

Before the Hearings Commissioners

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

In the matter of

a submission by KiwiRail Holdings Limited (submitter 373 and further submitter 99FS) on Hearing Stream 6 – Rural and Open Space and Recreation Zones

and in the matter of Proposed Waimakariri District Plan (the **PDP**)

**Primary statement of evidence of Catherine Lynda Heppelthwaite for
KiwiRail Holdings Limited regarding Hearing Stream 6 – Rural and
Open Space and Recreation Zones**

Dated 25 September 2023

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

- 1.0 My full name is Catherine Lynda Heppelthwaite. I am a principal planner for Eclipse Group Limited. I am presenting this planning evidence on behalf of KiwiRail Holdings Limited (**KiwiRail**).
- 1.1 I hold a Bachelor Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association and the Acoustical Society of New Zealand. I have more than 25 years' experience within the planning and resource management field which has included work for local authorities, central government agencies, private companies and private individuals. Currently, I am practising as an independent consultant planner and have done so for the past 18 years.
- 1.2 I have extensive experience with preparing submissions and assessing district plans provisions in relation to noise and vibration, most recently in relation to the New Plymouth, Upper Hutt, Porirua and Whangārei District Plans where I assisted Waka Kotahi and KiwiRail by providing specialist planning evidence on similar issues.

2 CODE OF CONDUCT

- 2.0 I have read the Environment Court's Code of Conduct for Expert Witnesses (2023) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3 SCOPE OF EVIDENCE

- 3.0 My evidence will address the following:
- a. The statutory and higher order planning framework;
 - b. KiwiRail's submissions; and
 - c. The Council's s42A recommendations.

- 3.1 In preparing my evidence, I have considered:
- a. The Officer's Report for the Hearings Panel on Rural Zones prepared by Mr Mark Buckley¹; and
 - b. The Officer's Report for the Hearings Panel on Open Space and Recreation Zones prepared by Mr Neil Sheerin².

4 THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK

- 4.0 In preparing this evidence I have specifically considered the following:
- a. The purpose and principles of the RMA (sections 5-8);
 - b. Provisions of the RMA relevant to plan-making and consenting;
 - c. National Policy Statement on Urban Development 2020 (**NPS-UD**); and
 - d. Canterbury Regional Policy Statement (**RPS**). The RPS contains 'Entire Region' and 'Wider Region' provisions³. As Waimakariri District falls within both these described areas, both were considered. (Bold added to following text)
 - i. **Issue 5.1.2 Inappropriate design, location and function of development (wider region)**. Explanatory text recognises: *Unless the design, location and function of development is carefully managed, it will not necessarily be able to:*
[...]
9. recognise and avoid reverse sensitivity effects; and
10. maintain or protect people's health, well-being and amenity
 - ii. **Objective 5.2.1 Location, Design and Function of Development (Entire Region)**
Development is located and designed so that it functions in a way that:
[...]
2. enables people and communities, including future generations, to provide for their social, economic and cultural well-being and health and safety; and which:

f. is compatible with, and will result in the continued safe, efficient and effective use of regionally significant infrastructure;

¹ Dated 8 September 2023.

² Dated 1 September 2023.

³ CRPS, page 43 of Chapter 5 – Land Use and Infrastructure [...] *the issues, objectives and policies that relate to the Canterbury region inclusive of Greater Christchurch will be notated as 'Entire Region'; those provisions which are not relevant to Greater Christchurch will be notated as 'Wider Region'.*

*g. avoids adverse effects on significant natural and physical resources including **regionally significant infrastructure, and where avoidance is impracticable, remedies or mitigates those effects on those resources and infrastructure;***

h. [...]; and

*i. **avoids conflicts between incompatible activities.***

iii. **Objective 5.2.2 Integration of land-use and regionally significant infrastructure (Wider Region)**

In relation to the integration of land use and regionally significant infrastructure:

*1. To recognise the benefits of enabling people and communities to provide for their social, economic and cultural well-being and **health and safety** and to provide for infrastructure that is regionally significant to the extent that it promotes sustainable management in accordance with the RMA.*

2. To achieve patterns and sequencing of land-use with regionally significant infrastructure in the wider region so that:

*a. **development does not result in adverse effects on the operation, use and development of regionally significant [infrastructure]***

b. adverse effects resulting from the development or operation of regionally significant infrastructure are avoided, remedied or mitigated as fully as practicable.

c. [...]

iv. **Policy 5.3.1 Regional growth (Wider Region)**

The RPS requires that territorial authorities:

2. Set out objectives, and policies, and may include methods in district plans which establish an approach for the integrated management of urban and zoned rural residential development with the primary focus of ensuring consolidated, well-designed and more sustainable urban patterns including the avoidance, remediation or mitigation of reverse sensitivity effects.

v. **Policy 5.3.2 Development Conditions (Wider Region)** seeks to **avoid remedy or mitigate effect which may compromise existing or consented regionally significant infrastructure⁴** and avoid or mitigate reverse sensitivity⁵.

vi. **Policy 5.3.7 Strategic land transport network and arterial roads (Entire Region)**

In relation to strategic land transport network and arterial roads, the avoidance of development which:

⁴ CRPS 5.3.2(1)(a), page 50.

⁵ CRPS 5.3.2(2)(b), page 51.

1. adversely affects the safe efficient and effective functioning of this network and these roads, including the ability of this infrastructure to support freight and passenger transport services; and

2. in relation to the strategic land transport network and arterial roads, **to avoid development which forecloses the opportunity for the development of this network and these roads to meet future strategic transport requirements.**

The RPS requires that territorial authorities:

3. Set out objectives and policies, and may include methods in district plans which:

[...]

c. minimise loss of function of the strategic land transport network and other arterial roads

vii. **Policy 5.3.8 Land use and transport integration (Wider Region)** among other things, seeks to avoid or mitigate conflicts with incompatible activities⁶. Territorial authorities are required to

2. Set out objectives, policies and/or methods in district plans which:

a. avoid land-uses that may result in adverse reverse sensitivity effects on transport infrastructure.

b. [...]

viii. **Policy 5.3.9 Regionally significant infrastructure (Wider Region)** seeks to:

1. avoid development which constrains the ability of this infrastructure to be developed and used without time or other operational constraints that may arise from adverse effects relating to reverse sensitivity or safety;

The RPS requires that territorial authorities:

4. Set out objectives and policies, and may include methods in district plans which:

a. **avoid sensitive and incompatible land-uses** within proximity of identified transport hubs and regionally significant infrastructure where the quality of current or future environment is incompatible with the **health requirements and amenity value expectations** of people adjacent or within part of the receiving environment of activities undertaken by regionally significant infrastructure.

b. **avoid land-uses that directly adversely affect the safe operation of regionally significant infrastructure.**

c. avoid, remedy or mitigate the adverse effects of regionally significant infrastructure on the environment

4.1 Both Mr Buckley and Mr Sheerin have identified other relevant statutory provisions with which I generally agree and will not repeat here⁷.

⁶ RPS 5.3.8(2), page 60.

⁷ Section 2 of both Hearings Reports.

4.2 The Emissions Reduction Plan is a matter to be had regard to by Council⁸. Of particular relevance within the Emissions Reduction Plan for rail is *Action 10.3.1: Support the decarbonisation of freight* which includes as a key initiative:

- *Continue to implement the New Zealand Rail Plan and support coastal shipping.*

4.3 For completeness, the New Zealand Rail Plan (**NZRP**) lists as strategic investment priorities:

Investing in the national rail network to restore rail freight and provide a platform for future investments for growth; and

4.4 While the Emissions Reduction Plan is *to be had regard to*, its support for the NZRP (among other things) illustrates a strategic forward plan to generally improve and increase train services over time.

5 KIWIRAIL SUBMISSIONS AND FURTHER SUBMISSIONS

5.0 In summary, KiwiRail's primary submission (as addressed in Hearing Stream 6) seeks:

Rural Zones

- a. The inclusion of a 5m building setback from the rail corridor as a Built Form Standard in the Rural Lifestyle Zone (*RLZ-BFS4 Building and structure setbacks*). The purpose of this setback is to provide a safety buffer and allow for maintenance of buildings without the need to access the rail corridor⁹;
- b. A new matter of discretion¹⁰ (for *RLZ-BFS5*) requiring that consideration is given to the safe and efficient functioning of the rail network for any building inside the 5m setback from any property boundary adjoining the railway network; and
- c. Retention of the notified definition¹¹ of *reverse sensitivity*.

⁸ RMA, section 74(2)(d).

⁹ Submission 373.91.

¹⁰ Submission 373.95.

¹¹ Submission 373.9.

Open Space and Recreation Zones

- d. The inclusion of 5m building setback from the rail corridor as a Built Form Standards in the Natural Open Space Zone (**NOSZ**)¹² and the Open Space Zone (**OSZ**)¹³; and associated matters of discretion¹⁴. The purpose of this setback is to provide a safety buffer and allow for maintenance of buildings without the need to access the rail corridor.

5.1 KiwiRail has also made further submissions:

Rural Zones

- a. In support of Waka Kotahi¹⁵ who proposes that part (1) of *RURZ-P7 Retail activities* be split into two sub-parts and that it includes an additional clause to recognise the adverse effects on the safe and efficient functioning of the transport system are avoided or mitigated. Waka Kotahi also sought additional wording to recognise the safe and efficient functioning of the transport system.

Open Space and Recreation Zones

- b. In support of Mainpower¹⁶ who expressed a 'strong preference' for proposed new corridor protection provisions for major electricity distribution lines to be relocated from the Energy and Infrastructure Chapter to nine different zone chapters including the NOSZ, OSZ, and SARZ Chapters. Mainpower considers the zone chapters are where such provisions will be more visible to landowners. KiwiRail¹⁷ supports the inclusion of new zone objectives and policies which seek to avoid reverse sensitivity effects on infrastructure.

6 SECTION 42A ASSESSMENT

6.0 The s42A Authors have responded to KiwiRail's submissions as described below.

¹² Submission 373.93.

¹³ Submission 373.94.

¹⁴ Submission 373.97.

¹⁵ Submission 275.76.

¹⁶ For example, submissions 249.114-249.139.

¹⁷ Further submission 99.

Rural Zones

- a. Mr Buckley supports the new Built Form Standard to the Rural Lifestyle Zone (*RLZ-BFS4 Building and structure setbacks*) providing a 4m setback from the rail corridor as it is consistent with other plan provisions¹⁸. While this is less than the 5m proposed by KiwiRail, for the reasons set out in Ms Grinlinton-Hancock's evidence, I agree with this recommendation on the basis that it is consistent with the other provisions of the PDP. I comment further on the need for setbacks in Section 7 below.
- b. Mr Buckley does not recommend a new matter of discretion¹⁹ but does recommend amending RURZ-MD8 to refer to the rail corridor. I support his recommendation as it reflects the need to consider the safe and efficient operation of the rail corridor.
- c. The notified definition²⁰ of *reverse sensitivity* has largely been retained and I do not address this further.

Open Space and Recreation Zones

- d. Mr Sheerin accepts²¹ KiwiRail's submission seeking a new building setback from the rail corridor in the NOSZ and the OSZ; this includes matters of discretion²². He supports a 5m setback for both the NOSZ and OSZ, however prefers a discretionary activity status for infringements of the control in the NOSZ (to be consistent with other built form standards infringements). I agree with his recommendation.

Rural Zones (further submissions)

- e. Waka Kotahi's²³ proposed amendments to *RURZ-P7 Retail activities* have been rejected on the basis that the relief sought is a repeat of Policies TRAN-P4(2) and TRAN-P15²⁴.
- f. I agree with Mr Buckley²⁵ that TRANS-P2 and TRAN-P15 would be relevant and accept that where built form standards are not met, traffic

¹⁸ Officer's Report: Whaitua Tākaro – Rural Zones, paragraph 735.

¹⁹ Officer's Report: Whaitua Tākaro – Rural Zones, paragraph 755.

²⁰ Submission 373.9.

²¹ Officer's Report: Whaitua Tākaro – Open Space and Recreation Zones, paragraphs 228-230.

²² Officer's Report: Whaitua Tākaro – Open Space and Recreation Zones, paragraph 266.

²³ Submission 275.76.

²⁴ Officer's Report: Whaitua Tākaro – Rural Zones, paragraph 164.

²⁵ Officer's Report: Whaitua Tākaro – Rural Zones, paragraph 163.

considerations are a matter of discretion (*RURZ-MD5 Rural sales*), including *assessment of access and vehicle movements on the site and the safety and efficiency of the roading network*.

Open Space and Recreation Zones (further submissions)

- g. The Hearings Report²⁶ indicates Mainpower's submission will be addressed in the Energy and Infrastructure s42A Report. KiwiRail will address its further submission in the Energy and Infrastructure Hearings Stream.

7 SETBACKS

- 7.0 There are a number of variables associated with access to buildings for maintenance activities (for example, ground slope and the type of access method proposed). As set out in Ms Grinlinton-Hancock's evidence, a 5m setback allows sufficient space for necessary access and maintenance activities to be undertaken. Any reduction in this distance reduces the potential space available for occupiers to be able to safely undertake these activities.
- 7.1 However, while I prefer a 5m setback, I accept that 4m (RLZ) will go some way toward managing adverse effects and that it would align with other rural zone rail setbacks (but not with the Open Space Zone 5m setbacks). As set out in Ms Grinlinton-Hancock's evidence, I understand KiwiRail is willing to accept a 4m setback rather than a 5m setback for the purposes of the Rural Zones.
- 7.2 I rely on Ms Grinlinton-Hancock's evidence which describes:
 - (a) Why a robust setback is necessary for maintaining buildings adjoining the rail corridor; and
 - (b) The risk to persons both accessing the rail corridor (to undertake adjoining property maintenance) and users of the rail corridor.
- 7.3 In addition to Ms Grinlinton-Hancock's evidence, it is not uncommon for district plans to include provisions which limit uses of land to protect the

²⁶ Officer's Report: Whaitua Tākaro – Open Space and Recreation Zones, paragraph 39.

operation of infrastructure beyond the designation boundary and also to provide safe and healthy environments for people.

- 7.4 For example, Transpower has included in a range of district plans a national grid corridor overlay which restricts activities within a specified spatial extent of its network (around both pylons and lines).²⁷ Airports and ports are another common infrastructure type which restrict activities and/or require mitigation for certain activities on surrounding private land.²⁸
- 7.5 For completeness, I have considered other methods (no setback and extending existing designation widths) to provide for building maintenance and the safety of adjoining occupants. This is assessed in the format of section 32AA and is included as **Attachment A**.

8 RPS FRAMEWORK

- 8.0 The RPS provides very clear direction and support for the health and safety of people and communities, as well as preventing or managing incompatible land uses so that they are compatible with, and will result in, the continued safe, efficient and effective use of regionally significant infrastructure such as the rail network.
- 8.1 **Objective 5.2.1** (Entire Region) generally requires that development is located and designed so that it enables the health and safety of communities, and avoids conflicts between incompatible activities while avoiding (or where not possible, mitigating or remedying) adverse effects on regionally significant infrastructure.
- 8.2 The RPS also directs (**Policy 5.3.9** Wider Region) district councils to include provisions that avoid sensitive and incompatible land uses within proximity of regionally significant infrastructure, where the future or current environment is incompatible with the health expectations of people. It further directs that provisions *avoid land uses that directly adversely affect the safe operation of regionally significant infrastructure*.
- 8.3 In my opinion, the changes proposed by Mr Buckley and Mr Sheerin will assist in delivering the RPS objectives and policies.

²⁷ For example, Chapter D26 of the Auckland Unitary Plan.

²⁸ For example, Chapters D24 Aircraft Noise Overlay and D25 City Centre Port Noise Overlay of the Auckland Unitary Plan.

9 CONCLUSION

9.0 In conclusion:

- a. The RPS provides for a range of outcomes including:
 - i. Community health and wellbeing;
 - ii. Protection of infrastructure from incompatible activities; and
 - iii. Management of more sensitive activities locating near infrastructure.
- b. The s42A Authors' recommend changes to accommodate building setbacks and commensurate matters of discretion (relative to the rail corridor) which I support and do not recommend any additional changes.

Cath Heppelthwaite
25 September 2023

Attachment A: s32AA Assessment of Building Setbacks

Having regard to section 32AA, the following is noted:

Effectiveness and efficiency

- The proposed setback will be more efficient and effective than other methods (such as 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 at all, the setback yard by contrast could enable future use by way of resource consent. This fits Objective 5.2.1 and Policy 5.3.7 in providing development which can be, with mitigation, compatible within reasonably close proximity to infrastructure, as well as enabling people and communities to provide for their health and safety.
- Providing no (or minimal) setback will not support an efficient outcome generally as incursions can lead to disruption to the rail network / inefficient operation and endanger safety.

Costs/Benefits

- The recommended setback will limit building in some locations (cost). However, the impact on overall development capacity is marginal and resource consent can be sought to infringe the setback standard.
- The benefits are providing a safe space for neighbouring occupants and for providing for a safer and more efficient rail network.
- The setback will enable greater certainty, and safety, for home owners and occupiers to undertake maintenance to their dwellings.

Risk of acting or not acting

- Evidence has been provided of the risks to public safety and network efficiency if no action is taken. Not acting could result in an inefficient operation of nationally significant infrastructure due to unexpected shutdowns. Not acting increases the risk to the health and safety of adjoining residents.

Decision about most appropriate option

- The recommended setbacks are therefore considered to be more appropriate in achieving the purpose of the RMA rather than the notified provisions.