

BEFORE INDEPENDENT COMMISSIONERS

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER Application for resource consent under sections 88 and 124 of the Resource Management Act 1991, by Genera Limited ("**Genera**") in relation to the proposed re consenting of the discharge of contaminants into air from fumigation at the Port of Tauranga

**STATEMENT OF EVIDENCE OF MICHELLE GRINLINTON-HANCOCK
ON BEHALF OF KIWI RAIL HOLDINGS LIMITED**

PLANNING

1. SUMMARY

- 1.1 Genera's application seeks to authorise the discharge of methyl bromide arising from fumigation activities at the Port of Tauranga ("**Port**"). Methyl bromide is a highly toxic substance and KiwiRail's workers operate in close proximity to Genera's fumigation activities. KiwiRail's submission sought that Genera's application be declined. KiwiRail continues to have serious concerns about the potential adverse health and safety effects on its employees and contractors. In my view these matters are clearly effects on the environment which must be avoided, remedied or mitigated under the Resource Management Act 1991.
- 1.2 The application and the s42A report do not appear to have considered KiwiRail's operations, which are carried out on a directly adjacent site to the Port, and extend within the Port itself. KiwiRail did not receive an invitation to attend the planner's expert conferencing on the application and proposed conditions. If the application is granted, KiwiRail considers that the conditions of consent need a range of amendments in order to address the potential risk for significant health and safety effects on KiwiRail's employees and contractors.

2. INTRODUCTION

- 2.1 My name is Michelle Grinlinton-Hancock and I am the RMA Team Leader for KiwiRail.
- 2.2 I have over 20 years of RMA and planning experience and I am a full member of the New Zealand Planning Institute. I graduated from Massey University in 2000 with a Bachelor of Resource and Environmental Planning (Hons).
- 2.3 I began my career in planning and resource management in 2000 and have over the course of my career worked as a planner in Council processing applications as well as a consultant where I prepared consent applications as well as submitted on district and regional plan provisions on behalf of clients. Prior to working for KiwiRail, while I was employed at WSP, I was the programme manager for the Ministry of Environment Making Good Decisions programme, and I am also a certified Commissioner under the Ministry of Environment Making Good Decisions programme.
- 2.4 I have worked for KiwiRail in the capacity as a Senior RMA Advisor and now as Team Leader for three years.
- 2.5 My evidence responds to the revised application by Genera for a discharge to air consent (dated 27 May 2022) ("**Revised Application**").

3. CODE OF CONDUCT

- 3.1 While this is a Council hearing, and I am a KiwiRail employee, I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving evidence. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

4. KIWIRAIL

- 4.1 KiwiRail is the State-Owned Enterprise responsible for the management and operation of the national railway. KiwiRail's activities include managing railway infrastructure and land, as well as rail freight and passenger services within New Zealand. KiwiRail is also the Requiring Authority for land designated for "Railway Purposes" (or similar) in District Plans throughout New Zealand.

- 4.2 In the Bay of Plenty region, the East Coast Main Trunk and the Mt Maunganui Branch line are of regional and national importance as the main line to the Port, and through to Kawerau. The Murupara Branch and the Taneatua Branch (to Awakere) are also strategic corridors.
- 4.3 KiwiRail operates a rail yard directly next to the Port which provides rail services to Port operations. KiwiRail's operation involves KiwiRail's staff and contractors regularly accessing the Port area to provide its rail services.

5. OVERVIEW OF KIWIRAIL'S CONCERNS

- 5.1 In its primary submission dated 16 November 2020 (in response to the original application for a discharge to air consent by Genera), KiwiRail sought the application for consent by Genera be declined unless certain matters could be adequately addressed, including through the imposition of suitable conditions of consent.
- 5.2 KiwiRail has reviewed the Revised Application. KiwiRail still has significant concerns about the use of methyl bromide in close proximity to KiwiRail's employees and contractors. The area used by Genera for its existing methyl bromide fumigation is located approximately 70 metres from the shunt line which is used to bring logs to and from the site. In addition to shunt operators, workers stropping and un-stropping the logs¹ will be in close proximity to the area where the methyl bromide is to be used.
- 5.3 Methyl bromide is a highly toxic substance and could have potentially significant effects on the health and safety of KiwiRail's workers. KiwiRail's key concern is to ensure that potential health and safety effects are avoided and that alternative uses to methyl bromide are pursued so as to cease its use as soon as practicable.
- 5.4 KiwiRail seeks:
- (a) Certainty around the area used for methyl bromide fumigation within the Port. We understand that the area used for methyl bromide has consolidated into one area within the Port (see image attached as **Appendix A**). However, the conditions do not limit methyl bromide fumigation to that area. It is critical that KiwiRail has certainty around the potential area of danger and its proximity to its workers.
 - (b) Genera is held to best practice recapture rates to ensure that the discharge to air of methyl bromide is minimised as much as possible.

¹ Refer to the description of stropping set out in the evidence of Simon Prevett on behalf of KiwiRail Holdings Limited dated 29 May 2023 at [3.2].

- (c) KiwiRail is notified of any issues immediately as they arise so that KiwiRail can take urgent measures to protect its workers.

6. RELIEF SOUGHT

6.1 KiwiRail still has significant concerns about the health and safety effects of the Revised Application on its employees and contractors. If the Revised Application is granted, the conditions need to ensure that the amount of discharge and the area of discharge are minimised as much as possible, and implement robust monitoring, notification and reporting processes. The amendments sought to the conditions by KiwiRail are as follows:²

- (a) Amend condition 2.1 and Attachment 1: Consent Plan RM19-0663/01 to include a specific area where the methyl bromide fumigant activity is to be undertaken as shown in **Appendix A** to my evidence.
- (b) Retain condition 3.1 (sought to be deleted by Genera). KiwiRail opposes the removal of this condition on the basis that its removal means that multiple fumigants could be vented at the same time which could lead to an adverse cumulative effect. The wording of the agreed position from the Joint Witness Statement in relation to Planning dated 20 – 25 March 2023 is supported as it would ensure that ventilation of the different fumigants would not occur at the same time.
- (c) Amend condition 3.3 to provide for a one minute interval instead of a three minute interval for data capture. This enables a real time monitoring and a faster response time should an adverse event occur. KiwiRail's key concern is a quick response time in the event of any issues arising. KiwiRail could accept three minute intervals in the event that the requirement for an alarm monitor is reinstated as set out in paragraph (g) below.
- (d) Reinstate condition 3.8 as proposed in the s42A report which requires pressure testing to determine whether or not there are leaks prior to fumigation commencing rather than reactively responding to leaks as they occur. At that point it would be too late for KiwiRail's workers. Three out of the six buffer zone distances in condition 8.1 are in excess of 70 metres, which is the approximate distance between KiwiRail's workers and the fumigant area (ie, leaks at those rates would affect KiwiRail's employees). As set out in the evidence of Mr Prevett,³ it is not clear from the conditions or Genera's application, how these KiwiRail workers will be protected.

² The condition references are references to the condition set included as Appendix A to the evidence of Keith Frenz on behalf of Genera Limited dated 1 May 2023.

³ Evidence of Simon Prevett on behalf of KiwiRail Holdings Limited dated 29 May 2023 at [4.8].

- (e) Amend condition 4.1 to specifically list KiwiRail as requiring prior notification of fumigation activities. KiwiRail also seeks that the condition be amended to require Genera to immediately notify KiwiRail of any leaks or exceedances when they occur. This will ensure that KiwiRail can take immediate steps to protect its workers operating regularly in close proximity to the fumigation area for methyl bromide.
- (f) Amend condition 5.3 to require Genera to hold all data collected for the duration of the consent. Genera's proposal that data be held for a minimum of two years is entirely insufficient and does not allow the Council to have an accurate picture of exceedances or to monitor trends over time.
- (g) Reinstate the requirement in condition 5.4 for an alarmed monitor at the MSZ/Risk Area that has the ability to instantly warn fumigation staff if the ceiling value of the fumigant is exceeded. Mr Frentz states that this has been deleted as it is *"a worker related operational matter that is not a matter that needs to, or should, be controlled by conditions of a resource consent"*.⁴ I disagree, the alarm provides an alert to a potential health and safety effect (a relevant RMA effect) which in turn will trigger notification requirements to those that might potentially be affected. As above, KiwiRail seeks that it is notified of any exceedances when they occur so it can take steps to protect its workers.
- (h) Condition 6 refers to an Emergency Response Plan. We understand that this document has been provided to Council and the Panel but has not been publicly disclosed as "commercially sensitive material".⁵ KiwiRail has not seen this document and therefore KiwiRail has no visibility as to whether or not it contains sufficient measures to ensure the safety of KiwiRail's workers on the Port site, and those that occupy the KiwiRail yard which is immediately adjacent to the Port.
- (i) Amend condition 8.3 to delete "container". Methyl bromide is a highly toxic substance. KiwiRail seeks that the conditions of consent require Genera to increase recapture rates by 2031 as much as possible from all fumigation events not just fumigation of containers.
- (j) Amend condition 13.1 so that the term of consent is limited to 5 years for the reasons set out in the evidence of Mr Prevett.⁶ In the event that the Panel

⁴ Evidence of Keith Frentz on behalf of Genera Limited dated 1 May 2023, Table 1, comments on condition 5.4.

⁵ s42A report pages 7 and 8 of the Hearings Agenda (pages 6 and 7 of the s42A report).

⁶ Evidence of Simon Prevett on behalf of KiwiRail Holdings Limited dated 29 May 2023 at [4.3].

grants consent for 5 years then the relief sought to condition 8.3 will no longer be required.

- (k) General: KiwiRail supports the inclusion of the acronyms and definitions as this makes the conditions more understandable.

7. POLICY FRAMEWORK - BAY OF PLENTY REGIONAL NATURAL RESOURCES PLAN

7.1 The relief sought by KiwiRail aims to protect the health and safety of its employees and contractors. This clearly fits within the objective and policy framework of the Bay of Plenty Regional Natural Resources Plan,⁷ see for example:

- (a) PC13 contains various objectives, of relevance:

AIR-O1 Protect air from adverse effects — Te tiaki i te hau mai i ngā pānga kino

Protection of the mauri of air and human health from adverse effects of anthropogenic contaminant discharges to air.

- (b) Policy AQ P3 of PC13 states:

AIR-P3 Management of discharges — Te whakahaere i ngā tukunga

Activities that discharge contaminants to air must be managed, including by use of the best practicable option, to:

(1) safeguard the life supporting capacity of the air, protect human health, and avoid, remedy or mitigate adverse effects on cultural values, amenity values, and the environment

(2) avoid the discharge of contaminants at a rate or volume that may cause an exceedance or breach of the ambient air quality standards of the National Environmental Standards for Air Quality (or its replacement or amendment)

(3) avoid reduction in visibility where it may cause adverse effects on vehicle, aircraft, or ship safety

(4) avoid, remedy or mitigate the discharge of contaminants that may cause adverse effects on regionally significant infrastructure or regionally significant industry. For the purposes of this Policy AIR-P3(4) regionally significant industry means industry based on the use of the natural and physical resources which have benefits that are significant at a regional or national scale. These may include social, economic or cultural benefits.

- (c) Policy AQ P4 of PC13 states:

AQ P4 Matters to consider — Ngā take hei whiriwhiri

Have particular regard to the following matters when considering the acceptability of any discharge of contaminants to air:

...

⁷

Plan Change 13 ("PC13") to the Regional Natural Resources plan was notified in 2018 and has passed through the public notification process. Some provisions of PC13 are still under appeal, however, those appeals do not include appeals to the policies and rules referenced in my evidence.

(e) The effect of the discharge on human health, cultural values, amenity values, the environment, and regionally significant infrastructure.

(d) Policy AQ P9 of PC13 states:

**AQ P9 Fumigation for quarantine application or pre-shipment application
— Auahina ki te paitini mō te tono taratahi, tono utanga-tōmua rānei**

Protect human health and the environment from adverse effects from use of fumigants for quarantine application or pre-shipment application by:

(a) enforcing the best practicable option for use of the fumigant, including via the use of effective recapture technology of fumigant gases, the use of safer fumigants, or alternative methods

(b) ensuring compliance with relevant exposure levels and management regime set by the New Zealand Environmental Protection Authority to protect human health

(c) having particular regard to protecting the health of persons in sensitive areas from fumigant exposure.

Michelle Grinlinton-Hancock

29 May 2023

Appendix A – Methyl Bromide Fumigation Area provided to KiwiRail by Genera

