

## **Before the Hearings Commissioners**

Under the Resource Management Act 1991 (the **RMA**)

In the matter of a submission by KiwiRail Holdings Limited (SO94 and SO94.FS.1) on the Kapiti Coast District Plan Proposed Plan Change 2

and in the matter of Kapiti Coast District Plan

**Supplementary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited regarding Kapiti Coast District Plan Proposed Plan Change 2**

Dated 24 March 2023

## 1 INTRODUCTION

- 1.0 At the hearing of KiwiRail's submission on Plan Change 2 held on 21 March 2023, the Panel requested that KiwiRail provide an updated set of the amended plan provisions sought by KiwiRail to address comments made by the Panel at the hearing.
- 1.1 My Primary Statement sets out my qualifications, commitment to comply with the Environment Court's Code of Conduct for Expert Witnesses (2023).
- 1.2 My Primary Statement describes KiwiRail's relief which includes:
  - a. A new permitted activity standard requiring 5m yard setback from the rail (designation) boundary with associated matters of discretion for the General Residential (**GRZ**), Metropolitan Centre (**MCZ**), Town Centre (**TCZ**) and Local Centre (**LCZ**) zones (**the four zones**).
  - b. A change to GRZ, Policy 10; and
  - c. Additional noise and vibration provisions.
- 1.3 This statement will address specific matters raised by the Panel which are understood to be:
  - a. further refinement of 5m yard setback relief sought by KiwiRail, including a potential permitted activity pathway;
  - b. consideration of the policy basis for the relief ;
  - c. amendments to noise and vibration provisions; and
- 1.4 I rely on my Primary Statement to address the statutory and higher order planning framework and the details of KiwiRail's submissions and further submissions.

## 2 PERMITTED ACTIVITY STANDARDS AND MATTERS OF DISCRETION

- 2.0 I have considered further how to integrate provisions within the 5m yard setback within the four zones and included my revised recommendations in **Attachment A**. My revisions seek to:

- a. amend the boundary reference in the setback rule to reflect the drafting used in NOISE-R14 (which uses the boundary of a designation for rail corridor purposes);
  - b. provide specific wording changes for each of the zones;
  - c. include a new policy to provide policy context for the setback rule;
  - d. reflect the structure of the Operative Plan and Plan Change 2 in terms of wording and style;
  - e. suggest a permitted activity pathway where a lesser building setback may be acceptable;
  - f. simplify proposed matters of discretion.
- 2.1 In regard to (d), as requested by the Panel, I have considered how to provide a potential permitted activity pathway for buildings which are less than 5m of the Rail Designation Boundary setback yard where KiwiRail's agreement is provided to Council.
- 2.2 Two new standards are proposed in each of MCZ-R7, TCZ-R6 and LCZ-R6 which provide for:
- a. a permitted activity standard where the 5m setback is met; and
  - b. a separate permitted activity standard with a 3m setback where the written approval from KiwiRail is provided.
- 2.3 Non-compliance with either of the proposed standards would require a restricted discretionary activity resource consent which reflects the same approach as for the majority of other standards.

### **3 OBJECTIVE AND POLICY FRAMEWORK**

#### Objectives and Policies – MCZ, TCZ and LCZ

- 3.0 I have assessed whether the current (Operative and Plan Change 2) objective and policy framework needs amendment to support the proposed Rail

Designation Boundary setback yard. Operative Plan Objectives DO-O3 and DO-O14 apply across all three zones<sup>1</sup> and the reflect the need to:

- a. integrate and efficiently use infrastructure<sup>2</sup>;
- b. manage incompatible land uses including the interfaces<sup>3</sup>; and
- c. ensure the transport system is not unreasonably compromised by other activities<sup>4</sup>.

- 3.1 Objective DO-O3 is proposed to be amended under PC2, however none of the specific provisions referenced<sup>5</sup> are to materially change based on the S42A report recommendations.
- 3.2 Operative Plan Policies MCZ-P8, TCZ-P6 and LCZ\_6 (*Urban form and design of centres*) support efficient integration of development with necessary infrastructure<sup>6</sup>. Some changes to these polices are proposed under PC2, however this is limited to updating references to a design guidance and reflecting new height limits.
- 3.3 It is my opinion that the current objective and policy framework provides sufficient support to the Rail Designation Boundary setback yard and no further amendments are required for the MCZ, TCZ and LCZ. Given the range of recommended changes under PC2, I anticipate this will remain the situation once PC2 is determined.

#### Objectives and Policies – GRZ

- 3.4 GRZ also relies on Operative Plan Objectives DO-O3 and DO-O14 so I do not consider additional objectives are required for the same reasons as noted in paragraphs 3.0 to 3.1 above.
- 3.5 Policy GRZ-R8 seeks to manage reverse sensitivity but is limited in that it seeks to protect only *lawfully established **industrial or intensive rural activities**, or areas zoned for these activities* [bold added]. I do not consider

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<sup>1</sup> MCZ, TCZ and LCZ.

<sup>2</sup> DO-O3 (1) and DO-O14(1).

<sup>3</sup> DO-O3 (8).

<sup>4</sup> DO-O14(5).

<sup>5</sup> DO-O3 (1) and (8).

<sup>6</sup> TCZ-P6 is proposed to be amended under PC2 however the specific reference to integration with infrastructure is not proposed to alter based on the S42A report recommendations.

this policy provides sufficient support for the proposed Rail Designation Boundary setback yard as it does not apply to transport networks.

- 3.6 Policy GRZ-R10 seeks amenity for residents and neighbours so is not particularly focused on achieving the outcomes of the Rail Designation Boundary setback yard (being safety (home owners and rail network users) and efficiency (rail network users)). For clarity, I continue to support my Primary Evidence changes to GRZ-R10 as the modified version would provide support for noise and vibration controls.
- 3.7 The policy framework for GRZ does have some policies specifically supporting Standards (eg. GRZ-P12 Landscaping) and in this regards, a policy supporting the Rail Designation Boundary yard setback would sit reasonably comfortably. I recommend a new policy to support the Rail Designation Boundary setback yard and suggest it follows GRZ-P12 (so it sits alongside other 'standard' based policy). I have structured my proposed policy on GRZ-P12 and GRZ-P19 and recommend the following text:

GRZ-P12A Rail Designation Boundary setback

A setback from the boundary of a designation for rail corridor purposes will be required for buildings and structures in the Residential Zones to ensure buildings and structures can be safely maintained within their site boundaries while providing for the safe and efficient operation of the rail network. A reduced setback may be achieved depending on the characteristics of the built structure proposed and the adjacent rail corridor. In determining whether or not the scale of effects from non-compliance is appropriate, particular regard shall be given to ensuring that buildings and structures can be maintained within their site boundaries while providing for the safe and efficient operation of the rail network by considering:

- a. the size, nature and location of the buildings on the site;
- b. the extent to which the safety and efficiency of railway operations may be adversely affected;
- c. any characteristics of the proposal that avoid or mitigate any effects on the safe operation of the rail network; and
- d. any implications arising from advice from KiwiRail.

#### **4 NOISE AND VIBRATION PROVISIONS**

- 4.0 I have reviewed the text in my Primary Evidence Attachment A in the context of operative plan noise provisions NOISE-R14 which seeks to manage noise within 40m of a rail corridor. Whilst the Primary Evidence Attachment A version mimics to a high degree the NOISE-R14 structure, I have made some

minor edits (principally changing the order of provisions) and modifying some wording for clarity to seek to provide clearer provisions. These are also included in my Attachment A.

Cath Heppelthwaite

24 March 2023

## Attachment A: Amendments

Black Text: Section 42A Report

Red Text: Attachment A from Evidence Dated ...

Blue Text: Attachment A Addenda Evidence

Deletions ~~strike through~~, additions underlined

Rule	Amendments sought												
GRZ-P10	<p>Subdivision, use and development in the Residential Zones will be required to achieve a high level of on-site amenity for residents and neighbours in accordance with the following principles:</p> <ol style="list-style-type: none"> <li>1. [...]</li> <li>4. buildings and structures will be designed and located <del>to minimise visual impact and to ensure they are of a scale which is consistent with the area's urban form compatible with the planned built character of the Zone</del> <u>and minimise reverse sensitivity effects on existing non-residential activities;</u></li> <li>5. [...]</li> </ol> <p><b><u>[Note: Amendments reflect Primary Evidence, Attachment A, included in this attachment for completeness]</u></b></p>												
New Policy GRZ	<p><u>GRZ-P12A Rail Designation Boundary setback</u>  <u>A setback from the boundary of a designation for rail corridor purposes will be required for buildings and structures in the Residential Zones to ensure buildings and structures can be safely maintained within their site boundaries while providing for the safe and efficient operation of the rail network. A reduced setback may be achieved depending on the characteristics of the built structure proposed and the adjacent rail corridor. In determining whether or not the scale of effects from non-compliance is appropriate, particular regard shall be given to ensuring that buildings and structures can be maintained within their site boundaries while providing for the safe and efficient operation of the rail network by considering:</u></p> <ol style="list-style-type: none"> <li>a. <u>the size, nature and location of the buildings on the site;</u></li> <li>b. <u>the extent to which the safety and efficiency of railway operations may be adversely affected;</u></li> <li>c. <u>any characteristics of the proposal that avoid or mitigate any effects on the safe operation of the rail network; and</u>  <u>any implications arising from advice from KiwiRail..</u></li> </ol>												
GRZ- Rx1	<p><u>New buildings and structures, and any minor works, additions or alterations to any building or structure.</u></p> <p><u>4. Buildings and structures must be setback from the relevant boundary by the minimum depth listed in the yards table below:</u></p> <table border="1" data-bbox="370 1525 857 1877"> <thead> <tr> <th colspan="2"><u>GRZ-Table x1 – Yard Setbacks</u></th> </tr> <tr> <th><u>Yard</u></th> <th><u>Minimum depth</u></th> </tr> </thead> <tbody> <tr> <td><u>Front</u></td> <td><u>1.5 metres</u></td> </tr> <tr> <td><u>Side</u></td> <td><u>1 metre</u></td> </tr> <tr> <td><u>Rear</u></td> <td><u>1m (excluded on corner sites)</u></td> </tr> <tr> <td><u>Rail Designation boundary</u></td> <td><u>5m</u></td> </tr> </tbody> </table> <p><u>This standard does not apply to site boundaries where there is an existing wall between 2 buildings on adjacent sites or where a common wall is proposed.</u></p>	<u>GRZ-Table x1 – Yard Setbacks</u>		<u>Yard</u>	<u>Minimum depth</u>	<u>Front</u>	<u>1.5 metres</u>	<u>Side</u>	<u>1 metre</u>	<u>Rear</u>	<u>1m (excluded on corner sites)</u>	<u>Rail Designation boundary</u>	<u>5m</u>
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Rule	Amendments sought
	<p><a href="#">The Rail Designation boundary yard setback can be reduced to 3m where the written approval of the Planning Manager (or equivalent) at KiwiRail Holdings Limited is provided to Council.</a></p> <p><del>x. Buildings and structures must not be located within a 5m setback from a boundary with a rail corridor.</del></p>
GRZ-Rx5	<p><b>Matters of discretion</b></p> <p><del>1. The relevant matters contained in the Residential Design Guide in Appendix x1.</del></p> <p><del>2. The matters contained in the Land Development Minimum Requirements.</del></p> <p><del>3. Consideration of the effects of the standard not met.</del></p> <p><del>4. Cumulative effects.</del></p> <p>5. The imposition of financial contributions in accordance with the Financial Contributions Chapter. [...]</p> <p><a href="#">6. For buildings or structures that do not comply with standard 4 GRZ-Rx1 in relation to the Rail Designation Boundary yard, whether the proposal ensures that buildings and structures can be maintained within their site boundaries while providing for the safe and efficient operation of the rail network.</a></p> <p><del>The location 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.</del></p>
MCZ-R7	<p><b>MCZ-R7</b></p> <p><u>Other Standards</u></p> <p>[...]16. 43. Buildings and structures shall be sited a minimum of 4 metres from the boundary of the Residential Zones.</p> <p><a href="#">16A. Buildings and structures shall be sited a minimum of 5 metres from the Rail Designation boundary.</a></p> <p><a href="#">16B. Buildings and structures shall be sited a minimum of 3 metres from the Rail Designation boundary where written approval of the Planning Manager (or equivalent) at KiwiRail Holdings Limited is provided to Council.</a></p> <p>17. 44. Except in Precinct C, no building or structure shall be set back more than 2 metres from the legal road boundary or main internal pedestrian route edge.</p> <p>[...]</p> <p><del>x. Buildings and structures must not be located within a 5m setback from a boundary with a rail corridor.</del></p>
MCZ-R13	<p><b>MCZ-R13</b></p> <p><b>Matters of Discretion</b></p> <p>1. Location, layout, size and design of the proposed development.</p> <p>[...]</p> <p>13. The consistency with the relevant objectives and policies.</p> <p><a href="#">14. For buildings or structures that do not comply with standard 16A or 16B MCZ-R7, whether the proposal ensures that buildings and structures can be maintained within their site boundaries while providing for the safe and efficient operation of the rail network</a></p> <p><del>x. The location 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.</del></p>
TCZ-R6	<p><b>TCZ-R6</b></p> <p><u>Other Standards</u></p> <p>[...]</p>



Rule	Amendments sought
	<p>13. <del>9</del>. Buildings and structures shall be sited a minimum of 4 metres from the boundary of any Residential Zone.</p> <p><a href="#">13A. Buildings and structures shall be sited a minimum of 5 metres from the Rail Designation boundary.</a></p> <p><a href="#">13B. Buildings and structures shall be sited a minimum of 3 metres from the Rail Designation boundary where written approval of the Planning Manager (or equivalent) at KiwiRail Holdings Limited is provided to Council.</a></p> <p>14. <del>10</del>. No building or structure shall be set back more than 2 metres from the legal road boundary or [...]</p>
TCZ-R11	<p><b>Matters of Discretion</b></p> <p>1. Location, layout, size and design of the proposed development. [...]</p> <p>13. The consistency with the relevant objectives and policies</p> <p><a href="#">14. For buildings or structures that do not comply with standard 13A or 13B TCZ-R6, 6 whether the proposal ensures that buildings and structures can be maintained within their site boundaries while providing for the safe and efficient operation of the rail network.</a></p>
LCR-R6	<p><b>LCR-R6</b></p> <p>Other Standards</p> <p>[...]</p> <p>13. 9. Buildings and structures shall be sited a minimum of 4 metres from the boundary of any Residential Zone.</p> <p><a href="#">13A. Buildings and structures shall be sited a minimum of 5 metres from the Rail Designation boundary.</a></p> <p><a href="#">13B. Buildings and structures shall be sited a minimum of 3 metres from the Rail Designation boundary where written approval of the Planning Manager (or equivalent) at KiwiRail Holdings Limited is provided to Council.</a></p> <p>14. 10. No building or structure shall be set back more than 2 metres from the legal road boundary or main internal pedestrian route edge.</p>
LCR—R12	<p><b>LCR—R12</b></p> <p><b>Matters of Discretion</b></p> <p>1. Location, layout, size and design of the proposed development. [...]</p> <p>13. The consistency with the relevant objectives and policies</p> <p><a href="#">14. For buildings or structures that do not comply with standard 13A or 13B LCZ-R6, 6 whether the proposal ensures that buildings and structures can be maintained within their site boundaries while providing for the safe and efficient operation of the rail network.</a></p>
NOISE-R14 – Permitted activity	<p>1. Any new or altered <i>habitable room</i> within a <i>building</i> that houses any <i>noise sensitive activity</i> (including rooms used for hospital recovery; but excluding rooms used for <i>visitor accommodation</i>, which is not <i>temporary residential rental accommodation</i>, outside of <i>residential zones</i>) on a <i>subject site</i> within any of the following: [...]</p> <p>e. within <del>40m</del> <u>100m</u> of the boundary of a <i>designation</i> for rail corridor purposes; and</p>

Rule	Amendments sought
<p><b>NOISE- RX –</b> Permitted activity</p>	<p><b><u>Indoor railway vibration</u></b></p> <p>1. Any new buildings or alterations to existing buildings containing a noise sensitive activity, within 60 metres of the boundary of any railway designation boundary network, <del>must either: be protected from vibration arising from the nearby rail corridor:</del></p> <p><del>(a) be designed, constructed and maintained to achieve rail vibration levels not exceeding 0.3 mm/s vw,95 or</del></p> <p>2. Compliance with standard 1 above shall be confirmed by a report prepared by a suitably qualified independent person, being submitted to the council</p> <p><del>(a) the new building or alteration or an existing building is designed, constructed and maintained to achieve rail vibration levels not exceeding 0.3 mm/s vw,95 or</del></p> <p><del>(b) the new building or alteration to an existing building is a single-storey framed residential building with:</del></p> <p style="padding-left: 40px;"><del>i. a constant level floor slab on a full surface vibration isolation bearing with natural frequency not exceeding 10 Hz, installed in accordance with the supplier's instructions and recommendations; and</del></p> <p style="padding-left: 40px;"><del>ii. vibration isolation separating the sides of the floor slab from the ground; and</del></p> <p style="padding-left: 40px;"><del>iii. no rigid connections between the building and the ground.</del></p> <p><b><u>Matters of discretion</u></b></p> <p><del>(a) location of the building;</del></p> <p><del>(ab) the effects of any non-compliance with the activity specific standards;</del></p> <p><del>(c) special topographical, building features or ground conditions which will mitigate vibration impacts;</del></p> <p><del>(be) the outcome of any consultation with KiwiRail.</del></p>