

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

AND

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

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

PLANNING

1. INTRODUCTION AND SUMMARY

- 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. I am a full member of the New Zealand Planning Institute.
- 1.2 KiwiRail has been working closely with Waikato District Council, Waka Kotahi, and Kāinga Ora to resolve Waka Kotahi and KiwiRail's appeals on the PDP. The parties have spent substantial time and resources working collaboratively to come to an agreement. I am very pleased to advise that KiwiRail, Waikato District Council, Waka Kotahi, and Kāinga Ora have now agreed noise and vibration provisions, and safety setback controls from the rail corridor.
- 1.3 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 agreed safety setback controls will need to be included in the relevant zone chapters that are subject to Variation 3.
- 1.4 My evidence describes the need for safety setbacks and outlines the provisions agreed between KiwiRail, Waikato District Council, Waka Kotahi, and Kāinga Ora through the PDP process. I consider the inclusion of the agreed setback provisions in the relevant Variation 3 zone chapters is efficient and appropriate.

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 DISTRICT

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 4 times the

present rail freight capacity of the route being supported by the Central North Island Freight Hub at Palmerston North.¹

- 3.5 KiwiRail's submission on Variation 3 seeks to manage the interface at a national level through the inclusion of noise and vibration controls and boundary setbacks. This will ensure KiwiRail's services and operations are not compromised by the effects of adjacent development and that new lineside neighbours are able to enjoy safe and high-quality urban environments.

4. SETBACKS

- 4.1 The rail corridor is an important physical resource and strategic transport infrastructure. As part of its operations and obligations to its customers, KiwiRail requires the ability to operate trains as required to meet demand. This can result in changes to the timing, frequency, or length of trains passing along the route. It can also result in upgrades to the network that can provide passing opportunities for trains, or other associated rail improvements.

- 4.2 As an asset of national significance, it is important that the rail corridor can operate safely and efficiently without interference. Any interference with the railway corridor can be incredibly disruptive to rail services, creating unnecessary and cascading delays to passengers and freight. KiwiRail therefore seeks building setback controls from the rail corridor boundary for development on land adjoining the corridor, which is an efficient and effective means of ensuring that the risk of interference is mitigated.

Need for safety setbacks

- 4.3 A safety setback is important to provide enough space within a site adjoining the rail corridor for the home owner or occupant of that building to maintain and access their own house or building safely – without accessing the rail corridor to do so, or getting too close to trains. Buildings constructed close to the rail corridor do not leave enough space on site for essential maintenance activities. The lack of space means that it is highly likely that these activities can only happen by accessing the rail corridor.

- 4.4 The rail corridor is not a public domain and it has a very different and high consequence risk profile compared to entering other sites. It is a hazardous environment and entering the rail corridor can result in a material safety issue

¹ 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.

to both the person accessing the corridor, and to the rail operations being undertaken within the rail corridor.

- 4.5 Buildings right up on the boundary (or subject to a minimal setback from the boundary) also significantly increases the risk of inadvertent incursion into the rail corridor from objects falling from open windows or being dropped from scaffolding / platforms that are used for maintenance.
- 4.6 Any object within the rail corridor becomes a safety issue for rail employees who need to remove the obstruction, not to mention train drivers and passengers on trains if the obstruction is not removed in time. It also becomes a safety issue for residents who seek to retrieve items from the track, due to danger from trains.
- 4.7 It is frequently suggested that adjoining landowners can simply ask KiwiRail for permission to access the rail corridor to undertake maintenance and other activities. With respect, this is not the answer. This would be disruptive to the network and onerous for landowners / occupiers to have to use each time they wish to undertake maintenance. Enabling third parties (like neighbours) to access the rail corridor can require on-site safety personnel, or the temporary closure of a block of the track. Closing – even temporarily – track requires around six months to plan, as freight and passenger demands are required to be factored in and alternatives found.
- 4.8 In my opinion, it would be a poor planning outcome if the options for landowners who need to access their buildings for maintenance are either: (a) the landowner needs to seek permission of KiwiRail to encroach onto the rail corridor (resulting in delay, cost and safety issues); or (b) they do not obtain permission and trespass on the rail corridor. The better planning outcome is to provide an adequate safety setback within a landowner's own property for that landowner to access their own building safely.

Setback distance

- 4.9 KiwiRail generally seeks a 5 metre safety setback from the boundary of the rail corridor as being sufficient to enable landowners to use and maintain buildings safely while ensuring the provision of a safe and efficient rail network.
- 4.10 A robust setback is particularly necessary under the Medium Density Residential Standards where three storey buildings are enabled as of right in applicable zones along the rail corridor. When buildings are taller, they become more difficult to maintain and require additional equipment like scaffolding or cherry picker cranes for maintenance. Due to the nature of this

equipment, there is a risk that elements could inadvertently enter the rail corridor.

- 4.11 A setback distance needs to take into account common plant and equipment used by owners and occupiers to maintain their buildings. This includes scaffolding, mechanical access equipment as well as appropriate support structures for higher scaffolding (such as outriggers) and the necessary space required around scaffolding equipment or machinery. It is not enough to just ensure the equipment itself does not encroach into the rail corridor. KiwiRail is also seeking to ensure that persons operating any equipment do not encroach into the rail corridor, given the safety implications.
- 4.12 Through discussions with parties in the PDP appeals process and based on the particular factors present in the Waikato District, KiwiRail has accepted a setback distance of 2.5 metres for residential zones and 3 metres for non-residential zones. The setback controls are intended to be included in each relevant zone chapter. In order to apply to the zones subject to Variation 3, these will need to be included in the Medium Residential Zone provisions. The 2.5 metre setback is also supported by the Reporting Planner.²
- 4.13 I consider the setback control should be included as a separate standard rather than contained within MRZ2-S15 "Building setback – sensitive land uses" as proposed by the Reporting Planner. This aligns with the approach taken in the other zones through the PDP appeal process and better reflects the purpose of the setback. The setback from the railway corridor is a general setback that applies to all buildings and structures, not just sensitive land uses.
- 4.14 The proposed wording for the setback control in the Medium Residential Zone chapter (which reflects the PDP provisions agreed between KiwiRail and Kāinga Ora) is set out in **Appendix A**. I also provide a s32aa analysis in **Appendix B**.

5. POLICY MRZ2-P11

- 5.1 As noted above KiwiRail, Waikato District Council, Waka Kotahi, and Kāinga Ora have agreed noise and vibration provisions which will act to minimise the potential for reverse sensitivity effects and risks to public health and safety. KiwiRail seeks that MRZ2-P11 Reverse sensitivity is amended to reflect the agreed provisions. The policy wording currently only refers to setback distances and should be amended to include reference to building design

² Section 42A report dated 15 September 2023 at [59].

measures. I set out below suggested amendments to the policy that reflect the purpose of the controls (changes shown in red):

Maintain appropriate setback distances between new **sensitive (and altered)** land uses and existing lawfully established activities **and require buildings to be designed with acoustic insulation to minimise the potential ~~that may result in for~~ reverse sensitivity effects and risks to public health and amenity.**

5.2 My evidence of 4 June 2023 addresses MRZ2-O6 Reverse sensitivity and MRZ2-P6 Qualifying matters and I do not repeat that here.

6. CONCLUSION

6.1 For the reasons set out above, the setback controls sought by KiwiRail are appropriate and necessary for the safe and efficient operation of the railway network in the Waikato District.

Pam Butler

20 October 2023

APPENDIX A

Amendment to MRZ2-S15

MRZ2-S15	Building setback – sensitive land use
<p>(1) Activity status: PER Where:</p> <p>(a) Any new building or alteration to an existing building for a sensitive land use shall be set back a minimum of:</p> <ul style="list-style-type: none"> (i). 2.5m from the designated boundary of the railway corridor; (ii). 15m from the boundary of a national route or regional arterial; (iii). 25m from the designated boundary of the Waikato Expressway; (iv). 300m from the edge of oxidation ponds that are part of a municipal wastewater treatment facility on another site; (v). 30m from a municipal wastewater treatment facility where the treatment process is fully enclosed; and (vi). 300m from the boundary of the Alstra Poultry intensive farming activities located on River Road and Great South Road, Ngaaruawaahia. 	<p>(2) Activity status when compliance not achieved: RDIS</p> <p>Council's discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> (a) Rail Road network safety and efficiency; (b) On-site amenity values; (c) Odour, dust and noise levels received at the notional boundary of the building; (d) Mitigation measures; and (e) Potential for reverse sensitivity effects.

Insertion of a new standard at MRZ2-S16

MRZ2-S16	Building and structure setback – rail corridor
<p>(1) Activity status: PER Where:</p> <p>(a) <u>Any new building or structure, or alteration to an existing building or structure, shall be setback a minimum of 2.5m from the designated boundary of the railway corridor.</u></p> <p>(b) <u>Standard MRZ2-S16(1)(a) does not apply to fences or structures less than 2m in height, poles or aerials.</u></p> <p>(c) <u>Standard MRZ2-S16(1)(a) does not apply to retaining walls,</u></p>	<p>(2) Activity status when compliance not achieved: RDIS</p> <p><u>Council's discretion is restricted to the following matters:</u></p> <ul style="list-style-type: none"> (a) <u>The location, size and design of the building as it relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor</u> <p><i><u>Notification: Any restricted discretionary activity under MRZ2-S16 shall not be</u></i></p>

<p><u>which must be set back a minimum of 1.5m from the designated boundary of the railway corridor.</u></p>	<p><u>notified or limited notified unless KiwiRail is determined to be an affected person in accordance with section 98B of the Resource Management Act 1991 or Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991.</u></p>
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APPENDIX B – S32AA

Effectiveness and efficiency

1. The proposed changes will be more efficient and effective than other methods (such a designating a wider corridor to provide setback) as it provides flexibility of use by resource consent allowing for situations where building within the setback is acceptable. Applying a wider designation means land will not be available for use, the setback could able future use by way of resource consent.
2. Providing no setback will not support an efficient outcome generally as incursions can lead to disruption to, and inefficient operation of, the rail network.
3. The proposed standard gives effect to AINF-O2 which requires the construction, operation, maintenance, repair, replacement and upgrading of infrastructure not to be compromised, and Waikato Regional Policy Statement UFD-O1. It also gives effect to SD-O14 which requires a well-functioning urban environment that enables all people and communities to provide for their social, economic, and cultural wellbeing, and for **their health and safety**, now and into the future.

Costs and benefits

4. The benefits of the setback standard are providing a safer and more efficient rail network with reduction of the potential cost to railway operations that otherwise might be affected via obstructions within the railway corridor. The proposed standard will enable greater certainty around a safe environment for owners and occupiers to undertake maintenance activities on their properties.
5. The setback standard may limit buildings in some locations (cost), although this will depend on topography, design, other requirements (for example height in relation to boundary standard), amenity and geotechnical constraints. The cost of the proposed rule is not unreasonable or disproportionate as developers can still develop their land within the setback by seeking a resource consent.
6. If parties could develop up to the boundary, the potential costs are greater in terms of the risk to safety arising from inadvertent conflict and the need to use the permit to enter system to access the rail corridor for maintenance activities.

Risk of acting or not acting

7. Not acting would increase risks to public safety and network efficiency. Not acting could result in an inefficient operation of nationally significant infrastructure due to unexpected shutdowns.

Decision about most appropriate option

8. The proposed setback standard is considered to be an appropriate option as it enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety, while avoiding, remedying or mitigating adverse effects on nationally significant infrastructure.