

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 18 – RURAL ZONE

Notified Chapter 5 (Rural Environment) and Chapter 22 (Rural 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 18 – Rural Zone (notified Chapters 5 and 22 of the Proposed Plan).

2. KIWI RAIL'S SUBMISSION ON THE RURAL ZONE

- 2.1 KiwiRail's submissions on the Rural Zone 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 18 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 986.26 – Policy 5.3.14 Signs;¹ and
 - (b) Further submission 1272.11 – Policy 5.3.5 Earthworks activities;²

¹ Section 42A report at [341].

² Section 42A – Hearing 18: Rural Zones ("Section 42A report") at [155].

Building setbacks

- 2.4 In its submission, KiwiRail sought to include a new rule in all zones with properties adjoining the railway corridor, including the Rural Zone, to require that all new or altered buildings be set back a minimum of 5m from the railway corridor boundary.³ Where compliance with the 5m setback is not achieved, resource consent may be sought for a restricted discretionary activity.⁴
- 2.5 I have provided evidence on the building setbacks sought by KiwiRail in other hearings on the Proposed Plan.⁵ 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 recommendation.
- 2.6 The Council officer has recommended that KiwiRail's submissions on the 5m setback be rejected, on the basis that the general boundary setbacks included in the Rural Zone are greater than 5m such that a bespoke reference to the railway corridor is not necessary.⁶ While maintaining its position that a rail-specific setback is necessary and appropriate in all other zones under the Proposed Plan, KiwiRail supports the Council officer's recommendation in this instance because:
- (a) Under Rule 22.3.7.1, the minimum distance that a building (habitable or non-habitable) must be set back from the boundary of an adjoining site (other than the road corridor) is 12m. Any building that does not comply with this requirement requires resource consent as a restricted discretionary activity.⁷
 - (b) While the Council officer rejected the inclusion of a rail-specific setback standard in the Rural Zone, the Council officer has recommended that the matters of discretion provided for buildings that do not comply with the general boundary setback requirements be amended to include "transport network safety and efficiency".⁸ This additional matter of discretion will ensure that, where a building is proposed to be located within 12m of the railway corridor, potential adverse effects on safe and efficient operation of the network will be appropriately considered as part of the consenting process, provided officers interpret the railway as being part of the transport network.

Points of disagreement

- 2.7 KiwiRail disagrees with the Council officer's recommendations in relation to KiwiRail's submissions on the following provisions:
- (a) Rule 22.2.3.1 P2(a) Earthworks – General;⁹
 - (b) Rule 22.1.2 P6 and P8 Permitted Activities;¹⁰

³ Submission 986.54.

⁴ Submission 986.67.

⁵ See Evidence of Pam Butler on behalf of KiwiRail Holdings Limited in relation to: Hearing 6 – Village Zone (25 November 2019); Hearing 7 - Industrial Zones (10 December 2019); Hearing 9 – Business and Business Town Centre Zones (28 January 2020); Hearing 10 – Residential Zone (3 February 2020).

⁶ Section 42A Report at [311].

⁷ Rule 22.3.7.1 RD1(a).

⁸ Section 42A Report at [671] and [673].

⁹ Submission 986.104 and 986.112.

¹⁰ Submission 986.125.

(c) Rule 22.1.3 – Restricted Discretionary Activities;¹¹ and

(d) Policy 5.3.15 Policy – Noise and vibration.¹²

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

3. EARTHWORKS

Stabilisation following earthworks

Relief sought by KiwiRail

3.1 KiwiRail's submission sought that Rule 22.2.3.1 P2(a)(iv) Earthworks – General be amended to include other available methods to stabilise the ground to prevent runoff, including building or hardcover development due to the ambiguous nature of the current drafting.¹³

Response to section 42A report

3.2 The Council officer has recommended that KiwiRail's submission be accepted in part, suggesting that Rule 22.2.3.1 be amended as follows:¹⁴

- (v) Areas exposed by earthworks are stabilised on completion and re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks;

3.3 KiwiRail supports the amendment recommended by the Council officer, but considers that a further change is necessary to ensure that the revised rule accurately captures KiwiRail's desired relief. KiwiRail seeks that the Council officer's recommended drafting for Rule 22.2.3.1 P2(a)(iv) is amended as follows:

- (v) Areas exposed by earthworks are stabilised on completion ~~and-or~~ re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks;

3.4 The word "and" should be replaced with "or" to make it clear that there are other methods to achieve stabilisation of areas exposed by earthworks other than revegetation. While revegetation may be an appropriate method of stabilising land following the completion of earthworks in many circumstances, this will not necessarily be the case in respect of all activities. The Proposed Plan should therefore provide users with the flexibility to adopt the most suitable and practicable option in each circumstance.

Setbacks for earthworks adjacent to the rail corridor

Relief sought by KiwiRail

3.5 KiwiRail's submission sought that Rule 22.2.3.1 P2 include an additional permitted activity standard requiring all earthworks to be located at least 1.5m from any infrastructure.¹⁵ The

11 Submission 986.125.

12 Submission 986.27.

13 Submission 986.112.

14 Section 42A Report at [276] and [291].

15 Submissions 986.104.

relief sought is intended to avoid or manage the potential for the railway corridor to be undermined as a result of adjacent earthworks.

Response to section 42A report

- 3.6 The Council officer has recommended that KiwiRail's submission on Rule 22.2.3.1 be rejected because the Proposed Plan already contains provisions to ensure that earthworks "will not impact on any waterway, open drain or overland flow path."¹⁶ However, these provisions do not ensure that the potential adverse effects of earthworks located near the railway corridor on rail infrastructure will be appropriately avoided, remedied or mitigated.
- 3.7 KiwiRail supports the Council officer's recommended amendment to Rule 22.2.3.1 RD1 to include "effects on the safe, effective and efficient operation, maintenance and upgrade of infrastructure, including access" as a matter of discretion for earthworks that breach the performance standards provided under Rule 22.2.3.1 P2.¹⁷ However, in the absence of a corresponding permitted activity standard relating to the location of earthworks in proximity to infrastructure in Rule 22.2.3.1 P2, earthworks may be able to be undertaken near the railway corridor (ie within 1.5m) as a permitted activity without any consideration on the potential impact of such works on the rail corridor. The requirement to consider effects on infrastructure under Rule 22.2.3.1 RD1 would therefore not be triggered, and such effects would not be appropriately considered and addressed.
- 3.8 KiwiRail continues to seek that Rule 22.2.3.1 P2 be amended to include a requirement for earthworks to be set back at least 1.5m from the railway corridor. The rail network can be undermined by earthworks undertaken on adjoining sites where there is no consideration of proximity rail infrastructure. This could compromise the safety and integrity of that infrastructure, which, in turn, has the potential to cause serious injury or loss of property and life, in the event that a train travels along unknowingly undermined or damaged tracks.

4. SETBACKS FOR FORESTRY ACTIVITIES ADJACENT TO THE RAIL CORRIDOR

Relief sought by KiwiRail

- 4.1 In its submission, KiwiRail sought amendments to Rule 22.1.2 to provide a minimum setback of 10m for forestry planting and replanting (where it occurs within five years of harvesting) near the railway corridor.¹⁸ KiwiRail also sought to add a new discretionary activity to Rule 22.1.3 for afforestation or forestry that does not meet the setback requirements, with the Council's discretion restricted to effects on health, safety and efficiency of the railway corridor.¹⁹

Response to section 42A report

- 4.2 The Council officer has recommended that KiwiRail's submissions be rejected, on the basis that a separate recommendation has been made to Rule 22.1.2 P6²⁰ and P8²¹ to subject these

¹⁶ Section 42A Report at [278].

¹⁷ Section 42A Report at [278] and [291]. This change is recommended in response to KiwiRail's submission on Rule 22.2.3.1

¹⁸ Submission 986.125.

¹⁹ Submission 986.125.

²⁰ Rule 22.1.2 P6 relates to afforestation not in an Outstanding Natural Landscape or Outstanding Natural Feature, with the recommended new performance standard requires such works to be undertaken in accordance with the NESPF.

²¹ Rule 22.1.2 P8, which has been recommended to be deleted and moved to P7 in the s42A Report, relates to forestry activities. The Council officer has recommended that the same performance standard be provided for forestry activities as for afforestation.

activities to the requirements of Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 ("**NES-PF**").²²

- 4.3 Regulation 14 NES-PF requires all afforestation activities to be set back at least 10m from any adjoining property (ie including the railway corridor). Afforestation refers to planting and growing plantation forestry trees on land where there is no plantation forestry, and where plantation forestry harvesting has not occurred within the last five years. Any replanting that occurs on land where plantation forestry harvesting has occurred within the last five years will therefore not be caught by the NES-PF's setback requirement. In the absence of a relevant rule in the Proposed Plan, if replanting of a harvested forest occurs within 5 years, trees may be located within 10m of the railway corridor as a permitted activity.
- 4.4 When planted near to the rail corridor, trees can intrude into sight lines which raises particular safety issues at level crossings and around curves. Such plantings often also drop branches or leaves onto the rail corridor, increasing the risk of derailment. Trains cannot stop in a hurry, nor are they able to drive over such obstacles. Roots from trees can also undermine the safety of the rail corridor through the creation of mud spots. Mud spots occur where ballast under the rails is removed. When a train goes over a mud spot, the track bounces, creating a risk that either the track breaks or the train derails. Further, replanting trees often get closer and closer to the boundary and can end up encroaching into rail land.
- 4.5 KiwiRail therefore continues to seek the amendments to Rules 22.1.2 and 22.1.3 as set out in its submission on the Proposed Plan.

5. ACOUSTIC INSULATION WHERE SENSITIVE LAND USE ACTIVITIES ARE LOCATED NEAR THE RAIL CORRIDOR

Relief sought by KiwiRail

- 5.1 In its submission, KiwiRail sought to amend Policy 5.3.15 to include land near the railway corridor in the list of "high noise environments" within which sensitive land uses are required to be acoustically insulated.²³ This relief is considered appropriate and necessary to reflect that the railway corridor operates 24 hours a day, 7 days a week, and can produce noise and vibration effects that cannot be fully internalised, due to the nature of rail infrastructure.

Response to section 42A report

- 5.2 The Council officer has recommended that KiwiRail's submission be rejected due to the absence of an assessment demonstrating that the benefits of the proposed amendment outweigh the costs for affected landowners, in accordance with s32 of the RMA.²⁴
- 5.3 KiwiRail's submission also sought the introduction of a suite of new provisions to the Infrastructure Chapter of the Proposed Plan requiring all new or altered sensitive activities in proximity to the railway network to be appropriately mitigated in relation to rail noise and vibration.²⁵ These provisions would apply across all zones, including the Rural Zone. As an alternative to this relief, KiwiRail sought that the same set of provisions be included in those zones where the railway network is located.

²² Section 42A Report at [382].

²³ Submission 986.27

²⁴ Section 42A Report at [529].

²⁵ Submission 986.51.

- 5.4 This aspect of KiwiRail's submission on the Proposed Plan has been allocated to Hearing 22 – Infrastructure. KiwiRail intends to provide evidence in support of the addition of acoustic controls for sensitive land uses in proximity to the railway corridor as part of that hearing. However, given that KiwiRail's submission on Policy 5.3.15 has been included in the section 42A report for Hearing 18 I will provide a brief response to the matters raised by the Council officer in rejected KiwiRail's submission.
- 5.5 In my opinion, it is appropriate for sensitive land uses to be required to acoustically mitigate when seeking to locate in proximity to the railway corridor. This does not impose an unreasonable or unnecessarily stringent control on persons seeking to develop near the railway corridor. Rather, a requirement to acoustically insulate against rail noise and vibration seeks to ensure that any new sensitive land uses are not exposed to the adverse effects of rail noise and vibration, and that KiwiRail's activities are protected from potential reverse sensitivity effects.
- 5.6 Such controls, in my view, strike the appropriate balance between the onus on existing lawful emitters like the railway network to manage their effects, where it is not practicable or possible to fully internalise these effects, and the onus on new sensitive activities to protect themselves against such effects. They reflect an integrated approach to planning that seeks to allow development to occur near the railway corridor, but in a way that appropriately manages the effects of, and effects on, the ongoing use and operation of the corridor.
- 5.7 For these reasons, as well as those that will be provided in relation to Hearing 22, KiwiRail considers that Policy 5.3.15 should be amended to include land near the rail corridor as a high noise environment.

6. CONCLUSION

- 6.1 I support the Council officer's recommendations on KiwiRail's submission points outlined in paragraphs 2.3 to 2.7 above.
- 6.2 However, I disagree with the Council officer's recommendation to reject submissions 986.112, 986.104, 986.125 and 986.27 for the reasons outlined in this statement of evidence.
- 6.3 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

8 September 2020