

IN THE MATTER OF Resource Management Act 1991

AND

IN THE MATTER OF The hearing of submissions in relation to
the Proposed Timaru District Plan

MINUTE 33

**HEARING F - DIRECTIONS REGARDING LATE FURTHER SUBMISSIONS IN RELATION
TO A SUBMISSION FROM ENVIRONMENT CANTERBURY (183) AND RESPONSE TO
ISSUES OF SCOPE ARISING FROM SUBMISSIONS AND EVIDENCE FROM KIWIRAIL
(187)**

DATED 7 MAY 2025

1. INTRODUCTION

[1] During the hearing of submissions in Hearing F two possible natural justice issues arose out of evidence in relation to:

- i. A request by Environment Canterbury (ECan) to extend the Flood Assessment Area Overlay in its originating submission, without any accompanying mapping or other description of the extended areas; and
- ii. A request to include acoustic and vibration mitigation overlays for buildings within 100m and 60m respectively of the railway line which was not accompanied by a map, and further a request from KiwiRail in evidence for both distances to be measured from the designation.

[2] The Panel¹ addresses our consideration of the issues of fairness and makes directions accordingly.

¹ The Timaru District Council ("the Council") appointed Cindy Robinson (Chairperson), Ros Day-Cleavin, Councillor Stacey Scott, Jane Whyte, Megan McKay, and Raewyn Solomon ("the Panel") to hear submissions and further submissions, and evidence to make decisions on the Timaru Proposed District Plan ("the Proposed Plan") pursuant to Section 34A(1) of the Resource Management Act 1991 ("RMA"). Our delegation includes all related procedural powers to conduct those hearings.

2. ENVIRONMENT CANTERBURY SUBMISSION – FLOOD ASSESSMENT AREA OVERLAY

[3] Counsel for the Timaru District Council outlined a potential fairness issue in her opening submission which arose from a submission from ECan. The issue was described as follows:²

36. The PDP as notified identified a Flood Assessment Area overlay, which includes areas that are highly likely to be subject to flooding and inundation but which require site-specific assessment to determine the level of risk to people and property. Within this overlay, certain activities require an applicant to obtain a Flood Risk Certificate from the Council which specifies the flood event risk level, the minimum finish floor level required for a building or structure and whether the land is located within an overland flow path.

37 ECan made a submission [183.28] seeking an expansion to the overlay however, as noted in the section 42A report and Ms Francis's evidence, did not provide an amended overlay map.

38 Mr Willis sought further information from ECan as to the extent of the area it considered should be covered by a flood assessment overlay, in August 2024. The Panel will recall that the Natural Hazards chapter was rescheduled from Hearing C to Hearing F, in order to allow sufficient information to be provided by ECan to enable Mr Willis to make a recommendation on its submission.

39 ECan provided a memorandum from Mr Griffiths on 28 February 2025, which provides a proposed map and sets out the methodology followed in order to produce that map. In preparing the map, ECan (Mr Griffiths) worked with Council officers (Mr Kemp) to review the Flood Assessment Area mapping of the Timaru and Geraldine urban areas, which relies upon modelling of the Council's stormwater network by WSP. It is understood that, given that the stormwater modelling has been updated since the PDP was notified, ECan's position was that the updated modelling should be used.

40 Mr Willis has concluded that the extension of the Flood Assessment Area likely has merit, but was unable to make a recommendation in the absence of technical evidence. The Council considers it appropriate to rely upon technical evidence provided by ECan in support of its submission, given its responsibilities for hazard management and the significant role it plays in providing technical information to territorial authorities, as set out in Ms Francis' evidence. In light of the evidence now filed for ECan, Mr Willis considers the proposed extension of the overlay to be appropriate. The evidence therefore suggests there is merit in this approach. No parties have opposed it.

[4] Counsel then proposed a number of alternatives as to how the Panel might address the risk that some people may not be aware that the ECan submission, which simply requested an extended area, would have included their properties. This included notification to allow an opportunity for a late further submission, or rejecting the relief requested by ECan and recommending the Council to pursue a variation, or simply reject the proposal on its merits.

² Legal Submissions of Counsel on behalf of Timaru District Council – Hearing F, 16 April 2025, paragraph 36-46

[5] The Panel sought the views of Ms Francis who appeared for ECan. Although Ms Francis advocated for the merits of including the most up to date modelling data in the Plan, she left the notification issue to the Panel.

[6] At the conclusion of the second day of Hearing F, the Chair indicated that the Panel considered that it was appropriate that the Plan include the updated flooding information, however the Panel was concerned about the potential that landowners who may now be in the revised areas, would not have reasonably foreseen that they would be impacted. We note that does not predetermine the outcome of the ECan submission point, however the Panel is of the view that those affected should be able to participate by having the opportunity to lodge a further submission.

[7] We direct that the Council publicly notify the updated flooding information for further submissions so those affected by the ECan submission point can have their say. Public notification shall include information illustrating the revised mapping extent, and links to the available relevant information provided in Hearing F so far on the Council website.

[8] The timing of notification will need to ensure that any late further submitters have the opportunity to prepare for, and attend Hearing H if they wish to do so. The Panel directs that Council provide a memorandum in response to this minute by 9 June 2025 setting out the proposed timeframes associated with the notification and further submission process, and confirm whether the matter can then be heard during Hearing H.

3. KIWIRAIL – ACOUSTIC AND VIBRATION SETBACK/'OVERLAYS'

[9] Counsel for 22 The Terrace Limited (submitter 202) filed legal submission in response to evidence filed by KiwiRail.³ 22 The Terrace Limited is not an original submitter or further submitter in relation to provisions in the Plan relating to rail setbacks and associated acoustic or vibration mitigation. Counsel raised a concern about the request from KiwiRail to include a new 60m Rail Vibration Overlay, extending outwards from the edge of the rail designation corridor and a new 100m Rail Noise Control Boundary Overlay, extending outwards from the edge of the rail designation corridor.

³ Legal Submissions on behalf of 22 The Terrace Limited, 30 April 2025.

[10] Counsel noted that the 'Overlays' were not included in the submission. We note, however that the written submission, did request the 60m and 100m metrics. The submission recorded:⁴

KiwiRail seeks the amendment and inclusion of noise and vibration controls requiring acoustic insulation and ventilation to be installed in new (or altered) sensitive uses within 100m of the railway corridor.

Noise and vibration from rail activities can potentially give rise to adverse health and amenity effects on noise sensitive activities located nearby if not properly addressed and provided for. The amended standard will provide options for developers in achieving an appropriate level of amenity for residents who live within 100m of the rail corridor.

The rail network is a 24 hour a day, seven day a week operation, and the frequency, length and weight of trains can change without community consultation. Noise and vibration can have an impact on the internal amenity of a building. Appropriate mitigation, installed to ensure that the health and wellbeing of those living and working near to the rail network are not adversely affected, is pivotal to ensure that undue restrictions are not placed on the operation of the rail network. Rail activities not only generate noise, but also vibration effects. KiwiRail seek amendment to require acoustic and vibration treatment for sensitive activities within identified corridors adjacent to the railway networks to ensure an appropriate level of internal amenity is achieved in buildings adjacent to the rail corridor. The proposed standard includes the requirement for feedback form KiwiRail. As the railway and network utility operator, KiwiRail's feedback about any effects of non-compliance is required to ensure that any proposed mitigation is appropriate. KiwiRail also seeks controls within 60m of the railway corridor, for buildings containing new (or altered) sensitive uses to be constructed to manage the impacts of vibration. These controls are important to ensure new development is undertaken in a way that achieves a healthy living environment for people locating within proximity to the railway corridor, minimising the potential for complaints about the effects of the railway network.

[11] The submission provided drafting amendments to the notified PDP rules:

Amend as follows:

Any site within 100m ~~40m~~ of the railway line Activity status: Permitted

Where:

PER-1 The building **or alteration to an existing building** is acoustically insulated and ventilated in accordance with: 1. NOISE-S3 and NOISE-S4; and 2. the acoustic insulation must be assessed in accordance with ISO 717-1:2020 Acoustics — Rating of sound insulation in buildings and of building elements — Part 1: Airborne sound insulation, **excluding acoustic insulation installed to address rail noise**; or ...

PER-3

⁴ Kiwi Rail submission, page 12, submission point 73.

Any new building or alteration to existing building containing an activity sensitive to noise, closer than 60 metres from the boundary of a railway network is designed, constructed and maintained in accordance with NOISE-S7.

[12] Ms White, the s42A author also raised an issue of scope as to whether the metrics are from the 'railway line', as shown in the amended text requested by the submitter, or from the designation, as requested in the submitters evidence.⁵ Counsel for Kiwi Rail responded during the hearing to the narrower issue of 'railway line' or designation and drew the Panel's attention to the reference to 'Rail Corridor' in the narration to the submission point.⁶ The Panel will consider the interpretation of the submission further in our deliberations, however in response to the legal submissions from Counsel for 22 The Terrace Limited, the Panel distinguishes the scope issue raised from that relating to ECan's request to 'extend' the overlay without a map or metric describing the proposed spatial extent. Here, KiwiRail have clearly requested 60m and 100m setbacks for the rule, the issue of whether those are shown as 'overlays', lines on a map, or simply described in a rule, does not raise any natural justice issue in our view. Rather it is an issue of plan useability, which the Panel will consider in our decision in due course.

[13] Accordingly, we record that we will address the KiwiRail submission on its merits, including the issue of whether the distance is from the 'railway line' or 'rail corridor' (or designation if that is found to be the same as 'rail corridor'), during our deliberations, and will record our findings in our decisions.



C E ROBINSON – CHAIR ON BEHALF OF THE HEARINGS PANEL

⁵ S42A Summary Report, Liz White, page 10.

⁶ See para [9] above.