;
 - (b) Whether there is any basis for imposing controls on noise sensitive land uses in the WBPDP;
 - (c) If so, the type and spatial extent of any controls that are necessary and appropriate to manage adverse effects; and
 - (d) Who should bear the burden (cost) of managing these effects, particularly in existing residential areas.
- 2.15 In relation to (a) above, Kāinga Ora has not seen any information that demonstrates a reverse sensitivity effect arises at the interface between the railway corridor and noise sensitive activities in the Western Bay of Plenty.

⁷ Statement of Evidence of Stephen Chiles on behalf of KiwiRail Holdings Ltd, dated 25 August 2023

- 2.16 In respect of (b) above, Kāinga Ora does not consider there is an ability to assess whether there is a basis for imposing controls on receivers without understanding: the actual noise levels involved; the potential health risks; the options to mitigate at source or between source and receiver; and how potential adverse health effects for existing receivers will be addressed by the relief sought by KiwiRail.
- 2.17 In relation to (c) and (d) above, the Kāinga Ora view is that the issue could be managed through:
- (a) KiwiRail mitigating their effects at source and as far as is practicable (e.g.: by adopting the Best Practicable Option).
 - (b) Undertaking works in areas where noise sensitive land uses exist or are provided for by the underlying zoning, and, where necessary, introducing controls in the receiving environment to deal with effects that cannot be internalised following the adoption of the BPO.
- 2.18 Kāinga Ora considers that mitigation should primarily be the physical and/or financial responsibility of KiwiRail and in some instances landowners and developers. It is appreciated that this allocation of responsibility will require a broader range of methods than the current WBPDP provisions, which have been deemed adequate by the reporting officer, currently provide:
- (a) The landowner/developer should be responsible where land use zoning is changed from providing for non-noise sensitive land uses to enabling noise sensitive land uses adjacent to an existing railway corridor (e.g.: through a plan change to introduce urban zoning on land alongside an existing railway corridor where the land was previously zoned rural or industrial).
 - (b) KiwiRail should be responsible for mitigating potential adverse health effects of noise and vibration on adjacent sensitive land uses where:

- (i) New infrastructure is constructed or existing infrastructure is upgraded (e.g.: upgrades which have the effect of bringing noise closer to existing sensitive activities);
- (ii) A noise sensitive land use exists adjacent to an existing railway corridor and that land use is to be retained, expanded, intensified or renovated;
- (iii) Where the operation of the infrastructure generates potential adverse health effects on existing sensitive receivers; or
- (iv) If land is rezoned from a zone that primarily facilitates development for noise sensitive land use activities to a zone that enables the intensification of such sensitive land use activities next to existing transportation corridors.

2.19 I note that Mr Styles' rebuttal evidence⁸ supports this. Mr Styles also states that a computer noise modelling exercise should be undertaken now at the time of this plan change to prevent costs incurred for the applicants and the Council. I agree with this approach.

2.20 Kāinga Ora has been involved in numerous plan changes and plan reviews across Aotearoa and have been successful in confining KiwiRail's requested default distance buffer corridors to spatially modelled extent based on the actual effects. This is evident within the Whangārei District Plan and Auckland Unitary Plan. There are a number of plan changes and plan reviews where a request to the spatial modelled extent of effects (over the default setback) has been sought by Kāinga Ora, and the Panel has requested KiwiRail to provide for the further information in the hearings processes.

⁸ Statement of Rebuttal Evidence of Jon Styles on behalf of Kāinga Ora, dated 6 September 2023

2.21 With respect to vibration, Kāinga Ora support the alternative method put forward by Ms Heppelthwaite, being a 'rail vibration alert overlay' and supported in Mr Brown's evidence. I agree with Ms Tait's rebuttal evidence on this point:

An alert overlay will enable builders and homeowners to make their own determinations about an appropriate building design to manage the potential vibration effect and will not unnecessarily impose a substantial building cost.

2.22 In that regard, Kāinga Ora supports a 60m wide alert layer in the Plan as proposed within Mr Brown's evidence and not 100m as proposed within Ms Heppelthwaite's evidence.



Lezel Beneke
6 September 2023