

IN THE MATTER

of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

of the Proposed Waikato District Plan ("**Proposed
Plan**")

**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED IN
RELATION TO HEARING 6 – VILLAGE ZONE**

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1. INTRODUCTION

- 1.1 These legal submissions are presented on behalf of KiwiRail Holdings Limited ("**KiwiRail**") in relation to notified chapter 24 (Village Zone) of the Proposed Waikato District Plan ("**Proposed Plan**").
- 1.2 KiwiRail is largely in agreement with the Council Officer's recommendations in the section 42A report on the Village Zone. In particular, KiwiRail supports the Council Officer's recommendations to:
- (a) amend policy 4.4.2 to incorporate reference to noise-sensitive activities when minimising adverse effects of noise on residential amenity;¹
 - (b) amend rule 24.3.6.1 to incorporate the 5 metre setback rule for all boundaries adjoining the rail corridor² and to incorporate further matters of discretion for buildings that do not comply with the 5 metre setback rule (except for the Council Officer's recommendation to reject the inclusion of the outcome of consultation with KiwiRail, set out below);³
 - (c) amend rule 24.4.1 to include, as a matter of discretion for subdivisions, the potential for reverse sensitivity effects to impact land transport infrastructure networks, which is regionally significant infrastructure;⁴
 - (d) reject the amendments sought to policy 4.3.5(b) as KiwiRail agrees that objective 6.1.6 and policy 6.1.7 adequately addresses the relief sought;⁵
 - (e) reject the amendments sought to rule 24.2.4.1(P1)(a)(i) as KiwiRail agrees that rule 24.2.4.1(P1)(a)(vi) adequately addresses the relief sought;⁶
 - (f) reject the amendments sought to rule 24.2.4.1(P1)(a)(vii) as KiwiRail accepts the rule has limited application to KiwiRail's operations; and

1 Submission point 986.22.

2 Submission point 986.56.

3 Submission point 986.69.

4 Submission point 986.89.

5 Submission point 986.72.

6 Submission point 986.99.

- (g) amend rule 24.2.7.2 to protect against obstructions to drivers at level rail crossings.⁷

1.3 There are limited areas of disagreement between KiwiRail and the Council Officer. The key outstanding issues relate to the Council Officer's recommendations in relation to the:

- (a) proposed amendments to the policy and rule framework for managing the adverse effects of signs on traffic;⁸ and
- (b) matters of discretion for buildings adjacent to the rail corridor that do not comply with the setback, in particular the Council Officer's recommendation to reject the inclusion of the outcome of any consultation with KiwiRail as a matter of discretion.⁹

1.4 These outstanding issues are addressed further in the evidence that has been filed by Pam Butler, Senior RMA Advisor on behalf of KiwiRail and in the following sections of these submissions.

2. KIWIRAIL'S OPERATIONS ARE CRITICAL TO THE DISTRICT

2.1 KiwiRail is a State-Owned Enterprise under the State Owned Enterprises Act 1986. It is responsible for the operation of the national rail network, and the financial management of rail infrastructure in New Zealand. KiwiRail is a requiring authority pursuant to section 167 of the Resource Management Act 1991 ("**RMA**") and is responsible for designations for railway purposes throughout New Zealand, including in the Waikato District.

2.2 While KiwiRail also operates passenger services, one of the core elements of KiwiRail's business is the movement of internal freight within New Zealand. On average, KiwiRail operates 900 freight services each week on its 3500 km long network which runs from Whangarei to the Bluff.

2.3 KiwiRail's operations in the Waikato District centre on the North Island Main Trunk Line and the East Coast Main Trunk Line, both of which pass through the Waikato district. The Hauptu and Rotowaro Branch Lines also run within the Waikato district. The railway network plays a critical role in supporting the social and economic well-being of the district and the wider Waikato region.

⁷ Submission point 986.121.

⁸ Submission point 986.23 in relation to Policy 4.4.7 Managing the adverse effects of signs and submission point 986.21 in relation to Signs – Effects on traffic.

⁹ Submission point 986.69 in relation to Rule 24.3.6.1 Building setbacks (matters of discretion).

3. THE IMPORTANCE OF BUILDING SETBACKS IN THE VILLAGE ZONE

Ensuring the safe operation of the rail network

- 3.1 KiwiRail's submissions on the Proposed Plan seek to protect its ability to operate, maintain and upgrade the rail network well into the future.
- 3.2 As set out in the evidence of Ms Butler, a key concern for KiwiRail in respect of the Proposed Plan is to ensure the safe and efficient operation of the rail network without undue restrictions from adjacent activities.¹⁰ One of the primary ways to ensure the safe operation of the rail network in built environments is through locating buildings an appropriate distance from the rail corridor boundary.
- 3.3 KiwiRail's submission on the Proposed Plan sought the inclusion of a new rule within all zones that are adjacent to the rail corridor (including the Village Zone) to require a 5 metre setback for new or altered buildings adjacent to the rail corridor boundary.¹¹ Activities complying with this control would be permitted, while activities seeking to establish within 5 metres of the railway corridor boundary would require a resource consent as a restricted discretionary activity.
- 3.4 As set out in Ms Butler's evidence, setbacks are critical to manage the interface between operations within the rail corridor and the activities near the boundary of the rail corridor.¹² Unless buildings are set back from the railway corridor boundary, there is a risk that the safe and efficient operation of the railway will be compromised by everyday activities occurring on neighbouring properties (such as vegetation clearance, painting or cleaning).
- 3.5 If this potential for conflict is not appropriately managed, these activities can give rise to a risk of objects or structures entering the rail corridor which can cause a collision. As Ms Butler explains, while the probability may be low, the consequences of a collision on the railway are significant.¹³
- 3.6 As the Waikato district grows, there is potential for conflict at the interface between built environments and the rail corridor to increase. As a result,

¹⁰ Evidence of Pam Butler, dated 25 November 2019, at 4.3.

¹¹ Submission point 986.56 on the Village Zone. See also submission points 986.53 to 986.61 seeking equivalent amendments in the Residential, Rural, Countryside Living, Business, Business Town Centre, Industrial, Heavy Industrial and Reserve Zones.

¹² Evidence of Pam Butler, dated 25 November 2019, at 4.1.

¹³ Evidence of Pam Butler, dated 25 November 2019, at 4.4.

ensuring activity setbacks are provided is increasingly important as development near the rail corridor intensifies.

- 3.7 In our submission, and for the reasons set out in Ms Butler's evidence, the setback control (and associated provisions) sought by KiwiRail are reasonable, appropriate and necessary to ensure that the risk of incidents occurring as a result of encroachment near the railway corridor is appropriately managed throughout the Waikato district.

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- 3.8 The Council Officer acknowledges the critical role that the rail network plays in the district and has recommended that the 5 metre setback control sought by KiwiRail be included in the Village Zone.¹⁴ The Council Officer agreed with KiwiRail's reasons that the inclusion of this control this would "account for safety, building maintenance, vehicle maintenance and the like".¹⁵
- 3.9 The Council Officer recommends that the relief sought "would be better achieved if it were a rule contained within Chapter 14 [Infrastructure and Energy]".¹⁶ KiwiRail agrees with this recommendation, as it would mean that the setback rule would apply district-wide to all properties adjoining rail corridors.¹⁷
- 3.10 As the rail network runs through the Waikato district, and most zones are adjacent to the rail corridor, it is important that the Proposed Plan adopts a consistent approach to the management of buildings seeking to locate adjacent to the rail corridor.

Matters of discretion

- 3.11 KiwiRail's submission sought that additional matters of discretion be included to ensure that the potential impacts on safety are appropriately considered when a development proposal does not comply with the setback. KiwiRail supports the Council Officer's recommendation to include as matters of discretion:¹⁸

- (a) the size, nature and location of the buildings on the site;

¹⁴ Section 42A report (subdivision) at [70].

¹⁵ Section 42A report (land use) at [520].

¹⁶ Section 42A report (land use) at [519].

¹⁷ Evidence of Pam Butler, dated 25 November 2019, at 4.9.

¹⁸ Section 42A report (land use) at [523].

- (b) the extent to which the safety and efficiency of rail and road operations will be adversely affected; and
- (c) any characteristics of the proposed use that will make compliance unnecessary.

- 3.12 However, KiwiRail disagrees with the Council Officer's recommendation to reject the inclusion of "the outcome of any consultation with KiwiRail" as a matter of discretion.¹⁹ The Council Officer recommends that this be rejected on the basis that "consultation with KiwiRail through the consents process is not mandatory and it is up to the decision of the processing planner".²⁰
- 3.13 It is acknowledged that when resource consent is sought it is a matter for the Council to determine whether that application should be publicly, limited or non-notified.²¹ KiwiRail is, however, not seeking to limit or pre-empt the Council's powers in this respect through the matter of discretion sought.
- 3.14 The matter of discretion sought by KiwiRail would enable the Council to consider whether the applicant has undertaken any consultation with KiwiRail as part of the application for the proposal and the outcome of any consultation. As a matter of discretion, this would be one of a number of matters that the Council may take into account in deciding whether to grant the application.²² There is no requirement that the Council notify KiwiRail of the application.
- 3.15 Consultation is appropriate to ensure that the potential effects of a proposal on the operation of the rail network have been considered by the applicant in preparing a resource consent application for an activity near the rail corridor. As the operator of the rail network, KiwiRail is the most appropriate entity for applicants to consult with on the design of their development. The matter of discretion will enable the Council to take into account any guidance provided by KiwiRail on whether the application will affect the rail corridor.
- 3.16 In our submission, the matters of discretion sought by KiwiRail are appropriate to ensure that applicants understand the operational needs of the rail network and to enable KiwiRail to provide guidance on resource consent applications at an early stage.

¹⁹ Submission 986.69.

²⁰ Section 42A report (land use) at [520].

²¹ RMA, sections 95A and 95B.

²² RMA, section 104C(1).

4. SIGNAGE AND "ROAD USERS"

Managing the adverse effects of signs on the land transport system

- 4.1 KiwiRail sought to amend Policy 4.4.7 and Rule 24.2.7.2(P1) which relate to managing the adverse effects of signs.²³ In the notified version of the Proposed Plan, these provisions seek to manage the adverse effects of signs on road users. KiwiRail's submissions sought to include reference in both the relevant policy and the rule to users of the "land transport" system rather than only "road users".²⁴
- 4.2 KiwiRail is concerned that without this amendment there are inadequate provisions in place to ensure signs erected in the Waikato district do not adversely affect the safe and efficient functioning of the land transport network, including railways, and the health and safety of all users of the transport network. KiwiRail also made similar submissions on the equivalent signage rules in other relevant zones of the Proposed Plan.²⁵
- 4.3 Safety is a key concern for KiwiRail. Ensuring level crossing sightlines are kept clear and operators on the rail network are not distracted by signs is important to the safe operation of the rail network.
- 4.4 As Ms Butler explains in her evidence, there is no justification for only protecting road users from the adverse effects of signs, but not other land transport users.²⁶ In our submission, the safe and efficient operation of the rail network should be provided for and protected by the Proposed Plan to the same extent that the road network is.
- 4.5 The rail network and rail corridor is part of the "significant transport corridors" as defined in the Waikato Regional Policy Statement ("**RPS**").²⁷ The policies and objectives of the RPS apply collectively to the significant rail corridor and the significant road corridor, without distinction.²⁸ Relevant policies include avoiding, as far as practicable, adverse effects on the function of significant transport corridors, and otherwise remedying or mitigating any adverse effects that cannot practicably be avoided.²⁹ The Council must ensure that the

²³ Submission points 986.23 and 986.121.

²⁴ Submission points 986.23 and 986.121.

²⁵ These were: Residential; Business; Business Town Centre; Industrial; Countryside Living and Reserve zones. See submission points 986.116 to 986.122.

²⁶ Evidence of Pam Butler, dated 25 November 2019, at 3.4.

²⁷ RPS, section 6B (Maps 6.1 and 6.1A).

²⁸ See Policy 6.6 (Significant infrastructure and energy resources), Map 6-1A and Map 6-1 of the RPS.

²⁹ Policy 6.6.1(a) of the RPS.

Proposed Plan gives effect to the RPS.³⁰ In our submission the relief sought by KiwiRail is appropriate to give effect to the RPS.

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4.6 The Council Officer has rejected the relief sought by KiwiRail on the basis that it may not encapsulate all road "users" (e.g. pedestrians, scooter riders and suchlike).³¹ However, the Council Officer has agreed with KiwiRail's suggested amendment to ensure drivers on roads do not have their sight lines obstructed at level rail crossings.³²

4.7 While KiwiRail supports this recommendation to include sightlines, it is only applicable to obstructions caused by "signs directed at road users" and would not apply to obstructions experienced by, for example, operators on the rail corridor.³³ In our submission, the relief sought by KiwiRail is appropriate to ensure that all users of the transport network, including railway operators and users, are captured.

5. CONCLUSION

5.1 KiwiRail supports the resource management outcomes sought by the Council for the Village Zone through the Proposed Plan. In particular, KiwiRail supports the Council Officer's recommendations as outlined at paragraph 1.2 of these submissions and seeks that the Commissioners adopt the recommendations supported by KiwiRail.

5.2 KiwiRail seeks that the Commissioners also amend the Proposed Plan to:

- (a) incorporate the outcome of any consultation with KiwiRail as a matter of discretion for activities seeking resource consent for non-compliance with the 5 metre setback; and
- (b) replace "road users" with "land transport users" in Policy 4.4.7 and Rule 24.2.7.2(P1) relating to signs and safety.

5.3 In our submission, these amendments will most appropriately achieve the sustainable management purpose of the RMA, ensure the ongoing safe and efficient use and operation of the railway corridor, and is the most appropriate

³⁰ RMA, section 75(3)(c).

³¹ Section 42A report (land use) at [184] and [388].

³² Section 42A report (land use) at [388]-[390].

³³ Section 42A report (land use) at [395].

means of achieving and implementing the objectives and policies of the Proposed Plan.

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