BEFORE THE INDEPENDENT COMMISSIONERS

UNDER	the Resource Management Act 1991 ("**RMA**")
AND	
IN THE MATTER	of a submission by KiwiRail Holdings Limited ("**KiwiRail**") (submitter 187) on Hearing F (Other District-wide Matters, Hazards & Risks (Natural Hazards only)) of the Timaru Proposed District Plan ("**Proposed Plan**")

MEMORANDUM OF COUNSEL ON BEHALF OF KIWIRAIL HOLDINGS LIMITED

11 JUNE 2025

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MAY IT PLEASE THE PANEL:

Introduction

1. KiwiRail appeared at Hearing F with its witnesses and legal counsel on 30 April 2025.

2. During questioning of KiwiRail's witnesses at the hearing, the Panel requested further information on the following two matters to assist with its deliberations:

   (a) information on complaints KiwiRail receives in relation to rail operations in the Timaru District; and

   (b) whether there are any policies in the Proposed Plan that support the inclusion of the Rail Vibration Alert Area Overlay.

3. This memorandum is filed on behalf of KiwiRail in response to these matters.

Complaints

4. KiwiRail has advised (with input from its local operations manager in Timaru):

   (a) When complaints have been received, they have primarily related to sound from locomotive horns, and the loading and unloading of containers from freight trains.

   (b) The majority of complainants are people who have recently moved into the area (either from outside the district or another area of Timaru further from the rail corridor) who were not previously aware of the location of the rail corridor or the extent to which noise travels from rail operations.

5. While KiwiRail does receive complaints relating to the operation of the rail network, it is our submission that evidence of complaints should not be the determinant of whether planning provisions should be included in the Proposed Plan to manage reverse sensitivity effects. It is prudent to ensure there are planning provisions in place to manage potential effects before they transpire.

6. The case law is clear that the *vulnerability* of an activity to reverse sensitivity effects is enough to warrant the implementation of protections for the activity in question (in this case, sensitive activities locating near the rail corridor). As a result, it is appropriate to consider the prospects of conflict and complaints

that will be received in relation to the activity, rather than rely on the actual complaints received.[1]

Policy support for the Rail Vibration Alert Area Overlay

7. There is support in the higher-level objectives of the Proposed Plan for protecting significant infrastructure against reverse sensitivity effects[2] and for minimising health effects on communities resulting from vibration,[3] which the Rail Vibration Alert Area Overlay would achieve should the Panel be minded the Overlay in the Proposed Plan. There are, however, no policies in the notified version of the Proposed Plan specifically relating to rail vibration.

8. Notwithstanding that, we anticipate the Panel is considering the basis for including the Rail Vibration Alert Area Overlay in terms of section 75(2)(b) of the RMA (ie whether it is a method for implementing policies in the Proposed Plan).

9. KiwiRail considers the Rail Vibration Alert Area Overlay can be included in the Proposed Plan pursuant to section 75(2)(h) RMA as a form of information that will assist with the achievement and exercise of the Timaru District Council's functions, powers and duties under the RMA. In particular, it aligns with the Council's integrated management functions under section 31(1)(a) of the RMA.

10. Given the regional and national significance of the rail corridor, the ongoing operation of the Main South Line within the Timaru district, and the clear direction in the Canterbury Regional Policy Statement to avoid adverse effects on regionally significant infrastructure (which aligns with the strategic objectives of the Proposed Plan outlined in paragraph 6 above),[4] the introduction of the Rail Vibration Alert Area Overlay is an appropriate method to signal the location of the operational rail corridor and the potential vibration effects of rail operations on properties located within 60 metres of the rail corridor. KiwiRail's position is that it is a pragmatic planning tool which achieves the right balance between information provision and regulation.

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1 *Foster v Rodney District Council* [2010] NZRMA 159 at [96].

2 See SD-TI-O4 of the Strategic Direction Chapter.

3 See TPT-O3 of the Transport Chapter.

4 Objective 5.2.1(2)(f)-(g) Location, design and function of development (Entire Region); Objective 5.2.2(2)(a) Integration of land-use and regionally significant infrastructure (Wider Region). These objectives are set out in paragraph [4.0(a)] of Ms Heppelthwaite's evidence dated 9 April 2025.

11. There is precedent for KiwiRail's approach here, for example, the Environment Court's consent order in *HD Land Limited v Waikato District Council*[5] relating to the Proposed Waikato District Plan. The parties to the consent order agreed to the inclusion of a "60m Rail Vibration Alert Area" from the rail designation boundary, which was endorsed as an "information layer". The Court summarised the section 32AA assessment relating to that relief as follows:[6]

> Using alert area layers to manage potential adverse effects generated by the rail corridor will be efficient and effective at balancing the infrastructure and health and amenity considerations resulting from development. Alert area layers are an efficient and effective mechanism to provide valuable information to current and prospective owners to allow them to elect to manage the effects they will experience themselves. There are no rules or other PDP provisions associated with the alert layers and therefore no costs arising from their inclusion in the PDP; and
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> […]

DATED: 11 June 2025

L J E Rapley
Counsel for KiwiRail Holdings Limited

5 [2024] NZEnvC 54.

6 *HD Land Limited v Waikato District Council* [2024] NZEnvC 54 at [18(h)-(i)].