

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 Kāpiti District and supports the vital movement of freight and people through the country via rail. Mr Brown's evidence sets out the volume of freight and passenger rail traffic in the Kāpiti Coast District noting that the NIMT through the Kāpiti Coast District is one of the busiest lines in the country.¹ Growth in use of the NIMT will continue to be influenced by the desire to achieve a low-carbon economy and modal shift in freight from road to rail.²

1.3 KiwiRail supports urban development around transport nodes. However, such development must be planned and managed thoughtfully and prudently, with the safety and wellbeing of people and the success of the national rail network in mind.

1.4 KiwiRail has submitted on PC2 to ensure the safe and efficient operation of the rail network by ensuring that development near the rail corridor is appropriately managed to minimise adverse effects on health and amenity of adjoining landowners and reverse sensitivity effects on KiwiRail's operations.

1.1 KiwiRail seeks the following:

- (a) the rail network be identified as a qualifying matter per s77I(e) and s77O(e) of the RMA;
- (b) a 5m setback for all new buildings and structures adjoining rail corridor;
- (c) an extension of the existing acoustic control to 100m; and
- (d) the introduction of vibration controls.

¹ Statement of Evidence of Michael Brown dated 10 March 2023 at [3.5].

² Statement of Evidence of Michael Brown dated 10 March 2023 at [3.6]. Mr Brown's evidence sets out the carbon emission benefits provided by rail compared to road freight.

2. QUALIFYING MATTER

- 2.1 The RMA includes a list of qualifying matters that may make the MDRS and the relevant building height or density requirements under Policy 3 of the National Policy Statement on Urban Development 2020 ("**NPS-UD**") less enabling of development in relation to an area in a relevant residential zone.³
- 2.2 PC2 has not recognised the rail corridor as a qualifying matter. This approach does not align with a number of other councils around the country which have provided for rail as a qualifying matter in their plans, including Porirua, Selwyn, Waipā and Auckland. KiwiRail seeks that Kāpiti Coast District Council recognise the rail network as a qualifying matter in PC2 and include the setback and noise and vibration controls described in Sections 3 and 4 below.
- 2.3 Under Sections 771(e) and s770(e) of the RMA a qualifying matter includes "a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure".⁴ The New Zealand rail network is nationally significant infrastructure.⁵
- 2.4 Matters to ensure the safe or efficient operation of KiwiRail's rail network in the Kāpiti Coast District are clearly a qualifying matter. The Reporting Planner appears to accept this, however, says there is insufficient information in the submission to demonstrate that the assessment requirements for new qualifying matters have been met.⁶
- 2.5 In our submission, the controls sought by KiwiRail are matters to ensure the safe or efficient operation of the rail network and therefore constitute qualifying matters as expressly contemplated by the RMA. The evidence of Mr Brown, Ms Heppelthwaite and Dr Chiles for KiwiRail provides evidence for the need for these controls.

3. SETBACKS

- 3.1 Setbacks are a common planning tool used to ensure the safe and efficient operation of the rail network, particularly when it may come into conflict with adjacent land uses.

³ RMA, s771. Section 770 of the RMA provides that qualifying matters may modify the requirements of Policy 3 of the NPS-UD in an urban non-residential zone.

⁴ s771(e) and s770(e).

⁵ See definitions in the National Policy Statement for Urban Development at <https://environment.govt.nz/assets/publications/National-Policy-Statement-Urban-Development-2020-11May2022-v2.pdf>

⁶ Statement of Evidence of Andrew Banks on behalf of Kapiti Coast District Council dated 24 February 2023 at [300] and [301(b)].

- 3.2 KiwiRail's submission on PC2 sought the following:⁷
- (a) an increase in the minimum setback from the rail corridor in the General Residential Zone to 5m; and
 - (b) the introduction of a new rule in the Metropolitan Centre Zone, Town Centre Zone and Local Centre Zone to require all new or altered buildings to be set back 5 metres from the rail corridor boundary.

Activities that comply with this control would be permitted, while activities that do not comply would require resource consent as a restricted discretionary activity.

- 3.3 Providing a physical setback for buildings adjacent to the railway corridor boundary is a safety control to manage the interface between operations within the railway corridor and activities on adjoining sites. A building setback acts to reduce the potential conflict between the safe enjoyment and maintenance of buildings on adjacent properties and the operational rail corridor. This has safety benefits for: users of the land adjoining the rail corridor; the users of the rail corridor; and efficiency benefits for rail operations by mitigating against the risk of train services being interrupted by unauthorised persons or objects entering the rail corridor.
- 3.4 The Reporting Planner considers KiwiRail's concerns can be addressed by neighbouring landowners seeking permission to encroach into the rail corridor.⁸ This is not good planning in our submission. As detailed in Mr Brown's evidence, the risks associated with the rail corridor are very different from property used for residential or other uses - if a person or object encroaches on the rail corridor there is a risk of electrocution where there are electrified lines and / or risk of injury or worse from rail activities.⁹ It is uncommon in KiwiRail's experience for landowners to request permission to enter the rail corridor to undertake such activities.¹⁰
- 3.5 In any event, requiring landowners to seek permission (or if they fail to obtain permission, to trespass) in order to undertake necessary building maintenance, is a poor, and potentially unsafe, planning outcome. A better planning outcome is to accommodate building maintenance activities within the property itself.¹¹
- 3.6 As set out in the evidence of Mr Brown, 5 metres is an appropriate distance for buildings and structures to be set back from the boundary of the railway

⁷ KiwiRail's Submission on Proposed Plan Change 2 – Intensification to the Kapiti Coast District Plan dated 15 September 2022.

⁸ Statement of Evidence of Andrew Banks on behalf of Kapiti Coast District Council dated 24 February 2023 at [299].

⁹ Statement of Evidence of Michael Brown dated 10 March 2023 at [5.2] – [5.3].

¹⁰ Statement of Evidence of Michael Brown dated 10 March 2023 at [5.6].

¹¹ Statement of Evidence of Michael Brown dated 10 March 2023 at [5.4].

corridor.¹² A 5 metre setback is particularly important in the context of PC2 which allows three storey buildings as a permitted activity.¹³

3.7 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. This allows for the WorkSafe Guidelines on Scaffolding in New Zealand to be complied with, as well as accommodating other mechanical access equipment required for maintenance, and space for movement around the scaffolding and equipment.¹⁴

3.8 Ms Heppelthwaite also considers that the setback is the most efficient outcome from a planning perspective.¹⁵ The 5 metre setback proposed by KiwiRail protects people from the potential safety risks of developing near the railway corridor and allows for the continued safe and efficient operation of nationally significant infrastructure.

4. RAIL NOISE AND VIBRATION

4.1 Trains are large, travel at speed, and generate noise and vibration as part of their operation. Exposure to activities that create noise and vibration can give rise to annoyance and adverse health effects for people living near noisy sources. As Dr Chiles has outlined in his evidence for KiwiRail, sound and vibration from rail networks have the potential to cause adverse health effects on people living nearby. These effects have been documented by bodies such as the World Health Organisation and are underpinned by robust scientific research.¹⁶

4.2 A key concern for KiwiRail in respect of the Plan Changes is to ensure that the development of sensitive activities near the rail corridor does not give rise to health and amenity effects on adjoining residents nor reverse sensitivity effects that may compromise the safe and efficient operation of the rail network.

4.3 Reverse sensitivity is a well-established concept and is an adverse effect for the purposes of the RMA.¹⁷ It refers to the susceptibility of lawfully established effects-generating activities (which cannot internalise all of their effects) to complaints or objections arising from the location of new sensitive activities nearby those lawfully established activities. Such

¹² Statement of Evidence of Michael Brown dated 10 March 2023 at [5.8] – [5.12].

¹³ See calculation of scaffolding distance required in the Statement of Evidence of Michael Brown dated 10 March 2023 at [5.9].

¹⁴ Statement of Evidence of Michael Brown dated 10 March 2023 at [5.9] – [5.11].

¹⁵ Statement of Evidence of Catherine Heppelthwaite dated 10 March 2023 at [8.3].

¹⁶ Statement of Evidence of Stephen Chiles dated 10 March 2023 at [4.1] – [4.6].

¹⁷ See *Affco New Zealand v Napier City Council* NZEnvC Wellington W 082/2004, 4 November 2004 at [29] as cited in *Tasti Products Ltd v Auckland Council* [2016] NZHC 1673 at [60].

complaints can place significant constraints on the operation of established activities, as well as their potential for growth and development in the future.

- 4.4 Reverse sensitivity is a significant issue for transport infrastructure, including the rail network. The Environment Court has recognised the importance of protecting regionally significant infrastructure from reverse sensitivity effects, and has declined applications for resource consent where developments have the potential to give rise to such effects.¹⁸

KiwiRail's approach to noise and vibration controls

- 4.5 KiwiRail is a responsible infrastructure operator that endeavours to avoid, remedy or mitigate the adverse rail noise and vibration it produces, through its ongoing programme of upgrade, repairs and maintenance work to improve track conditions. Not only is this important to KiwiRail as part of being a good neighbour, but it is also under a statutory obligation to use the best practicable option to avoid unreasonable noise¹⁹ and to avoid, remedy or mitigate adverse effects on the environment.²⁰
- 4.6 However, the nature of rail operations means that KiwiRail is unable to fully internalise all noise and vibration effects within the rail corridor boundaries. In any case, KiwiRail is not required to internalise all of its effects, as the RMA is not a "no effects" statute.²¹ As set out in the evidence of Ms Heppelthwaite, the Greater Wellington Regional Policy Statement accepts there will be effects from infrastructure (beyond its boundaries) and provides a policy framework in which to manage these.²²
- 4.7 Accordingly, a balance needs to be struck between the onus on the existing lawful emitter (here, KiwiRail) to manage its effects, and district plans providing appropriate controls on the development of new sensitive activities in proximity to the rail corridor.
- 4.8 The Kāpiti Coast District Plan currently contains a rule, NOISE-R14, which applies an acoustic performance standard to habitable rooms in buildings containing noise sensitive activities within 40 metres of the boundary of a designation from rail corridor purposes. KiwiRail's submission seeks to extend the application of this standard to 100 metres from the rail corridor. KiwiRail's submission also seeks to include vibration controls.
- 4.9 Dr Chiles' evidence is that the current 40 metres in NOISE-R14 misses substantial areas where the threshold of 55 dB $L_{Aeq(1h)}$ is exceeded. Dr

¹⁸ See, for example, *Gargiulo v Christchurch City Council* NZEnvC Christchurch 137/2000, 17 August 2000.

¹⁹ RMA, s16.

²⁰ RMA, s17.

²¹ *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159 at [245].

²² Statement of Evidence of Catherine Heppelthwaite dated 10 March 2023 at [9.4].

Chiles' evidence is that application of the rule to all areas within 100 metres of the rail corridor will cover most areas likely to be exposed above 55 dB $L_{Aeq(1h)}$ and this is necessary to manage potential adverse health effects on people in new and altered buildings.²³

- 4.10 Dr Chiles' evidence also sets out the basis for the need for vibration controls which he considers necessary to manage adverse health effects on sensitive activities.²⁴
- 4.11 Ms Heppelthwaite concludes that the extension of the acoustic performance standard and the new vibration control is the most efficient outcome to provide for health and amenity along with consequentially reducing potential reverse sensitivity effects.²⁵ These controls are necessary to ensure the safe and efficient operation of the rail network.
- 4.12 The Reporting Planner does not consider that rule NOISE-R14 needs to be provided for as a qualifying matter, because the standards under the rule are not contrary to the requirements, permissions or conditions outlined under Schedule 3A. The Reporting Planner does not consider these acoustic standards constitute an "other density standard" that is restricted under clause 2(2) of Schedule 3A.²⁶
- 4.13 It is correct that Schedule 3A of the RMA includes a definition of "density standard", which does not include acoustic performance standards.²⁷ However, the extended acoustic standard and new vibration controls can be provided for in PC2, as nationally significant infrastructure.
- 4.14 The relevant qualifying matter is required to ensure the safe or efficient operation of the rail network. The noise and vibration controls proposed by KiwiRail are necessary to ensure this. At the very least, they are clearly related provisions that support or are consequential on the MDRS.²⁸ The noise and vibration controls proposed will ensure that intensification around the rail corridor is appropriately managed, to provide for its ongoing safe and efficient operation, which is particularly necessary in the context of the additional intensification proposed through PC2.
- 4.15 KiwiRail also disagrees with the Reporting Planner's assertion that there are a significant number of land parcels to which these controls would apply and that there is insufficient information to conclude that these controls are appropriate. As set out in the evidence of Ms Heppelthwaite,

²³ Statement of Evidence of Stephen Chiles dated 10 March 2023 at [6.5].

²⁴ Statement of Evidence of Stephen Chiles dated 10 March 2023 at [6.6] – [6.11].

²⁵ Statement of Evidence of Catherine Heppelthwaite dated 10 March 2023 at [9.5].

²⁶ Statement of Evidence of Andrew Banks on behalf of Kapiti Coast District Council dated 24 February 2023 at footnote 129.

²⁷ RMA, Schedule 3A, clause 1: "density standard means a standard setting out requirements relating to building height, height in relation to boundary, building setbacks, building coverage, outdoor living space, outlook space, windows to streets, or landscaped area for the construction of a building".

²⁸ RMA, s80E(1)(b)(iii), (2).

simply counting the total number of parcels is not an accurate assessment for evaluation. This is because for the proposed controls to apply, a cascade of events must occur and this will not apply to every parcel, as further described in the evidence of Ms Heppelthwaite.²⁹

5. CONCLUSION

- 5.1 The relief sought by KiwiRail is the most appropriate way to provide for the safe and efficient operation of nationally significant infrastructure as intended by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

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