BEFORE THE HEARINGS PANEL

IN THE MATTER	of the Resource Management Act 1991 ("**RMA**")
AND	
IN THE MATTER	of a submission by KiwiRail Holdings Limited ("**KiwiRail**") on Hearing Stream 3 (Noise) of the Proposed Waitaki District Plan ("**Proposed Plan**")

LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED IN RELATION TO HEARING STREAM 3 (NOISE)

15 OCTOBER 2026

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1. SUMMARY

1.1 KiwiRail builds, maintains and operates New Zealand's rail network, managing railway infrastructure and land, and running freight and passenger services nationwide. That infrastructure is of regional and national significance.

1.2 As a requiring authority under the RMA, KiwiRail holds railway designations throughout New Zealand, including in the Waitaki District. The Main South Line ("**MSL**") traverses the district and is designated for railway purposes in the Proposed Plan (designation KRH-1). KiwiRail also holds a designation for the former Waiareka Branch (designation KRH-2), which is not currently operational. The MSL, which runs from Bluff to Christchurch, is a pivotal part of the national rail network, and KiwiRail's container terminal in Oamaru is a key rail freight connection point.

1.3 Rail operations generate noise and vibration effects which KiwiRail endeavours to avoid, remedy, or mitigate as far as practicable. However, the nature of rail operations means that KiwiRail cannot fully internalise all noise and vibration effects within the rail corridor boundaries.

1.4 Dr Chiles has explained how noise and vibration effects can result in health and amenity effects for neighbouring properties and in particular residents.[1] KiwiRail therefore seeks to ensure the development or intensification of particular activities near the rail corridor in the Waitaki District does not give rise to health and amenity effects on adjoining residents, nor reverse sensitivity effects that may compromise the safe and efficient operation of the rail network. Reverse sensitivity is a significant issue for transport infrastructure, including the rail network.

1.5 The notified Proposed Plan rightly recognises that new noise-sensitive activities near the rail corridor must be managed. KiwiRail and the Council's reporting officer, Ms Belgrave, are largely aligned on the noise controls to be included in the Proposed Plan. However, KiwiRail seeks some refinements to these provisions to ensure they are clear for plan users and workable in practice.

[1] Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at sections 4 and 5.

2. RELIEF SOUGHT

2.1 KiwiRail seeks:

(a) a mapped Transport Corridor Noise Control Area Overlay which, as it relates to the rail network, applies within 100m of the rail corridor designation boundary ("**Noise Overlay**"), in place of the notified 80m setback;

(b) retention of the acoustic insulation and mechanical ventilation provisions (NOISE-R2, NOISE-S2 and NOISE-S3), subject to technical amendments to address the issues identified by NZTA and Dr Chiles;

(c) the inclusion of a mapped Rail Vibration Alert Area Overlay, for information purposes only, applying within 60m of the rail corridor designation boundary ("**Vibration Overlay**"); and

(d) related amendments to definitions (Transport Corridor Noise Control Area Overlay; Rail Vibration Alert Area Overlay), the Noise chapter introductory text and the planning maps.

2.2 KiwiRail's noise and vibration relief has been developed and refined over a number of years through multiple planning processes, and has been accepted by many councils and the Environment Court.[2] The provisions are appropriate, pragmatic and reasonable, and consistent with the Council's obligations to prepare and change its plan in accordance with the provisions of Part 2 of the RMA, including enabling people and communities to provide for their social, economic, and cultural well-being and their health and safety.

2.3 KiwiRail's proposed provisions are set out in **Attachment A** to Ms Heppelthwaite's evidence.[3]

3. THE IMPORTANCE OF RAIL NOISE AND VIBRATION PROVISIONS

3.1 Noise and vibration are an unavoidable consequence of operating a rail corridor. Trains are large, travel at speed, and generate noise and vibration simply by running. These effects, and their impacts on human health, are well

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2 See for example, *Kāinga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218 at [78].

3 Statement of Evidence of Catherine Heppelthwaite dated 8 October 2026 at Attachment A.

documented by bodies such as the World Health Organisation and underpinned by robust scientific research.[4]

3.2 KiwiRail takes its responsibilities seriously. Through an ongoing programme of upgrades, repairs and maintenance to improve track conditions, it actively works to avoid, remedy or mitigate the rail noise and vibration it produces. It does so both as a good neighbour and in discharging its statutory obligation to adopt the best practicable option to avoid unreasonable noise and to avoid, remedy or mitigate adverse effects on the environment.[5]

3.3 But there are limits to what the rail operator can do. The nature of rail operations means that noise and vibration cannot be fully contained within the rail corridor boundaries. Nor does the law require it: the RMA is not a "no effects" statute.[6]

3.4 That is why the Proposed Plan matters. KiwiRail's key focus is to ensure that new or intensified sensitive activities near the rail corridor do not expose residents to adverse health and amenity effects, or give rise to reverse sensitivity effects that compromise the safe and efficient operation of the rail network.

3.5 Reverse sensitivity is a real and significant threat to transport infrastructure, including the rail network. The Environment Court has consistently recognised the importance of protecting regionally significant infrastructure from reverse sensitivity effects, and has declined resource consent where development risked giving rise to them.[7] The High Court has likewise confirmed the vulnerability of infrastructure operators to these effects.[8]

3.6 It is clear the Council intends that protecting the rail network from reverse sensitivity effects is a core purpose of the Proposed Plan provisions. KiwiRail is supportive of this approach. The amendments KiwiRail seeks are largely to ensure that the noise-related provisions are clear and workable for plan users.

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4 Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at [4.1]-[4.3].

5 RMA, ss16 - 17.

6 *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159 at [245].

7 See, for example, *Gargiulo v Christchurch City Council* NZEnvC Christchurch 137/2000, 17 August 2000.

8 *Auckland International Airport Limited v Auckland Council & Anor* [2024] NZHC 2058.

4. TRANSPORT CORRIDOR NOISE CONTROL OVERLAY

4.1 The expert evidence before the Panel is that acoustic provisions for new sensitive uses adjacent to the rail corridor are appropriate. KiwiRail supports Ms Belgrave's (Council Planner) recommendation that those controls apply within 100m of the rail corridor, rather than 80m as notified.[9] The remaining differences between KiwiRail and the Council relate to how this area is identified: being either by a mapped overlay (KiwiRail's preference) or by words in the rule (Ms Belgrave's preference). Dr Chiles has also recommended some technical amendments to the form of the noise controls which KiwiRail supports.

Mapping of the Noise Overlay

4.2 Ms Belgrave recommends that the noise controls apply within a "Transport Corridor Noise Control Area" defined in words. Her view is that measuring an offset from the rail corridor boundary is straightforward and the approach accommodates future changes to the rail designation without amendment to the planning maps.[10] Ms Heppelthwaite prefers a mapped overlay from a planning perspective.[11]

4.3 Use of a mapped Noise Overlay is both common across plans in New Zealand and is consistent with the National Planning Standards which specifically provide for a mapped "Noise Control Boundary Overlay" symbol. The National Planning Standards state that an overlay "spatially identifies distinctive values, risks or other factors which require management in a different manner from underlying zone provisions." The noise controls fit this brief.

4.4 As Ms Heppelthwaite explains, the district plan maps are the starting point for any plan assessment and are simple and clear for plan readers. An overlay will clearly show the extent of the rail noise controls applying in the District. Conversely, a control contained only in a rule in the Noise chapter is not readily accessible to most plan users. A mapped overlay is by far the most effective way of ensuring that landowners, purchasers, residents and developers are aware, at the outset, that the controls apply to their site.[12]

4.5 For the avoidance of doubt, KiwiRail seeks that the Noise Overlay apply along the entire extent of the rail corridor. This is a district wide control (not a zone-

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9 Section 42A Report dated 21 September 2026 at [64], [69] and [212].
10 Section 42A Report dated 21 September 2026 at [64], [69] and [318].
11 Statement of Evidence of Catherine Heppelthwaite dated 8 October 2026 at [6.1]-[6.2].
12 Statement of Evidence of Michelle Grinlinton-Hancock dated 8 October 2026 at [5.9].

specific control), which is not exempt from being considered in this Proposed Plan process.

Form of noise controls

4.6 KiwiRail generally supported the acoustic insulation and ventilation controls in the notified Proposed Plan (NOISE-R2, NOISE-S2 and NOISE-S3). Having considered those provisions further, Dr Chiles has identified a number of technical issues which need to be addressed so that the provisions are technically effective, clear and enforceable.[13] Ms Heppelthwaite agrees these technical issues identified by Dr Chiles should be addressed.[14]

4.7 Ms Belgrave recommends narrowing the heading of NOISE-R2 so that it no longer applies to changes of use of, or additions to, existing buildings. Ms Heppelthwaite and Dr Chiles do not support that narrowing and consider NOISE-R2 should continue to apply to changes of use, and to additions and alterations that create new space for a sensitive activity.[15]

5. VIBRATION ALERT AREA OVERLAY

5.1 KiwiRail's submission seeks a mapped Vibration Overlay, together with a supporting definition and introductory text in the Noise chapter explaining its purpose.[16]

5.2 The Proposed Plan does not include any provisions relating to rail vibration. Dr Chiles' evidence is that vibration has adverse health and amenity effects on people living near the rail corridor,[17] and that vibration can routinely exceed relevant criteria over 100m from railway tracks in New Zealand.[18] Dr Chiles' technical opinion is that controls on rail vibration are warranted for new and altered buildings to manage potential effects on occupants.[19]

5.3 KiwiRail has nevertheless taken a pragmatic approach - rather than land use controls over the 100m that would be technically preferable, it seeks only an information-only Vibration Overlay extending 60m from the rail corridor

13 Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at [6.7]-[6.9].
14 Statement of Evidence of Catherine Heppelthwaite dated 8 October 2026 at [6.32].
15 Statement of Evidence of Catherine Heppelthwaite dated 8 October 2026 at [6.24]-[6.28]; Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at [7.7].
16 KiwiRail submission points 233.1, 233.17, 233.89 and 233.134.
17 Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at [4.1].
18 Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at [6.10].
19 Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at [7.20].

designation boundary.[20] The 60m extent is therefore conservative, given that vibration effects can occur at and beyond 100m from the track.

5.4 The Vibration Overlay does not impose land use controls. It is an information tool that alerts plan users, landowners and developers that properties within the overlay may experience rail vibration effects.[21] It is not a prohibition on development, and it does not mean that land within the overlay is unsuitable for sensitive activities. It leaves it to the landowner to decide whether and how to respond, for example through building location or design.[22]

5.5 The Council's own acoustic advisers, Marshall Day Acoustics, consider that rail vibration is an issue that warrants an alert mechanism.[23] While Ms Belgrave does not take issue with the evidence on rail vibration effects, she recommends rejecting the Vibration Overlay for two reasons:[24]

(a) she considers that an overlay with no associated controls may confuse plan users; and

(b) she considers that the location of rail corridors is generally well known, so that occupants and purchasers should be aware of their effects.

5.6 We respectfully disagree. The explanatory text sought by KiwiRail is clear that no vibration controls apply. Such alert layers are not novel and are an increasingly common feature of district plans, including the Whangārei, Waimakariri and Timaru District Plans and the Auckland Unitary Plan.[25] The Environment Court has also accepted that such layers are an effective tool to

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20 Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at [6.11]; Statement of Evidence of Michelle Grinlinton-Hancock dated 8 October 2026 at [5.13]; Statement of Evidence of Catherine Heppelthwaite dated 8 October 2026 at [6.8].

21 Statement of Evidence of Michelle Grinlinton-Hancock dated 8 October 2026 at [5.14].

22 Statement of Evidence of Michelle Grinlinton-Hancock dated 8 October 2026 at [5.14]; Statement of Evidence of Catherine Heppelthwaite dated 8 October 2026 at Attachment A (Noise chapter introduction).

23 Section 42A Report dated 21 September 2026, Appendix 4, Marshall Day Acoustics comments on submission points 233.1 and 233.17; Statement of Evidence of Dr Stephen Chiles dated 8 October 2026 at [7.20].

24 Section 42A Report dated 21 September 2026 at [92] and [318].

25 Whangārei District Plan, NAV-R8 (60m); Waimakariri District Plan, How to interpret and apply the rules (3) (100m); Timaru District Plan, Noise chapter introduction (60m); Auckland Unitary Plan, Waihoehoe (I452) and Drury Centre (I450) Precincts.

manage effects in the absence of controls to manage vibration on sensitive uses.[26]

5.7 Further, proximity to a rail line does not equate to an understanding of vibration effects, particularly for purchasers who are new to an area, or where the rail line is not visible but the property is still within an area where vibration effects can occur.[27]

5.8 The Vibration Overlay is a pragmatic planning tool to manage potential vibration effects on future sensitive uses near the rail corridor, and should be included in the Proposed Plan.

6. OTHER NOISE PROVISIONS

6.1 KiwiRail seeks a range of other amendments to the Proposed Plan, including consequential amendments to definitions and the planning maps, which are addressed in Ms Heppelthwaite's evidence.

6.2 KiwiRail's relief, as set out in **Attachment A** to Ms Heppelthwaite's evidence, will most appropriately achieve the sustainable management purpose of the RMA, protect the health and amenity of residents in proximity to the rail corridor, and ensure the ongoing safe and efficient use and operation of the rail corridor in the Waitaki District as nationally significant infrastructure.

DATED: 15 October 2026



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26 *Kāinga Ora - Homes and Communities v Auckland Council* [2022] NZEnvC 218; *KiwiRail Holdings Ltd v Whangārei District Council* [2023] NZEnvC 004; *HD Land Ltd v Waikato District Council* [2024] NZEnvC 054.

27 Statement of Evidence of Michelle Grinlinton-Hancock dated 8 October 2026 at [5.14]; Statement of Evidence of Catherine Heppelthwaite dated 8 October 2026 at [6.8].