

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 99) on Hearing Stream 9 – Commercial and Mixed Use Zones

and in the matter of

Proposed Waimakariri District Plan (**Proposed Plan**)

**Primary statement of evidence of Catherine Lynda Heppelthwaite for
KiwiRail Holdings Limited regarding Hearing Stream 9 – Commercial
and Mixed Use Zones**

Dated 15 January 2024

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, 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, most recently in relation to the New Plymouth, Upper Hutt, Porirua and Whangarei District Plans.

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;
 - c. Council's s42A recommendations; and
 - d. My recommended amendments to the Proposed Plan.

3.1 In preparing my evidence, I have considered the Council Officer's Report for the Hearings Panel on Commercial and Mixed Use Zones prepared by Mr Andrew Willis¹.

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**);
- d. Canterbury Regional Policy Statement (**CRPS**). The CRPS contains 'Entire Region' and 'Wider Region' provisions.² As the 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 6 December 2023.

² CRPS, page 43, for 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***

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 CRPS 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 effects which may compromise existing or consented regionally significant infrastructure³, and avoid or mitigate reverse sensitivity⁴.
- 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:

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 activities⁵. 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. [...]

³ CRPS 5.3.2(1)(a), page 50.

⁴ CRPS 5.3.2(2)(b), page 51.

⁵ CRPS 5.3.8(2), page 60.

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 CRPS 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 Mr Willis has identified other relevant statutory provisions with which I generally agree and will not repeat here⁶.

4.2 The Emissions Reduction Plan is a matter to be had regard to by Council.⁷ Of particular relevance within the Emissions Reduction Plan 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.*

⁶ Section 2 of the S42A Report.

⁷ RMA, section 74(2)(d).

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;*

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'S SUBMISSION AND FURTHER SUBMISSION

5.0 In summary, KiwiRail's primary submission addressed in Hearing Stream 9 seeks:

- a. a new Built Form Standard (**BFS**) providing for a 5m setback from the rail corridor in the Mixed Use Zone along with a new matter of discretion⁸.
The proposed matter of discretion requires 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 rail network;
- b. an increase to the existing BFS in the Neighbourhood Centre Zone (BFS7), Local Centre Zone (BFS7), Town Centre Zone (BFS8) and Large Format Retail Zone (BFS7)⁹ (**Commercial Zones**) from 4m to 5m adjacent to the rail corridor, to provide a safety buffer and allow for maintenance of buildings without the need to access the rail corridor.

5.1 KiwiRail also made a further submission opposing Kainga Ora's submission which sought to:

- a. reduce BFS7 in the Local Centre Zone¹⁰ and Neighbourhood Centre Zone¹¹ from 4m to 2.5m; and
- b. modify the existing matter of discretion¹² for CMUZ-MD13.

⁸ Submission 373.92.

⁹ Submissions 373.84 to 373.87.

¹⁰ Kainga Ora Submission 325.306.

¹¹ Kainga Ora Submission 325.296.

¹² Kainga Ora Submission 325.345.

6 SECTION 42A ASSESSMENT

6.0 For the **Commercial and Mixed Use Zones**, Mr Willis¹³ considers that a BFS with a 4m setback is appropriate. Mr Willis also considers this approach would be consistent with delivering Policy EI-P1(1)¹⁴. While this is less than the 5m setback initially sought by KiwiRail, for the reasons set out in the evidence of Ms Grinlinton-Hancock, I agree with this recommendation.

6.1 Mr Willis considers¹⁵ that a **new matter of discretion** for the Commercial Zones and Mixed Use Zones is not necessary because the existing CMUZ-MD13 provision has the same wording proposed in KiwiRail's submission. I support the matter of discretion as notified in the Proposed Plan and reflected in KiwiRail's submission.

7 CRPS FRAMEWORK

7.0 The CRPS provides very clear direction / support for community health and preventing or managing incompatible land uses. **Objective 5.2.1** (Entire Region) generally requires that development is located and designed so that it enables community health and avoids conflicts between incompatible activities, while avoiding (or where not possible, mitigating or remedying) adverse effects on regionally significant infrastructure.

7.1 The CRPS 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 individuals' health expectations. It also directs that district councils' provisions should *avoid land-uses that directly adversely affect the safe operation of regionally significant infrastructure*.

7.2 In my opinion, the provisions supported by Mr Willis will assist in delivering the objectives and policies of the CRPS.

8 PROPOSED PLAN OBJECTIVE AND POLICY FRAMEWORK

8.0 I have considered whether the proposed provisions are consistent with the Proposed Plan's objective and policy framework and address these as

¹³ S42A Report, paragraph 58.

¹⁴ S42A Report, paragraph 505.

¹⁵ S42A Report, paragraph 667.

follows. Objective SD-O3 is considered particularly relevant in regards to supporting a building setback (noting that it applies across the entire Waimakariri District).

SD-O3 Energy and infrastructure

Across the District:

1. *improved accessibility and multi-modal connectivity is provided through a **safe and efficient transport network** that is able to respond to technology changes and **contributes to the well-being and liveability of people and communities**;*

2. *infrastructure, including strategic infrastructure, critical infrastructure and **regionally significant infrastructure**:*

a. ***is able to operate efficiently and effectively**; and*

b. *is enabled, while:*

i. *managing adverse effects on the surrounding environment, having regard to the social, cultural and economic benefit, functional need and operational need of the infrastructure; and*

ii. ***managing the adverse effects of other activities on infrastructure**, including managing reverse sensitivity; (bold added)*

Energy, Infrastructure and Transport

*EI-O3 **Effects of other activities and development on energy and infrastructure***

*The **safe, efficient and effective operation**, maintenance, repair, renewal, upgrading and development of energy and infrastructure **is not constrained or compromised by activities and development**, including by reverse sensitivity effects.*

*EI-P6 **Effects of other activities and development on energy and infrastructure***

***Manage adverse effects of other activities and development on energy and infrastructure**, including by the following:*

1. ***ensuring such effects do not compromise or constrain access to or the safe, effective and efficient operation, maintenance, repair, upgrading and development of energy and infrastructure**; and*

2. [...]

(bold added)

TRAN-O1

A safe, resilient, efficient, integrated and sustainable transport system

An integrated transport system, including those parts of the transport system that form part of critical infrastructure, strategic

infrastructure, regionally significant infrastructure, and strategic transport networks, that:

1. *is safe, resilient, efficient and sustainable for all transport modes;*
2. *is responsive to future needs and changing technology;*
3. *enables economic development, including for freight;*
4. ***supports healthy and liveable communities;***
5. [...]

(bold added)

TRAN-O4

Effects of activities on the transport system

Adverse effects on the District's transport system from activities, including reverse sensitivity are avoided, remedied or mitigated.

TRAN-P15

Effects of activities on the transport system

Ensure, to the extent considered reasonably practicable, that other activities do not compromise the safe and efficient operation, maintenance, repair, upgrading or development of the transport system, including through:

1. ***managing access to the road corridor, and activities and development adjacent to road/rail level crossings, particularly where it is necessary to achieve protection of the safe and efficient functioning of the transport system, including those parts of the transport system that form part of critical infrastructure, strategic infrastructure and regionally significant infrastructure;***
2. *avoiding, remedying or mitigating adverse reverse sensitivity effects on the transport system; and*
3. *providing for ease of access for service and emergency service vehicles.*

(bold added)

Commercial and Mixed Use Zones – General Objectives and Policies

CMUZ-O2 Urban form, scale and design

A scale, form and design of development in all Commercial and Mixed Use Zones that:

1. [...];
2. [...];
3. **recognises the functional and operational requirements of activities and the existing built form; and**
4. **manages adverse effects on the surrounding environment.**

(bold added)

- 8.1 The inclusion of a building setback in the Mixed Use Zone, and the retention of the notified setback in the Commercial Zones, will help support health and liveable communities, mitigate (and potentially avoid) effects on the safe and efficient functioning of the railway network, and be consistent with the objective and policy framework of the Proposed Plan.

9 CONCLUSION

9.0 In conclusion:

- a. The CRPS provides for a range of outcomes including:
 - i. community health and wellbeing; and
 - ii. protection of infrastructure from incompatible activities; and
 - iii. avoidance of land uses that adversely affect the safe operation of regionally significant infrastructure.
- b. The proposed changes sought by KiwiRail are supported by the Proposed Plan's objective and policy framework.
- c. I support Mr Willis' recommendations to retain the 4m BFS in the Commercial Zones, and include a new BFS in the Mixed Use Zone which accommodates a 4m building setback from the rail corridor boundary.
- d. I also support retention of CMUZ-MD13 as notified in the Proposed Plan (which reflects the wording sought in KiwiRail's submission).

Cath Heppelthwaite

15 January 2024