

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

**AND**

**IN THE MATTER** of the Proposed Waikato District Plan –  
Variation 3 ("**Variation 3**")

**STATEMENT OF EVIDENCE OF PAM BUTLER  
ON BEHALF OF KIWIRAIL HOLDINGS LIMITED**

**PLANNING**

**1. INTRODUCTION**

- 1.1 My name is Pam Butler and I am a Senior RMA Advisor for KiwiRail Holdings Limited ("**KiwiRail**"). I have over 40 years RMA and planning experience. I have been employed delivering railway projects both in NZ and the UK for the last 15 years. Before that I was employed as the Auckland Regional Planner at the Ministry of Education for 9 years. These roles included a mix of policy and project delivery work. I hold a Bachelor of Arts and a Diploma in Town Planning.
- 1.2 As the Panel will be aware, the large majority of KiwiRail's relief in Variation 3 (relating to setbacks, noise and vibration controls) was deferred by the Panel's Direction dated 12 June 2023 to be heard on 6 November 2023 in order to provide the parties time to resolve these matters through the Environment Court mediation process occurring for the Proposed District Plan appeals. My evidence will therefore not speak to those submission points.
- 1.3 In relation to the matters being heard at this hearing, KiwiRail's primary submission sought:
- (a) rail be identified as a qualifying matter pursuant to s77I(e) and s77O(e) of the RMA; and
  - (b) amendments to Objective MRZ2-O6, and Policies MRZ2-P6 and MRZ2-P11.
- 1.4 On review of the s 42A report, I continue to support the amendments as sought by KiwiRail to the objective and policies set out at 1.3, on the basis that these

appropriately provide for the controls sought by KiwiRail to protect and provide for the rail corridor as a qualifying matter.

## **2. ROLE IN GIVING EVIDENCE**

2.1 While I acknowledge that I am an employee of KiwiRail, I have read and am familiar with the Code of Conduct for Expert Witnesses in the current Environment Court Practice Note (2023). I have complied with it in the preparation of this statement of evidence. I also confirm that the matters addressed in this statement are within my area of expertise, except where I rely on the opinion or evidence of other witnesses. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express. I provide this evidence to assist the Hearings Panel on matters within my knowledge or experience, as well as to confirm to it the views of KiwiRail as an organisation.

## **3. KIWIRAIL IN THE REGION**

3.1 KiwiRail is a State-Owned Enterprise responsible for the management and operation of the national railway network. The rail network is an asset of national and regional importance. Rail is fundamental to the safe and efficient movement of people and goods throughout New Zealand. Recognising the importance of rail network, the Government has invested and continues to invest in the maintenance and expansion of the rail network to meet future growth demands and improve transport network efficiency.

3.2 The designated corridor of the North Island Main Trunk passes through the Waikato District and carries freight from various ports to the rest of the nation as well as the Te Huia passenger service from Hamilton to Auckland.

3.3 The Rotowaro Line also carries material from the quarry and freight from industries to the North Island Main Trunk ("**NIMT**"). The NIMT is of regional and national importance, supporting the movement of freight and passengers through the country via rail. This makes this corridor a key part of the KiwiRail network nationally.

3.4 To assist with New Zealand's move towards a low-carbon economy and to meet the needs of New Zealand's growing population, services on the NIMT will grow. Recognising that rail produces at least 70 percent less carbon emissions per tonne of freight carried compared with heavy road freight, plans to accommodate more freight on the NIMT are underway, with the new

(delivery from 2025) Cook Strait ferries able to accommodate four times the present rail freight capacity of the route being supported by the Central North Island Freight Hub at Palmerston North.<sup>1</sup>

- 3.5 KiwiRail's submission to Variation 3 sought that rail be identified as a qualifying matter pursuant to s77I(e) and s77O(e) of the RMA.<sup>2</sup> My evidence will address this further.

#### 4. QUALIFYING MATTERS

- 4.1 Policy 3 of the National Policy Statement for Urban Development ("**NPS-UD**") seeks to enable intensification across the urban areas of New Zealand. Territorial authorities are required to implement the medium density residential standards ("**MDRS**") which provide for additional height and increased density of urban form. MDRS applies in urban areas unless qualifying matters are identified and a less enabling approach is proposed that meets the relevant statutory tests.

- 4.2 Under section 77I and 77O, Council may introduce Qualifying Matters to be less enabling than that required by the MDRS or NPS-UD. Where urban development is enabled at a higher density adjacent to recognised regionally significant infrastructure, there is a need to ensure development near the rail corridor does not constrain the safe and efficient operation of rail. Qualifying matters is defined in Section 3.32 of the NPS-UD and includes:

(c) any matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure

- 4.3 Sections 77I(e) and 77O(e) specifically refer to a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure. The NPS-UD defines nationally significant infrastructure by including the New Zealand rail network.

- 4.4 KiwiRail seeks to retain the definition of "Qualifying Matters" on the basis that it is appropriate to use the statutory definition set out in the Resource Management Act 1991 which includes, nationally significant infrastructure (such as the rail corridor). Identification of rail as a qualifying matter in the Waikato District Plan will ensure intensification near the rail corridor is appropriately managed. In my opinion qualifying matters and a strengthened

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<sup>1</sup> The Freight Hub is a proposed 177-hectare freight facility designed to support the transit of rail freight through the lower North Island. The Hub is presently at appeals stage under the Environment Court, with an expected opening date of 2030.

<sup>2</sup> Original Submission of KiwiRail Holdings Limited dated 28 October 2022, submission point 54.4.

recognition of potential reverse sensitivity is needed. Other intensification planning instruments have recognised the rail corridor as qualifying matters, for example, Selwyn and Porirua.

4.5 The Council Officer agrees with KiwiRail that the definition should be retained.<sup>3</sup>

## 5. OBJECTIVES AND POLICIES

### Objective MRZ2-O6

5.1 KiwiRail sought to amend MRZ2-O6 as follows (amendments in red):

(1) Avoid or minimise the potential for reverse sensitivity ~~and risks to public health and safety~~ by managing the location and design of ~~sensitive~~ activities through:

(a) The use of building setbacks: ~~and~~

(b) The design of subdivisions and development ~~;~~ ~~and~~

(c) The design of buildings, including use of acoustic insulation, ventilation and vibration measures.

5.2 The Council Officer rejected these amendments on the basis that they would change the intent of the objective which specifically relates to reverse sensitivity (not risks to public health and safety).<sup>4</sup>

5.3 KiwiRail and its experts maintain that reverse sensitivity issues and health and safety are intertwined in respect of their activities. If you can't sleep, this has both an adverse effect on your health and you are more likely to complain about rail operations. Further, supporting the health and safety of the community is part of a well-functioning urban environment, as is provided for in Objective SD-O14 of Variation 3.

5.4 I consider including reference to both reverse sensitivity and health and safety in Objective MRZ-O6 is important to reinforce the full range of potential boundary effects arising from buildings locating near infrastructure. This is particularly important where the MDRS standards are encouraging greater intensity of development, including near the railway corridor. I therefore disagree with the planner's conclusion on this point.

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<sup>3</sup> Section 42A Report dated 15 June 2023 at [252].

<sup>4</sup> Section 42A Report dated 15 June 2023 at [190].

5.5 However, should the Panel seek to keep MRZ-O6 purely focused on reverse sensitivity, I would accept that the changes sought by KiwiRail to the first two lines of the objective could be rejected, provided the addition of (c) is accepted. Adding clause (c) to MRZ-O6 will provide clarity about the suite of management measures available in the Plan to address the effects of development on the railway (and road corridor). Appropriate building design and placement is one way to successfully integrate new development with existing transport corridors, and therefore manage reverse sensitivity. Clause (c) provides appropriate policy direction for the tools sought by KiwiRail and Waka Kotahi to manage reverse sensitivity otherwise through these plan changes.

### **Policy MRZ2-P6**

5.6 KiwiRail sought to amend MRZ2-P6 as follows (amendment in red):

Restrict ~~residential~~ development to an appropriate level to provide for and protect any relevant qualifying matters.

5.7 The Council Officer rejected KiwiRail's submission as MRZ2-P6 is intentionally limited to residential development. The Council Officer noted that Policy MRZ2-P10 (relating to non-residential activities) provides clear directives for non-residential development and therefore KiwiRail's amendment is considered unnecessary.<sup>5</sup>

5.8 I note the Council Officer's comment that the plan includes a policy for non-residential activities at MRZ2-P10. However, from my review of MRZ2-P10, it does not include reference to the restriction of such non-residential activities for the reason of providing or protecting for qualifying matters. KiwiRail's concern is that increased development of non-residential activities is also enabled by the IPI changes, including increased building heights and density of urban form under Policy 3 of the NPS-UD. This needs to be appropriately managed where qualifying matters, like the rail corridor, apply.

5.9 The intent of the proposed change is to provide for the use of tools like setbacks and or noise and vibration controls to enable protection of rail as a qualifying matter from such non-residential activities. The provisions sought by KiwiRail are not solely relating to noise sensitive residential activities, but to all development where proximity to the railway corridor may create safety issues and compromise operations.

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<sup>5</sup> Section 42A Report dated 19 June 2023 at [200] – [201].

5.10 The current wording of Policy MRZ2-P10 does not provide appropriate direction for these kinds of controls, and instead addresses the need to ensure amenity and social wellbeing in residential zones by limiting the range and nature of alternative activities that may be located within the zone and its effects on activities within that zone. It is not concerned with achieving the outcomes of the railway setback nor on management of all new development activities which may be incompatible with existing infrastructure/qualifying matters. I therefore do not support the Council Officer's recommendation on this submission.

#### **Policy MRZ2-P11**

5.11 KiwiRail requested the Council broaden the directive of MRZ2-P11 to ensure it related to reverse sensitivity and mitigates the risk to public health. While this policy has been included in the s42A report for this hearing, the Council Officer confirmed that discussion on this policy is being left to October.<sup>6</sup> I will therefore comment on this Policy in my evidence for the deferred hearing in November where I will provide more comprehensive evidence on noise and vibration.

**Pam Butler**  
**4 June 2023**

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<sup>6</sup> Section 42A Report dated 19 June 2023 at [209].