



Spark
New Zealand

3 February 2020

Hearing Commissioners

Proposed Waikato District Plan

C/- Waikato District Council

Private Bag 544

Ngaruawahia 3742

districtplan@waidc.govt.nz

Dear Commissioners

Proposed Waikato District Plan: Hearing Topic 10 Residential and other zone topic hearings in regard to Rail Corridor Setbacks requested by Kiwi Rail

Chorus New Zealand Limited (Chorus), Spark New Zealand Trading Limited (Spark) and Vodafone New Zealand Limited (Vodafone) (*"the Companies"*) have joined together for the purposes of the Proposed Waikato District Plan process in order to provide cohesive and efficient input from the telecommunications sector. The Companies have lodged identical submissions and further submissions on all matters except in regard to Chorus designations.

The Companies substantive points mainly relate to the hearings for infrastructure scheduled to occur in September 2020. However, the companies are further submitters on submissions by Kiwi Rail to have a 5m setback for new buildings and building alterations from designated rail corridors. These submissions relate to the Business and Business Town Centre Zones (Hearing Topic 9), Residential Zones (this hearing topic), and a number of other zones yet to have hearings¹.

The s42A reports for Topics 9 and 10 recommend that the KiwiRail submissions in regard to rail corridor setbacks are rejected².

The Companies Further Submissions

The Companies further submissions are to oppose the KiwiRail submissions in part to retain standing to work with KiwiRail to reach an agreed position regarding appropriate exclusions for telecommunications equipment³.

The KiwiRail Position

KiwiRail sets out its position on the s42A report in the evidence of Pam Butler for Topic 9 (see Attachment A to this statement). That position will equally apply to all zone hearing topics including Topic 10⁴. In short, KiwiRail is pursuing its submission on this matter primarily on the grounds of health and safety and

¹ KiwiRail submissions 986.53 and 986.54.

² See para 83 of Topic 10 s42A report which is the equivalent recommendation to Topic 9 s42A report.

³ Further submission FS1031.6, 1032.6 and FS1033.6 for Topic 10

⁴ Section 3, evidence of Pam Butler for KiwiRail, Topic 9.

maintenance. However, as set out in paragraphs 3.12-3.14 of that evidence, KiwiRail does not intend for the 5m setback to apply to common network utility structures.

As set out in Ms Butler's Topic 9 evidence, the s42A report for definitions proposed a change in the definition of "Building" to match that included in the National Planning Standard. We concur that that definition would not apply to poles and lines. Telecommunications cabinets could fall under that definition, but are provided for as a permitted activity in all zones under the *Resource Management (National Environmental Standards for Telecommunications Facilities) Regulations 2016* (NESTF). We also concur that under the current structure of the Proposed Plan, any infrastructure included in Chapter 14 is not subject to zone rules (unless specified in Chapter 14), so in any case the 5m setback in the zone provisions would not apply.

Requested Relief

On the basis of the above, the proposed 5m setback in the zone provisions for new buildings and building alterations will have no impact on network utility infrastructure provided for in Chapter 14 of the Proposed Plan, or telecommunications equipment provided for in the NESTF. Accordingly, should the Panel be of a mind to grant the relief sought by KiwiRail, this will be a satisfactory outcome for the Companies in regard to the further submissions on this matter.

Should the Panel resolve to address this matter directly within Chapter 14 such that the provisions would apply to network utility infrastructure enabled in that section, the Companies would need to reserve their position and further address the matter as part of that hearing topic in due course.

We ask that this statement is tabled for consideration by the Panel. Whilst this statement is being filed in regard to Hearing Topic 10, it may assist the Panel if it is also tabled in regard to Topic 9 to align with the presentation of Ms Butler's evidence for KiwiRail (noting that the submitter evidence filing date for Topic 9 has passed).

If the Panel considers it necessary, the Companies can provide written responses to any questions that the Commissioners may have.

Yours sincerely,



Vodafone New Zealand Ltd
Colin Clune
Resource Management Planner

Colin.Clune@Vodafone.co.nz

(09) 355 2000



Chorus New Zealand Ltd
Andrew Kantor
Environmental Planning &
Engagement Manager

Andrew.kantor@chorus.co.nz

022 354 5327



Spark New Zealand Trading Ltd
Graeme McCarrison
Engagement and Planning
Manager

Graeme.mccarrison@spark.co.nz

027 4811 816 or (09) 357 2807

Attachment A:

Topic 9 Evidence of Pam Butler, KiwiRail

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 9 – BUSINESS AND BUSINESS TOWN CENTRE ZONES

(Notified Chapters 17, 18 and 19)

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 9 – Business and Business Town Centre Zones (notified chapters 17, 18 and 19 of the Proposed Plan).

2. KIWIRAIL'S SUBMISSION ON THE BUSINESS ZONES

- 2.1 KiwiRail's submissions on the Business and Business Town Centre Zones 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 9 and agree with a number of the recommendations in this report in relation to KiwiRail's submissions.
- 2.3 In particular, KiwiRail agrees with Council officer's recommendations on the following submissions where the recommendation is to accept KiwiRail's relief, either wholly or in part as these recommendations achieve the aim of KiwiRail's submission points and address KiwiRail's concerns:
- (a) Submission 986.76 – Policy 4.5.31 Reverse Sensitivity;¹

¹ Section 42A report – Hearing 9: Business and Business Town Centre Zones ("Section 42A report") at [252].

- (b) Submissions 986.100, 986.101 and 986.102 – Rules 17.2.5.1 P1(a)(i),² 18.2.4.1 P1(a)(i)³ and 19.2.4.1 P1(a)(i)⁴ Earthworks – General;
- (c) Submissions 986.107, 986.108 and 986.109 – Rules 17.2.5.1 P1(a)(v),⁵ 18.2.4.1 P1(a)(v)⁶ and 19.2.4.1 P1(a)(iv)⁷ Earthworks – General; and
- (d) Submissions 986.117 and 986.118 – Rules 17.2.7.2⁸ and 18.2.7.2⁹ Signs – Effects on traffic.

2.4 In relation to submissions 986.117 and 986.118, KiwiRail notes that the amendment accepted by the Council officer appears to have been inserted into the incorrect provision of the Rules. KiwiRail sought the following amendment to be made to Rules 17.2.7.2 and 18.2.7.2:

- (a) Any sign directed at ~~road~~ land transport users must:

[...]

- (iii) Not obstruct sight lines of drivers turning into or out of a site entrance and intersections or at a level crossing

2.5 The Council officer accepted KiwiRail's submissions and incorporated the amendments to "land transport users" correctly, but appears to have inserted "or at a level crossing" in the wrong clause of Rules 17.2.7.2 and 18.2.7.2. The Council officer's recommended amendment is as follows:¹⁰

- (a) Any sign directed at ~~road~~ land transport users must:

[...]

- (ii) Be located at least 60m from controlled intersections or at a level crossing, pedestrian crossings and any other sign;

- (iii) Not obstruct sight lines of drivers turning into or out of a site entrance and intersections;

2.6 KiwiRail seeks that the amendment recommended by the Council officer is corrected to reflect the relief sought in its original submission on the basis that it is presumed that this was the Council officer's intention.

Reverse sensitivity

2.7 KiwiRail sought that Rule 17.4.1 RD1 and Rule 18.4.1 RD1 Subdivision – General be amended to include an additional matter of discretion as follows:¹¹

- (b) The Council's discretion shall be limited to the following matters:

² Section 42A report at [382].

³ Section 42A report at [585].

⁴ Section 42A report at [754].

⁵ Section 42A report at [382].

⁶ Section 42A report at [585].

⁷ Section 42A report at [754].

⁸ Section 42A report at [400].

⁹ Section 42A report at [601].

¹⁰ Section 42A report at [402] and [603].

¹¹ Submissions 986.92 and 986.93.

[...]

(iii) reverse sensitivity effects, including on land transport networks.

2.8 The Council officer has recommended that KiwiRail's submission points be rejected on the basis that "it is the land use that creates the potential for reverse sensitivity effects, not subdivision".¹² In my opinion, these are matters that should be taken into account when decision-makers are considering applications for subdivisions. The subdivision of a site may influence the future development of a site, including the location of potential sensitive uses and access ways, in a manner that is incompatible with existing infrastructure. For this reason, it is appropriate to consider potential reverse sensitivity effects that may arise as a result of subdivision at the subdivision consenting stage.

2.9 The Council officer has, however, recommended the addition of the following matter of discretion to Rules 17.4.1 and 18.4.1 in response to Counties Power Limited's submissions:¹³

(b) Council's discretion is limited to the following matters:

[...]

(iii) impact on the operation, maintenance, upgrade and development of existing infrastructure.

2.10 While not in response to KiwiRail's submission, I consider that this amendment is sufficient to address KiwiRail's concerns. As drafted by the Council officer, the rule now directs decision makers to consider the potential effects of subdivision on existing infrastructure. As the Proposed Plan defines "Infrastructure" to specifically include rail, these effects include potential impacts on the railway network. KiwiRail therefore supports the Council officer's recommendation.

Points of disagreement

2.11 KiwiRail disagrees with the Council officer's recommendations to reject the submissions seeking the inclusion of:

- (a) building setbacks for activities adjacent to the railway corridor boundary;¹⁴ and
- (b) a new matter of discretion to require consideration of reverse sensitivity effects on land transport networks at the subdivision consent stage.¹⁵

2.12 I expand on these points of disagreement in the following sections of my evidence.

3. SETBACKS FOR BUILDINGS ADJACENT TO THE RAIL CORRIDOR

Relief sought by KiwiRail

3.1 In its submission, KiwiRail sought to include a new rule in all zones with properties adjoining the railway corridor, including the Business and Business Town Centre zones, to require that all new or altered buildings be set back a minimum of 5m from the rail corridor boundary.

¹² Section 42A report at [456] and [679].

¹³ Submissions 405.62 and 405.63.

¹⁴ Submission 986.57 – Rule 17.3.4 Building Setbacks; Submission 986.58 – Rule 18.3 Land Use; Submission 986.63 – Rule 17.1 Land Use Activities; Submission 986.64 – Rule 18.1 Land Use Activities.

¹⁵ Submissions 986.92 and 986.93.

Resource consent can be sought for a restricted discretionary activity where the 5m setback is not achieved.

- 3.2 I have provided evidence on the building setbacks sought by KiwiRail in Hearings 5, 6 and 7 on the Proposed Plan. I rely on my previous statements of evidence in that regard and will not repeat that in detail here except to the extent that it is necessary to respond to the Council officer's section 42A report below.

Response to section 42A report

- 3.3 As noted above, the Council officer has recommended that the 5m setback rules are rejected.¹⁶ Despite this, the section 42A report refers to KiwiRail's submissions on the 5m setback rules as having been accepted by the Council officer throughout the report.¹⁷ The Council officer has also accepted KiwiRail's submissions to amend consequential provisions on the basis that the sought 5m setback rules have been accepted,¹⁸ and has added a new policy (not directly sought by KiwiRail) on the basis that the 5m setback rules have been accepted.¹⁹
- 3.4 KiwiRail supports the recommendations and / or discussion accepting the addition of a 5m setback rule and related provisions. For example, KiwiRail agrees with the Council officer's recommendation to amend Policy 4.5.27 of Chapter 4 (Urban Environment) as follows:²⁰

4.5.27 Policy – ~~Front~~ Strategic infrastructure setback – Business Zone

- ~~(a) Ensure buildings within the Business Zone are designed and setback from roads~~ strategic infrastructure. ~~by:~~
- ~~(i) Retaining the predominant building setback within the street; and~~
- ~~(ii) Allowing sufficient space for the establishment of landscaping on the site.~~

- 3.5 However, KiwiRail seeks clarification from the Council Officer as to which submission points were recommended to be rejected or accepted. Further, KiwiRail seeks that the reasons for these recommendations are amended where necessary to provide consistency and clarity throughout the section 42A report. For completeness, I respond to the Council officer's reasons for rejecting the setbacks below.
- 3.6 KiwiRail disagrees with the Council officer's assertion that:²¹

The submissions from KiwiRail Holdings Limited [986.63 and 986.57] and New Zealand Transport Agency [742.141] seek to include setbacks from the railway corridor and the state highway. In my opinion, the issues of reverse sensitivity have been addressed by the requirement that multi-unit development is a restricted discretionary activity.

- 3.7 The proposed 5m setback rule is not intended to address reverse sensitivity effects. Rather, the building setback is a safety control that is concerned with managing the interface between operations within the rail corridor and activities on adjoining sites. A physical setback seeks to avoid or minimise potential adverse effects on people's safety that may arise from objects or structures from adjoining activities inadvertently coming into conflict with the rail corridor.

¹⁶ Section 42A report at [431] and [660].

¹⁷ See section 42A report at [226] and [249].

¹⁸ Section 42A report at [249].

¹⁹ Section 42A report at [227], Policy 4.5.27.

²⁰ Section 42A report at [227].

²¹ Section 42A report at [429].

- 3.8 Maintenance, cleaning or vegetation clearance on sites adjoining the railway corridor, which involve the use of scaffolding, poles and the like, can lead to objects or structures (often inadvertently) entering the railway corridor. When buildings are permitted to be built up to the railway corridor boundary, the design of the building (for example, signs or awning) can also result in these structures interfering with infrastructure within the corridor. Locating buildings a safe distance from the railway corridor minimises the risk of inadvertent interference with a moving train or other infrastructure within the corridor, the consequences of which can be significant.
- 3.9 In the Business Town Centre Zone in particular, the Council officer has rejected the setback rules and associated matters of discretion on the basis that:²²

For the rail corridor, in most instances the Business Town Centre zone is more than 5 metres away. Accordingly, in my opinion, there is no justification for the proposed rule.

- 3.10 Even if it is correct that "in most instances" buildings are already setback 5 metres, this is an inadequate reason to reject the amendment that KiwiRail sought as that could change at any stage. Including the rule in the Proposed Plan now appropriately ensures that if any areas adjacent to the railway corridor are rezoned for Business Town Centre zone purposes in the future, that there are appropriate controls in place to control building development adjacent to the rail corridor.
- 3.11 In my opinion, 5 metres is an appropriate distance for buildings and structures to be set back from the boundary of the railway corridor. A setback of 5 metres ensures that there is sufficient space for landowners and occupiers to safely conduct their activities, and maintain and use their buildings, while minimising the potential for interference with the rail corridor. Such an approach strikes an appropriate balance between protecting people from the potential safety risks of developing near the railway corridor and the continued operation of regionally significant infrastructure.

Network utility infrastructure

- 3.12 Chorus New Zealand Limited, Spark New Zealand Trading Limited and Vodafone NZ Limited further submitted in partial opposition to the 5 metre setback sought by KiwiRail. These submitters are not opposed to the concept of a railway setback. 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".²³
- 3.13 The 5 metre setback does not apply retrospectively, such that any existing buildings will not be affected. The rule is also not intended to capture common network utility structures. The definition of "building" as proposed to be amended by the Council officer as part of the Definitions hearing seeks to align the definition of a building with the National Planning Standards.²⁴ I understand that this definition is not intended to capture common network utility structures, such as power pylons, towers and mast poles.
- 3.14 Further, Chapter 14 of the Proposed Plan (Infrastructure and Energy), as notified, which provides for new infrastructure (the definition of which includes telecommunications network)

²² Section 42A report at [659].

²³ Further submissions FS1031.10, FS1032.10 and FS1033.10.

²⁴ See definition of "Building" in Section 42A report – Hearing 5: Definitions, Appendix 2 at page 7; Section 42A report – Hearing 5: Definitions at 3.17.3 at [274].

as a permitted activity,²⁵ states that the zone rules do not apply to infrastructure activities, unless otherwise specified.²⁶ In this regard, the building setback rule (if applied within each of the relevant zones adjoining the railway corridor) would not apply to telecommunications infrastructure, unless specified within Chapter 14. I note that the Council Officer for Hearing 6 proposed that the building setback rule could be included in Chapter 14 (which KiwiRail supports).²⁷ If this was adopted, I consider that this could be incorporated in a way such that it is clear that it does not capture telecommunications infrastructure.

4. CONCLUSION

- 4.1 I support the Council officer's recommendations on KiwiRail's submission points outlined in paragraphs 2.3 to 2.10 above.
- 4.2 KiwiRail seeks clarity on the Council officer's recommendations in relation to the building setbacks sought by KiwiRail. In the event that the Council officer's recommendation is to reject the relief sought (as indicated in parts of the section 42A report), KiwiRail disagrees with that position for the reasons outlined in this statement of evidence and continues to seek the inclusion of the setback, along with the additional matters of discretion for new or altered buildings not complying with the permitted activity standard.
- 4.3 I consider that the changes sought by KiwiRail's submissions 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

28 January 2020

²⁵ Waikato Proposed District Plan, Rule 14.2.1 P1.

²⁶ Waikato Proposed District Plan, Chapter 14.1(1) – Introduction.

²⁷ Section 42A report (Land Use) – Hearing 6: Village Zone at [519].