

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 24 – RESERVES

Notified Chapters 8 (Reserves) and Chapter 25 (Reserve 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 24 – Reserves (notified Chapters 8 Reserves and 25 Reserve Zone of the Proposed Plan).

2. KIWIRAIL'S SUBMISSION ON THE RESERVES ZONE

- 2.1 KiwiRail's submissions on Chapters 8 and 25 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 24 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 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 986.115 – Rule 25.2.4.1 P1(a)(iv) Earthworks general.¹

¹ Section 42A report discussion at [211] and recommendation at [216(b)].

(b) Submission 986.122 Rule 25.2.7.2 P1 Signs – Effects on traffic.²

2.4 KiwiRail sought that a new paragraph be added to Rule 25.2.4.1 P1(a) Earthworks – General to require earthworks to be setback at least 1.5 metres from any infrastructure.³ The Council officer has recommended KiwiRail's submission be rejected.⁴ KiwiRail does not oppose this recommendation because the Council officer has recommended that Rule 25.2.4.1 P1(a) be amended to require any earthworks to be set back 1.5m from any boundary.⁵ While not directly in response to KiwiRail's submission, I consider this is sufficient to address KiwiRail's concerns.

2.5 The section 42A report also recommends rejecting Submission 986.75 – Policy 8.1.2 – Provision, use and development of public open space and reserves, which sought that a new paragraph be added to this policy directing that reverse sensitivity be managed by providing sufficient building setbacks to provide for residents' safety and amenity.⁶ The Council officer recommended that this be rejected on the basis that Objective 6.1.6 and Policy 6.1.7 in Chapter 6 Infrastructure sufficiently address the relief sought in KiwiRail's submission.⁷ KiwiRail agrees with this reasoning and recommendation.

3. POINTS OF DISAGREEMENT

3.1 KiwiRail disagrees with the Council officer's recommendations to reject the submission seeking a requirement for new or altered buildings to be set back at least 5m from the railway corridor boundary,⁸ and to reject the associated matters of discretion relating to non-compliance with the 5m setback.⁹

3.2 I expand on this point of disagreement in the following section 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 applying in all zones adjoining the railway corridor, including the Reserves Zone, to require that all new or altered buildings be set back a minimum of 5m from the railway corridor boundary.

4.2 I have provided evidence on the building setbacks sought by KiwiRail in relation to previous hearings on the Proposed Plan.¹⁰ I rely on my previous statements of evidence in that regard 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.

² Section 42A report discussion at [236] and recommendation at [249(f)].

³ Submission 986.103.

⁴ Section 42A report discussion at [209] and recommendation at [216(a)].

⁵ Section 24A report at [209] and recommended amendments at section 14.5 (Rule 25.2.4.1 P1(a)(v)).

⁶ Submission 986.75 Policy 8.1.2 Provision, use and development of public open space and reserves; Section 42A report discussion at [51] and recommendation at [57(d)]. It should be noted that KiwiRail's original submission referred to 'setbacks buildings' and should have read 'building setbacks'.

⁷ Section 42A report at [51].

⁸ Submission 986.61 – Rule 25.3.5 Building setbacks; Section 42A report discussion at [270] and recommendation at [275(a)].

⁹ Submission 986.70 – Rule 25.1 Land Use - Activities; Section 42A report discussion at [270] and recommendation at [275(b)].

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

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 for the following reasons:¹¹

The submitter notes that a 5m setback from all buildings would account for safety, building maintenance, vehicle maintenance and the like. I acknowledge my earlier recommendation in Topic 6: Village Zone to accept the submission from KiwiRail on an identical rule sought. Upon reflection and upon seeing the evidence and arguments come forth from the preceding hearings (such as the Industrial and Residential Zones), I have changed my mind on this matter and agree with those s42A report writers that the requested setback should not be agreed upon.

- 4.4 KiwiRail is disappointed that the Council officer has reversed their previous position without providing any further explanation as to what it is about the preceding evidence or arguments that caused the Council officer to change their mind. In the section 42A report for Hearing 6 – Village Zone, the Council officer accepted KiwiRail's submission, stating:¹²

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

- 4.5 KiwiRail considers that the change to the Council officer's position requires greater justification than what has been provided. Without knowing the exact basis for the Council officer's change of position, it is difficult for KiwiRail to respond to this recommendation. KiwiRail would appreciate further clarification in the Council's rebuttal evidence.

- 4.6 As outlined in my previous statements of evidence,¹³ 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.¹⁴ In my view, KiwiRail's proposed setback rule strikes an appropriate balance between the need to protect occupiers of adjoining land from the potential safety risks while still allowing development to occur near the railway corridor in circumstances where the effects of developing in this location have been appropriately considered.

- 4.7 The Council officer's report states that KiwiRail's proposed setback is opposed in part by Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone NZ Limited.¹⁵ As previously confirmed by these submitters, these parties are not opposed to the concept of a railway setback. The evidence tabled for Chorus, Spark and Vodafone in relation to Hearing 10 explains that "the proposed 5m setback in the zone provisions for new buildings and building alterations will have no impact on network utility infrastructure."¹⁶

¹¹ Section 42A report at [270].

¹² Section 42A report for Hearing 6 – Village Zone at [520].

¹³ See Evidence of Pam Butler on behalf of KiwiRail – Hearings 5, 6, 7, 9, 10 and 12.

¹⁴ Evidence of Pam Butler on behalf of KiwiRail – Hearing 6 at [4.1] to [4.7].

¹⁵ Section 42A report at [271].

¹⁶ 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).

4.8 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."¹⁷ I have previously set out my views in relation to network utility infrastructure under KiwiRail's proposed setback rules.¹⁸

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 submissions 986.61 and 986.70 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 in the Reserve Zone and seeks that the Council officer provide an adequate justification for its change of position in its rebuttal evidence.

5.3 I consider that the changes sought by KiwiRail's submissions are consistent with the purpose of the RMA and appropriately give effect to the objectives and policies of the Waikato Regional Policy Statement and the Proposed Plan.

Pam Butler

25 September 2020

¹⁷ 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).

¹⁸ Evidence of Pam Butler on behalf of KiwiRail - Hearing 9 at [3.12-3.14]