

**BEFORE THE WAIKATO DISTRICT COUNCIL HEARINGS PANEL**

**IN THE MATTER** of the Resource Management Act 1991  
("RMA")

**AND**

**IN THE MATTER** of the Proposed Waikato District Plan  
("Proposed Plan")

**Evidence of Pam Butler Senior RMA Adviser**

**Submitter: KiwiRail Holdings Ltd, submitter 986**

**HEARING 7 – INDUSTRIAL ZONES (Chapters 20 and 21)**

**1. INTRODUCTION**

1.1 My name is Pam Butler and I am the Senior RMA Advisor for KiwiRail Holdings Limited ("**KiwiRail**"). I have over 30 years' RMA and planning experience. I hold a Bachelor of Arts and a Diploma in Town Planning. I am a full member of the New Zealand Planning Institute.

1.2 This evidence has been prepared on behalf of KiwiRail in relation to Hearing 7 – Industrial Zones (notified chapters 20 and 21 of the Proposed Plan).

**KiwiRail in the Waikato District**

1.3 KiwiRail is the State-Owned Enterprise responsible for the management and operation of the national railway network. This includes 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 "Railway Purposes" (or similar) in District Plans throughout New Zealand.

1.4 The North Island Main Trunk Line and the East Coast Main Trunk pass through the Waikato district. The Hautapu 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.

**2. KIWI RAIL'S SUBMISSION ON THE PROPOSED PLAN**

2.1 KiwiRail's submissions on the Industrial and Heavy Industrial Zones raise a number of issues that arise from the drafting of the Proposed Plan as notified.

**Points of agreement**

2.2 I have reviewed the Council officer's section 42A reports in relation to Hearing 7 and agree with a number of the recommendations in those reports.

2.3 In particular, the Council officer's recommendations are accepted on the following submissions where the recommendation is to accept either wholly or in part, as these recommendations achieve the aim of KiwiRail's submission points and address KiwiRail's concerns:

- (a) 986.110 – Rule 20.2.5.1 P1 Earthworks – General (Industrial);
- (b) 986.111 – Rule 21.2.5.1 P1 Earthworks – General (Heavy Industrial); and
- (c) 986.119 – Rule 20.2.7.2 P1 Signs (Industrial).

2.4 KiwiRail also supports the Council officer's recommendations in relation to Rule 20.4.1 Industrial Subdivision and Rule 21.4.1 Heavy Industrial Subdivision. KiwiRail sought that these rules be amended to include an additional matter of discretion requiring consideration of potential reverse sensitivity effects that may arise from subdivision near the rail corridor, as follows:<sup>1</sup>

- (b) Council's discretion is limited to the following matters:

[...]

(iv) reverse sensitivity effects, including on land transport networks

2.5 While the Council officer has recommended that KiwiRail's submission points be rejected, the recommended amendments in response to submissions of First Gas Limited<sup>2</sup> and Counties Power Limited<sup>3</sup> address KiwiRail's concerns.<sup>4</sup> KiwiRail's relief sought to address similar concerns to those raised in these submissions, which relate to ensuring that the ability to access infrastructure is maintained, as well as protecting infrastructure from potential reverse sensitivity effects. These are matters that should be taken into account when decision-makers are considering applications for subdivision, as the existing infrastructure network contributes significantly to the wellbeing of the Waikato district. The Council officer has recommended the addition of the following matter of discretion to Rules 20.4.1 and 21.4.1:

- (b) Council's discretion is limited to the following matters:

[...]

(v) the extent to which the subdivision design impacts on the operation, maintenance, upgrade and development of existing infrastructure.

2.6 The relief sought by KiwiRail was intended to ensure that potential adverse effects from the establishment of incompatible land uses that may arise as a result of subdivision are appropriately considered at the subdivision consenting stage. These effects are not limited to potential reverse sensitivity effects arising due to the location of sensitive land uses, and extend to matters such as traffic safety (eg the need to install new level crossings to allow access to new properties established through a subdivision). It is critical that any subdivision occurring near or adjacent to the rail corridor is designed to avoid (where practicable) or minimise adverse effects on rail infrastructure.

2.7 KiwiRail therefore supports the Council officer's recommendations in respect of Rules 20.4.1 and 21.4.1 in response to the submissions of First Gas and Counties Power.

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<sup>1</sup> Submissions 986.94 and 986.95.

<sup>2</sup> Submission 945.13

<sup>3</sup> Submission 405.65.

<sup>4</sup> Section 42A Report Part B – Industrial Zone Rules at [540], Section 42A Report Part C – Heavy Industrial Zones at [950]-[951].

### Points of disagreement

- 2.8 KiwiRail disagrees with the Council officer's recommendations in relation to the following submissions:
- (a) 986.59 – Rule 20.3.4 Building setbacks (Industrial);
  - (b) 986.60 – Rule 21.3.4 Building setbacks (Heavy Industrial);
  - (c) 986.65 – Rule 20.1 Land Use Activities (Industrial);
  - (d) 986.66 – Rule 21.1 Land Use Activities (Heavy Industrial);
  - (e) 986.97– Rule 20.2.5.1 P1 Earthworks - General (Industrial); and
  - (f) 986.98 – Rule 21.2.5.1 P1 Earthworks - General (Heavy Industrial).
- 2.9 In the following sections of my evidence, I expand on the points of disagreement with the Council officer's recommendations summarised at paragraph 2.8 above.

## 3. SETBACKS FOR BUILDINGS ADJACENT TO THE RAIL CORRIDOR

### Relief sought by KiwiRail

- 3.1 In its submission, KiwiRail sought to include a new rule in all zones with properties adjoining the railway corridor, including the Industrial and Heavy Industrial zones, to require that all new or altered buildings be set back a minimum of 5m from the rail corridor boundary. The proposed 5m setback rule is not intended to address mitigation for noise and vibration effects experienced by activities sensitive to noise associated with rail activities. Rather, the building setback is concerned with avoiding or minimising potential adverse effects on the safety of the rail corridor (and people) that may arise from the development of any type of building (sensitive or not) adjacent to the rail corridor.
- 3.2 The rule sought by KiwiRail does not prevent the establishment of new buildings within 5m of the railway boundary altogether. Resource consent can be sought for a restricted discretionary activity where the 5m setback is not achieved. KiwiRail's submission also sought that additional matters of discretion be added to the restricted discretionary criteria in the Industrial and Heavy Industrial zones, to ensure that potential impacts on the safety and efficiency of the railway corridor are appropriately considered where a development proposal does not comply with the setback requirement.

### The importance of setbacks

- 3.3 KiwiRail has recently provided evidence to the Hearing Panel explaining the importance of setbacks to the ongoing safe and efficient operation of the railway corridor, in the context of Hearing 6 – Village Zone.<sup>5</sup> As set out in that evidence, setbacks are critical to ensuring that the interface between operations within the railway corridor and the activities near the boundary adjoining activities is effectively and appropriately managed from a safety perspective.<sup>6</sup> Increasing pressure on this interface will occur in the future throughout the

<sup>5</sup> Evidence of Pam Butler for KiwiRail Holdings Limited – Hearing 6 - Village Zone dated 25 November 2019.

<sup>6</sup> Evidence of Pam Butler for KiwiRail Holdings Limited – Hearing 6 - Village Zone dated 25 November 2019 at 4.1 to 4.7.

Waikato district, as services in the rail corridor increase and adjacent land use activities are intensified.

- 3.4 Reducing the need for access over or onto the rail corridor is one way KiwiRail endeavours to mitigate health and safety risks. However, it is not a complete solution, and KiwiRail relies on the planning framework to ensure adverse effects on the safety of the rail network are managed.
- 3.5 In the instance of land adjoining the corridor, the most efficient and effective means of ensuring mitigation is through the location of structures being setback from the boundary of the rail corridor. Designing in a physical setback reduces the adjoining landowners' likelihood of innocently accessing the rail corridor, mitigates against future behaviour / activities and reduces the risk of impact by train or the need to follow the permit to enter process.<sup>7</sup> There are many activities that may not otherwise be seen as creating safety risk, such as water blasting and using equipment to maintain buildings, but do so by bringing people into contact with lines and/or trains, which clearly pose a significant risk from a health and safety perspective.
- 3.6 The amendments sought by KiwiRail are therefore necessary to ensure that the risk of incidents occurring as a result of encroachment into the rail corridor is appropriately managed and avoided throughout the Waikato district.

#### **Response to section 42A report**

- 3.7 The Council officer has recommended that KiwiRail's submissions seeking that all new buildings, and alterations to existing buildings in the Industrial and Heavy Industrial zones be set back 5m from the rail corridor be rejected, including the corresponding restricted discretionary criteria.<sup>8</sup>
- 3.8 KiwiRail strongly disagrees with the Council officer's assertion that:<sup>9</sup>
- The need for any person or organisation to access KiwiRail land for the purpose of carrying out works on their own land is considered a private matter which does not require Council input. As an example, this is no different to two private landowners negotiating an access agreement when no legal right of way exists.
- 3.9 KiwiRail has a "Permit to Enter" system that manages access to the rail corridor. However, access is not the issue that KiwiRail's relief seeks to address.
- 3.10 Many of the activities that may result in encroachment into the railway corridor by third parties do not require those parties to physically access the corridor. Maintenance, cleaning or vegetation clearance on sites adjoining the railway corridor, which involve the use of scaffolding, poles and the like, can lead to objects or structures (often inadvertently) entering the railway corridor, with the potential to cause a serious incident should they collide with a moving train. Trains travel at speed and are unable to stop quickly, with freight trains often

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<sup>7</sup> KiwiRail has a dedicated "Permit to Enter" system for all access to the rail corridor, which must be followed prior to access being granted. This can include the requirement for on-site safety personnel, or the temporary closure of the track (known as a block of line) for a set period to manage safety while activities occur. A block of line requires around six months to plan, as freight and passenger demands are required to be factored in and alternatives found. This process applies equally when KiwiRail needs to undertake work on its assets, as it does for third parties. See Evidence of Pam Butler for KiwiRail Holdings Limited – Hearing 6 - Village Zone dated 25 November 2019 at 4.4.

<sup>8</sup> Section 42A Report Part B – Industrial Zone Rules at [501], Section 42A Report Part C – Heavy Industrial Zones at [917].

<sup>9</sup> Section 42A Report Part B – Industrial Zone Rules at [501], Section 42A Report Part C – Heavy Industrial Zones at [917].

taking one kilometre to come to a complete stop. KiwiRail has no ability to control the way third parties conduct these sorts of activities on their land. It is therefore necessary to have buildings (and activities associated with those buildings) set back from the railway corridor, to avoid the possibility of a collision.

#### *Hearing 6 – Village Zone*

- 3.11 The approach adopted by the Council officer in this case also differs to that taken in respect of KiwiRail's submissions on this matter in the section 42A report for Hearing 6 – Village Zone. In that report, the Council officer agrees with KiwiRail that a 5m setback from the railway corridor for buildings is appropriate in terms of safety and amenity:<sup>10</sup>

[KiwiRail] notes that a 5m setback from all buildings would account for safety, building maintenance [...] and the like. I agree with the reasons provided by the submitter.

- 3.12 The Council officer for Hearing 6 also raised the possibility of achieving the relief sought by KiwiRail by incorporating a rule to this effect into Chapter 14 (Infrastructure and Energy).<sup>11</sup> As outlined in KiwiRail's evidence on Hearing 6, KiwiRail supports the Council officer's recommendation to include a 5m setback within the Village Zone, and agrees that the 5m setback rule should apply district wide. It is important that a consistent approach is taken to development adjoining the railway corridor throughout the Waikato district. We would not be opposed to the inclusion of the rule within the Infrastructure and Energy chapter to that effect.<sup>12</sup>
- 3.13 As set out above, if the proposed setback is not complied with, resource consent is required as a restricted discretionary consent. KiwiRail sought the inclusion of additional matters of discretion relating to non-compliance with the 5m setback and I consider that this is requisite to adding the setback control to the Proposed Plan. There will be occasions where compliance may be unnecessary and the proposed criteria provides a high degree of clarity and efficiency for assessment of such applications.
- 3.14 KiwiRail therefore continues to seek the 5m setback coupled with the additional matters of discretion for new or altered buildings not complying with the 5m setback from the rail corridor.

## **4. EARTHWORKS**

### **Relief sought by KiwiRail**

- 4.1 KiwiRail's submission sought that Rules 20.2.5.1 and 21.2.5.1 be amended to require all earthworks to be located at least 1.5m from any infrastructure.<sup>13</sup> The relief sought is intended to avoid or manage the potential for the railway corridor to be undermined as a result of adjacent earthworks.

### **Response to section 42A report**

- 4.2 The Council officer has recommended that KiwiRail's submissions on Rules 20.2.5.1 and 21.2.5.1 be rejected.<sup>14</sup>

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<sup>10</sup> Section 42A Report – Land use and activities at [520].

<sup>11</sup> Section 42A Report – Land use and activities at [519].

<sup>12</sup> KiwiRail's submissions sought that the 5m setback requirement apply across all zones.

<sup>13</sup> Submissions 986.97 and 986.98.

<sup>14</sup> Section 42A Report Part B – Industrial Zone Rules at [366], Section 42A Report Part C – Heavy Industrial Zones at [820].

- 4.3 KiwiRail continues to seek that earthworks be set back from the railway corridor. I consider that the Proposed Plan should provide a robust framework within which potential constraints on location, size and design that derive from infrastructure providers' technical and operational requirements are considered and protected. The rail network can often be undermined by earthworks undertaken on adjoining sites where there is no consideration of proximity to a boundary or effects on adjoining sites. Further, there is the potential for sediment control to cause adverse effects on the rail network in the event of failure. These have the potential to cause serious injury or loss of property and life in the event that a train travels along unknowingly undermined or damaged tracks.
- 4.4 To address these concerns, KiwiRail's submission sought a suite of amendments throughout the Proposed Plan designed to avoid or manage the potential adverse effects of earthworks on rail infrastructure.

## **5. CONCLUSIONS**

- 5.1 I support the Council officer's recommendations on KiwiRail's submission points outlined in paragraphs 2.3 to 2.7. However, I disagree with the Council officer's recommendations on the balance of KiwiRail's submission points.
- 5.2 I consider that the changes sought by KiwiRail's submissions are consistent with the purposes of the RMA and appropriately give effect to the objectives and policies of the Waikato Regional Policy Statement and the Proposed Plan.

**Pam Butler**

**10 December 2019**