

IN THE MATTER

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

AND

IN THE MATTER

of the Proposed Waikato District Plan ("**PDP**") –
Variation 3 ("**Variation 3**")

**LEGAL SUBMISSIONS ON BEHALF OF
KIWIRAIL HOLDINGS LIMITED**

21 NOVEMBER 2023

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MAY IT PLEASE THE PANEL:**1. INTRODUCTION**

- 1.1 KiwiRail is a State-Owned Enterprise responsible for the management and operation of the national railway network. Its role includes managing railway infrastructure and land, as well as freight and passenger services within New Zealand. This infrastructure is of regional and national significance.
- 1.2 KiwiRail is a requiring authority under the RMA and is responsible for designations for railway purposes throughout New Zealand, including the North Island Main Trunk line ("**NIMT**") which passes through the Waikato District.
- 1.3 KiwiRail supports urban development around transport nodes and recognises the benefits of co-locating housing near transport corridors which provide passenger connections. However, such development must be planned with the safety and wellbeing of people, and the ongoing efficient operation of the rail network in mind.
- 1.4 KiwiRail has submitted on Variation 3 to ensure good management of the interface between the increased urban development proposed under the Variation and lawfully established, critical infrastructure such as the railway network. An integrated and proactive approach to planning is critical to support the overall integrated vision of our developing urban environments, and to ensure that our transport network can support increasing growth and housing intensification.
- 1.5 KiwiRail has been engaging with Waikato District Council, Waka Kotahi, and Kāinga Ora to resolve Waka Kotahi and KiwiRail's appeals on the PDP. As outlined in the evidence of Ms Butler, the parties have reached an agreement on noise and vibration provisions, and safety setback controls from the rail corridor.
- 1.6 The agreed noise and vibration provisions are district-wide rules and therefore will automatically apply to the zones that are the subject of Variation 3. However, the safety setback controls will need to be included in the relevant zone chapters that are subject to Variation 3.

2. SETBACKS

- 2.1 Setbacks are a common planning tool used to ensure the safe and efficient operation of activities such as the railway corridor, particularly when it may come into conflict with adjacent land uses. They are not a new tool.
- 2.2 In the case of rail, a setback provides a **safe physical distance** between a building and the railway corridor boundary. Heavy freight trains run on the railway lines through the Waikato District. Without a sufficient setback, people painting their buildings, clearing gutters or doing works on their roof will need to enter onto the rail corridor. If a person or object encroaches onto the rail corridor, there is a substantial risk of injury or death for the person entering the rail corridor.
- 2.3 A setback control has obvious safety benefits for the users of the land adjoining the rail corridor and users of the rail corridor. It also has efficiency benefits for rail operations, by mitigating against the risk of train services being interrupted by unauthorised persons or objects entering the rail corridor.
- 2.4 Setbacks are not the same as yard buffers or setbacks from other properties, given there are significant and potentially severe consequences that can arise from encroachment into the rail corridor. There are obvious safety issues arising from people interfering with or entering a rail corridor.
- 2.5 Activities that comply with the setback control would be permitted, while activities that do not comply would require resource consent as a restricted discretionary activity. The proposed setback controls do not create a "no build zone", but rather provide a reasonable and considered approach to development immediately adjacent to the rail corridor.

Setback distance

- 2.6 Through the various plan changes around New Zealand, KiwiRail has generally sought a 5 metre setback. As set out in Ms Butler's evidence, KiwiRail maintains a 5 metre setback distance is appropriate and sufficient to enable landowners to use and maintain their building adjoining the rail corridor.
- 2.7 However, through the PDP appeals and taking into consideration the characteristics of the Waikato District, KiwiRail has accepted a setback distance of 2.5 metres for residential zones and 3 metres for non-residential zones. These setback controls will be included in each relevant zone chapter of the PDP. KiwiRail requests the Panel include the proposed setback control set out at Appendix A to Ms Butler's evidence in the MRZ2 provisions. This

wording reflects the PDP provisions agreed between KiwiRail, Council and Kāinga Ora.

- 2.8 The Reporting Planner also supports the proposed setback standard.¹ Adopting the Reporting Planner's recommendations for a 2.5 metre setback in MRZ2 will also enable the Council to comply with its obligations under section 74(1)(b) of the RMA to enable people and communities to provide for their social, economic, and cultural well-being and their health and safety.

3. OBJECTIVES AND POLICIES

- 3.1 KiwiRail's submission on Variation 3 sought changes to MRZ2-O6 Reverse sensitivity, Policy MRZ2-P11 Reverse sensitivity and MRZ2-P6 Qualifying matters.

MRZ2-P6 - Qualifying matters

- 3.2 The Reporting Planner agrees with KiwiRail's submission to remove "residential" from Policy MRZ2-P6 as follows:²

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

- 3.3 As outlined by the Reporting Planner, this amendment is required as rules and standards in the Medium Residential Zone are not limited to residential development. Non-residential development may also be affected by relevant qualifying matters.³ The proposed amendment is also consistent with Policy 3 of the National Policy Statement for Urban Development, which is not limited to residential development as it relates to building heights and density of urban form generally.

New Objective and Policy for setbacks from the railway corridor

- 3.4 The Reporting Planner proposed a new objective and policy relating to setbacks from the railway corridor.⁴ KiwiRail supports the proposed objective and policy. KiwiRail agrees that it is necessary and appropriate to include a setback objective and policy within the Medium Residential Zone provisions to provide support for the setback standard.

¹ Variation 3 s42A Hearing Report – Horotiu, Rebuttal dated 14 November 2023 at [30].

² Variation 3 s42A Hearing Report – Horotiu, Rebuttal dated 14 November 2023 at [38].

³ Variation 3 s42A Hearing Report – Horotiu, Rebuttal dated 14 November 2023 at [39].

⁴ Variation 3 s42A Hearing Report – Horotiu, Rebuttal dated 14 November 2023 at [34].

MRZ2-O6 Reverse sensitivity, Policy MRZ2-P11 Reverse sensitivity

- 3.5 KiwiRail sought amendments to the objective and policies relating to reverse sensitivity to include reference to design measures. Objective MRZ2-O6 as proposed by the Reporting Planner is as follows:

Minimise the potential for reverse sensitivity by managing the location and design for sensitive activities through:

(a) The use of building setbacks and building heights;

(b) The design of subdivisions and development

- 3.6 The Reporting Planner has proposed changes to MRZ2-P11 to include new (2) as follows:

(1) Maintain appropriate setback distances between new sensitive land uses and existing lawfully established activities that may result in reverse sensitivity effects.

(2) Use of design controls for sensitive activities to minimise reverse sensitivity effects on existing lawfully established activities.

~~(2)~~(3) Manage potential reverse sensitivity effects by restricting building heights within the Area 1 height restriction area in the Havelock Precinct.

- 3.7 KiwiRail agrees with this amendment. Including design controls in the policy is consistent with the references to setback distances and building heights in **both** the objective and policy. At the moment design controls are the only one of the three components of the objective that are not also referenced in the policy. The proposed amendment will ensure the objective and the policy align.

- 3.8 It is important that design controls are referenced in the policy as well as the objective, otherwise it appears the only policy direction in relation to reverse sensitivity is setback distances and building heights.

- 3.9 For the purposes of Variation 3, KiwiRail supports the wording proposed by the Reporting Planner set out above in paragraph 3.6.

4. CONCLUSION

- 4.1 The relief sought by KiwiRail will most appropriately achieve the sustainable management purpose of the RMA, protect the health and amenity of residents within proximity to the rail corridor, and ensure the ongoing safe and efficient use and operation of the railway corridor as nationally significant infrastructure.

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