

9 September 2022

To: Waimakariri District Council (**Council**)

Subject: Submission on Variation 1 to the Proposed Waimakariri District Plan (**Variation 1**)

Scope and nature of submission

1. KiwiRail welcomes the opportunity to provide feedback on Variation 1 to the Proposed District Plan to enable intensification of housing in urban areas as required under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**).
2. This submission relates to the following provisions of Variation 1 which ensure appropriate setbacks from the rail corridor as a qualifying matter to the Medium Density Residential Standards (**MDRS**):
 - (a) TRAN-R21 and TRAN-APP7; and
 - (b) MRZ-BFS5.
3. KiwiRail supports the retention of these provisions, and seeks an amendment to MRZ-BFS5 to include a specific matter of discretion where setbacks from the rail corridor are not complied with.
4. KiwiRail could not gain an advantage in trade competition through this submission.

KiwiRail's operations

5. KiwiRail is the State-Owned Enterprise responsible for the construction, maintenance and operation of New Zealand's rail network. KiwiRail is also a Requiring Authority that holds railway purpose designations in District Plans throughout New Zealand.
6. KiwiRail's national railway network (which comprises of 3,700km of track, over 200 locomotives, 18,100 hectares of land and 1,350 modern and heritage buildings)¹ is a nationally and regionally significant infrastructure asset. The rail network is critical to the safe and efficient movement of freight and passengers throughout New Zealand, and forms an essential part of the national transportation network and the wider supply chain. New Zealanders have invested significantly in the rail network and it is a critical public asset.
7. The benefits of rail to the New Zealand economy were estimated in 2019 to be in the order of \$1.7 – 2.1 billion.² The economic significance of rail and the critical role it plays in reducing New Zealand's carbon emissions has been recognised by the Government through its continued investment in rail infrastructure. Transport modal shifts to more climate-friendly modes of transport, like rail, are critical to reduce carbon emissions. As a result, rail

¹ Half Year Annual Report 2022 and Unaudited Financial Statements for the Six Months Ended 31 December 2021 (KiwiRail, 2022) at page 5.

² The Value of Rail in New Zealand – Report for the Ministry of Transport (EY, Wellington, 2021) at page 8.



is experiencing a renaissance as evidenced by the significant investment being made by the Government to reinvigorate the railway network, demonstrating a strong and continued confidence in rail's current and future potential.

8. In the most recent budget, the Government allocated \$349 million to replace and modernise New Zealand rail assets,³ which has gone towards a number of major projects nationwide, including the rejuvenation of the Northland railway lines, the reopening of the Napier to Wairoa line, establishing a multi-million dollar regional freight hub in Palmerston North, and significant upgrades to the Auckland, Wellington and Hamilton metro networks.
9. The designated corridor of the Main North Line (**MNL**) passes through the Waimakariri District from north to south and is a key part of the KiwiRail network nationally. KiwiRail seeks to protect its ability to operate, maintain and upgrade this line into the future.

Urban Development around the Rail Corridor

10. The fundamental driver of the Amendment Act and Variation 1 is to enable intensification of housing in urban areas. KiwiRail supports urban development, including around transport nodes, and recognises the benefits of co-locating housing near transport corridors.
11. However, it is critical that Variation 1 provides for adequate management of the interface between urban development and lawfully established, critical infrastructure, such as the railway network. This is necessary to ensure our communities are built in healthy living environments, and the railway network can operate and develop in the future without constraint. An integrated and proactive approach to planning is critical to support the overall vision of our urban environments, and to ensure that our transport network can support the increasing growth and housing intensification.
12. The nature of railway operations means KiwiRail cannot fully internalise all its effects within the railway corridor boundaries. Environmental legislation and caselaw recognises the lawful emission of such effects. Increasing development around railway corridors consequentially means the introduction of more sensitive receivers to adverse effects of existing and lawful railway activities. With a proposed increase in sensitive activities in proximity to the railway corridor as a result of the increased density enabled by Variation 1, KiwiRail is concerned that without appropriate planning measures in place at a territorial level, the risk of adverse health and amenity effects impacting people locating in proximity to the railway corridor, and reverse sensitivity effects constraining our operations is significantly elevated.
13. The two primary ways which KiwiRail seeks to manage this interface at a national level is through the inclusion of the following controls in district plans:
 - (a) **Noise and vibration controls** – requiring acoustic insulation and ventilation to be installed in new (or altered) sensitive uses within 100m of the railway corridor. Within 60m of the railway corridor, controls are sought that buildings containing new (or altered) sensitive uses are constructed to manage the impacts of vibration. These controls are important to ensure new development is undertaken in a way that achieves a healthy living environment for people locating within proximity to

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Wellbeing Budget 2022 – A Secure Future (New Zealand Government, Wellington, 2022) at page 82.



the railway corridor, minimising the potential for complaints about the effects of the railway network; and

- (b) **Boundary setbacks** – requiring a "no-build" setback within 5m of the railway corridor for new buildings or structures on sites adjoining the railway corridor. This is to ensure that people can use and maintain their land and buildings safely without needing to extend out into the railway corridor, minimising the risks of physical interference on railway operations and health and safety hazards on these residents.

Proposed Waimakariri District Plan and Variation 1

- 14. In the Proposed Waimakariri District Plan, the Council has proposed modified versions of the controls sought nationally by KiwiRail as follows:
 - (a) acoustic insulation and ventilation standards for habitable rooms within 80m of the rail corridor⁴ (no vibration controls are proposed); and
 - (b) 4m setbacks from the rail corridor are proposed across a range of urban zones.⁵
- 15. KiwiRail supports the inclusion of acoustic standards and district-wide setbacks as important controls to ensure the ongoing safe and efficient operation of the rail corridor, particularly where intensive residential development is proposed adjacent to the rail corridor. KiwiRail intends to submit on these provisions through the wider Proposed District Plan process.
- 16. In respect of the Amendment Act and Variation 1, the MDRS mandate a 1m setback from side and rear yards, and a 1.5m setback from front yards. However, the Amendment Act enables the Council to amend the MDRS and intensification requirements where a "qualifying matter" applies. The qualifying matters expressly include:⁶
 - (a) the need to give effect to a designation (but only in relation to the land that is subject to that designation); and
 - (b) matters "required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure". The rail network is nationally significant infrastructure for the purposes of the Amendment Act.
- 17. The Council has recognised the rail corridor as a qualifying matter in Variation 1 and has relied on this status to increase building setbacks where necessary for the safe and efficient operation of the rail corridor.⁷ Specifically, this qualifying matter is applied in Variation 1 to:
 - (a) retain approach and restart sight triangles for level crossings (provided for in the Proposed District Plan at TRAN-R21 and TRAN-APP7) which require structures and buildings to be setback to enable appropriate visibility for vehicles at level crossings. Strict application of the MDRS may have reduced these triangles where residential land was situated immediately adjacent to level crossings; and

⁴ NOISE-R16.

⁵ See for example, GRZ-BFS5(5).

⁶ RMA, Sections 77I(e) and (g); 77O(e) and (g).

⁷ Section 32 assessment, section 8.2.



- (b) implement an increased to the setback distances from the rail corridor (from 4m to 5m) in the Medium Density Residential Zone at MRZ-BFS5.
18. KiwiRail strongly supports the identification of the rail corridor as a qualifying matter and its application to protect sight triangles and setbacks. Sight triangles are key tools to enable the safe function of level crossings. As outlined above, KiwiRail considers 5m is an appropriate distance for setbacks, given the increased building height and reduced height to boundary controls enabled under the MDRS which increase the risk of potential interference with the rail corridor from maintenance and other activities being undertaken on sites adjoining the rail corridor. As the Council has acknowledged in the section 32 report, the area subject to the 5m setback would impact only 20 properties in Rangiora and 10 in Kaiapoi and:⁸
- the extent of the 5 metre setback on the affected properties is minor and the setback still allows for potential new residential development on these properties. The vast majority of the remainder of the TCZ in these parts of Rangiora and Kaiapoi would not be affected by the setback.*
19. However, the proposed matters of discretion in MRZ-BFS5 only require consideration of residential design principles and impacts on neighbouring property. There is no specific matter of discretion directing consideration by decision makers of the effects where the setback from the rail corridor is infringed. KiwiRail considers a matter of discretion directing consideration of impacts on the safety and efficiency of the rail corridor is appropriate in situations where the 5m setback standard is not complied with.
20. KiwiRail therefore seeks the matter of discretion outlined at paragraph 22 below to be included in Variation 1.

General reasons for the submission

21. The identification of the rail corridor as a qualifying matter and the sight triangles and setbacks from the rail corridor (as proposed to be amended below) will:
- (a) promote sustainable management of resources, achieve the purpose of the RMA, and are not contrary to Part 2 and other provisions of the RMA;
 - (b) meet the reasonably foreseeable needs of future generations;
 - (c) enable the social, economic and cultural wellbeing of the community in the Waimakariri district; and
 - (d) provide and promote the greatest health, safety and amenity outcomes and preserve operational and developmental capacity and efficiency for nationally significant infrastructure.



Relief Sought

22. KiwiRail seeks:

- (a) retention of identification of the rail corridor as a qualifying matter;
- (b) retention of TRAN-R21 and TRAN-APP7 as notified;
- (c) retention MRZ-BFS5; and
- (d) inclusion of a new matter of discretion in MRZ-BFS5 (the text introduced through Variation 1 is shown in black underline and strikethrough and KiwiRail's proposed addition is shown in red underline below).

MRZ-BFS5 Building and structure setbacks	
<p>1. Any building or structure other than a garage shall be set back a minimum of <u>21.5m from any road boundary</u> (other than a strategic road or arterial road boundary where the minimum setback shall be 6m) except for:</p> <ul style="list-style-type: none"> a. any fence permitted by MRZ-BFS8; b. poles and masts up to 6.5m in height above ground level; c. structures other than a fence, less than 10m² and less than 3m in height above ground level; d. any caravan; e. the replacement, maintenance and minor upgrading of any infrastructure; and f. any structure or residential unit adjoining an accessway that does not have doors or windows that open into that accessway. <p>2. Any garage shall be set back a minimum of 6m from the road boundary.</p> <p>3. 2. Any building or structure shall be set back a minimum of 1m from any internal boundary (except on corner sites) except that buildings on adjoining sites which share a common wall, the internal setback shall not apply along that part of the internal boundary covered by such a wall.</p> <p>4. Habitable room windows within any residential unit on the first floor or above shall avoid direct views into an adjacent residential unit located within 9m by:</p> <ul style="list-style-type: none"> a. being offset by a minimum of 0.5m in relation to any existing window in an adjacent residential unit; or 	<p>Activity status when compliance not achieved: RDIS</p> <p>Matters of discretion are restricted to:</p> <p>RES-MD2 - Residential design principles</p> <p>RES-MD5 - Impact on neighbouring property</p> <p><u>RES-MDX - 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.</u></p> <p>Notification</p> <p>An application for a restricted discretionary activity under this rule is precluded from being publicly notified, but may be limited notified.</p> <p><u>Refer to notification status in MRZ-BFS1.</u></p>



MRZ-BFS5 Building and structure setbacks	
<p>b. having sill heights of 1.5m above floor level; or</p> <p>c. having fixed obscure glazing below 1.5m above floor level.</p> <p>53. On corner sites, vegetation or structures exceeding 1m in height above ground level shall not be located within the structure and vegetation setback area identified by Figure MRZ-24.</p> <p>64. All buildings shall be set back a minimum of 45m from any site boundary with the rail corridor.</p> <p>5. Any building or structure shall be set back a minimum of 12m from any National Grid support structure as per rule EI-R51.</p> <p><u>Legal Effect</u></p> <p>The highlighted yellow text identifies the part of the standard that has immediate legal effect if no qualifying matter applies.</p>	

23. KiwiRail wishes to be heard in support of this submission. If other parties make similar submissions, KiwiRail would consider presenting a joint case with those parties at the hearing.

Yours faithfully

Michelle Grinlinton-Hancock
RMA Team Leader

