

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 12 – COUNTRY LIVING ZONE

Notified Chapters 5 (Rural Environment Policy) and 23 (Country Living Zone)

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 12 – Country Living Zone (notified Chapters 5 Rural Environment and 23 Country Living Zone of the Proposed Plan).

2. KIWIRAIL'S SUBMISSION ON THE COUNTRY LIVING ZONE

- 2.1 KiwiRail's submissions on Chapters 5 Rural Environment and 23 Country Living Zone 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 report in relation to Hearing 12 and agree with a number of the recommendations in this report in relation to KiwiRail's submissions.
- 2.3 In particular, KiwiRail agrees with the Council officer's recommendations to accept or accept in part the following submissions, on the basis that the recommended amendments to the Proposed Plan are sufficient to address KiwiRail's concerns:

- (a) Submission 986.29 – Policy 5.6.16 Noise.¹

¹ Section 42A report discussion at page 30, para 137

- (b) Submission 986.113 Rule 23.2.3.1 P2 (a)(iv) Earthworks general.²
- (c) Submission 986.120 – Rule 23.2.6.2 P1 Signs – Effects on traffic.³
- (d) Submission 986.68 - Rule 23.1 Land Use.⁴
- (e) Submission 986.28 - Policy 5.6.3 Subdivision.⁵
- (f) Submission 986.90 - Rule 23.4.2 General subdivision.⁶

2.4 KiwiRail sought that a new paragraph be added to Rule 23.2.1 P2(a) Earthworks – General to require earthworks to be setback at least 1.5 metres from any infrastructure. The Council officer has recommended KiwiRail's submission be rejected. KiwiRail does not oppose this recommendation, as Rule 23.2.3.1 P2 (a) (iii) contains a requirement for any earthworks to be 1.5m from any boundary which is recommended to be retained in the zone. While not in response to KiwiRail's submission, I consider this is sufficient to address KiwiRail's concerns.

2.5 The s42A report also recommends rejecting Submission 986.74 – Policy 5.6.4 – Setbacks, which sought that a new paragraph be added to this policy directing that reverse sensitivity should be managed by providing sufficient building setbacks to provide for residents' safety and amenity.⁷ However, KiwiRail accepts the Council officer's recommendation in relation to this submission point, as other proposed changes to the Country Living Zone objectives, policies and assessment criteria, in particular the proposed introduction of Policy 5.6.19 – Reverse Sensitivity, will largely achieve the result sought in KiwiRail's submission.

3. POINTS OF DISAGREEMENT

3.1 KiwiRail disagrees with the Council officer's recommendations to reject submission 986.55 seeking a requirement for new or altered buildings to be set back at least 5m from the railway corridor boundary.⁸ I expand on this point of disagreement in the following sections of my evidence.

4. SETBACKS FOR BUILDINGS ADJACENT TO THE RAIL CORRIDOR

Relief sought by KiwiRail

4.1 In its submission, KiwiRail sought to include a new rule in the Country Living Zone, to require that all new or altered buildings be set back a minimum of 5m from the railway corridor boundary. KiwiRail is seeking that the rule applies to all new and altered buildings, not solely those buildings for sensitive land uses, as is currently provided under the proposed rule.

4.2 I have provided evidence on the building setbacks sought by KiwiRail in relation to previous hearings on the Proposed Plan.⁹ I rely on my previous statements of evidence in that regard

² Section 42A report discussion at page 79 paragraph 334

³ Section 42A report discussion at page 89 paragraph 373

⁴ Section 42A report discussion at page 118 paragraph 476

⁵ Section 42A report discussion at page 132 paragraph 526

⁶ Section 42A report discussion at page 159 paragraph 605

⁷ Submission 986.74 Policy 5.6.4 Building setbacks Section 42A report discussion at page 21 paragraph 89. It should be noted that KiwiRail's original submission referred to 'setbacks buildings' and should have read 'building setbacks'

⁸ Submission 986.55 –Rule 23.3.7.2 Building setback sensitive land use Section 42A report discussion at page 118 paragraph 474

⁹ Evidence of Pam Butler on behalf of KiwiRail – Hearings 5, 6, 7 and 9 and 10.

and will not repeat them in detail here, except to the extent that it is necessary to respond to the Council officer's section 42A report.

Response to section 42A report

- 4.3 The Council officer has recommended that KiwiRail's submission seeking that a 5m setback rule apply to all buildings in the zone be rejected, but that the 5m sensitive land use building setback for sensitive activities be retained.¹⁰ While I fully support the inclusion of a railway setback rule for sensitive land uses in the Country Living Zone, I disagree with the Council officer's reasoning for the recommendation to decline the setback rule sought by KiwiRail, which is as follows:¹¹

This is not a necessary change in the Country Living Zone rule framework. The setback to boundaries in general is 12m from every boundary other than a road boundary. On sites that are less than 1000m² the setback is 3m. Sites in the Country Living Zone which are less than 1000m² are historic in nature and there is no proposed subdivision rule framework that supports properties of this size. In the event that a building consent is applied for on sites that are greater than 1000m², the 12m setback will apply, as it is the more stringent rule. My understanding of the 5m setback in the rule for sensitive land use is to manage the sites that are less than 1000m² that are adjacent to a railway corridor. The general setback rule for a property of this size is proposed to be 1.5m (other than a road boundary). If the site is adjacent to a railway corridor the proposed 5m setback will apply. In my opinion, the 12m setback rule is the preferred distance from boundaries, inclusive of a railway corridor. I recommend that the panel reject the first part of KiwiRail [986.55], and accept the alternative offered, which is to retain the rule.

- 4.4 As emphasised in my previous statements of evidence,¹² the 5m setback sought by KiwiRail is concerned with managing risks to human safety associated with the interface between rail operations and activities on all sites adjoining the rail corridor. Its key function is to avoid or minimise potential adverse effects on people's safety that may arise from objects or structures inadvertently and / or unexpectedly coming into conflict with moving trains within the rail corridor.¹³ This applies whether the activities taking place in a building are sensitive land use activities or not. Rule 23.3.7.2 Building setback sensitive land use does not go far enough to protect and provide for the safety of all building or site occupiers in the zone.
- 4.5 While the Country Living zone will principally accommodate sensitive land uses and include some larger (more than 1000m² sites) it will also contain buildings including farm and commercial or industrial buildings, garages and ancillary buildings for which only a 1.5m setback will apply (as these are not sensitive land uses, meaning that the 5m setback would not apply). Applying KiwiRail's plan-wide setback rule to all buildings in the zone would make the Proposed Plan easier to administer and strike an appropriate balance between the need to protect property occupiers from the potential safety risks and allowing development to occur near the railway corridor.
- 4.6 The Council officer's report states that KiwiRail's proposed setback is opposed by Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone NZ Limited. These submitters are not opposed to the concept of a railway setback. As set out in the evidence

¹⁰ Section 42A report discussion at page 118 paragraph 475.

¹¹ At 475.

¹² See Evidence of Pam Butler on behalf of KiwiRail – Hearings 5, 6, 7 and 9 and 10.

¹³ Evidence of Pam Butler on behalf of KiwiRail – Hearing 6 at [4.1] to [4.7].

tabled for Chorus, Spark and Vodafone in relation to Hearing 10, "the proposed 5m setback in the zone provisions for new buildings and building alterations will have no impact on network utility infrastructure."¹⁴

- 4.7 Rather, their concerns relate to the potential application of the rule to existing network utility infrastructure, with their further submissions lodged as a means to "work with KiwiRail to reach an agreed position regarding appropriate exclusions for telecommunications equipment". Chorus, Spark and Vodafone have further confirmed that granting of the relief sought by KiwiRail "will be a satisfactory outcome...in regard to the further submissions on this matter."¹⁵ I have previously set out my views in relation to network utility infrastructure under KiwiRails proposed setback rules.¹⁶

5. CONCLUSION

- 5.1 I support the Council officer's recommendations on KiwiRail's submission points outlined in paragraph 2.3 to 2.5 above.
- 5.2 However, I disagree with the Council's officer's recommendation to reject submission 986.55 for the reasons outlined in this statement of evidence. KiwiRail continues to seek the inclusion of a 5m setback for new or altered buildings from the railway corridor boundary.
- 5.3 I consider that the changes sought by KiwiRail's submission 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

17 March 2020

¹⁴ Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand Limited Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand Limited "Proposed Waikato District Plan: Hearing Topic 10 Residential and other zone topic hearings in regard to Rail Corridor Setbacks requested by KiwiRail" (3 February 2020).

¹⁵ Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand Limited Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone New Zealand Limited "Proposed Waikato District Plan: Hearing Topic 10 Residential and other zone topic hearings in regard to Rail Corridor Setbacks requested by KiwiRail" (3 February 2020).

¹⁶ Evidence of Pam Butler on behalf of KiwiRail - Hearing 9 at [3.12-3.14]