

BEFORE THE INDEPENDENT COMMISSIONERS

IN THE MATTER

of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER

a submission by KiwiRail Holdings Limited (submitter
442) on the Proposed Te Tai o Poutini Plan ("**TTPP**")

**INTRODUCTION AND GENERAL PROVISIONS – LEGAL SUBMISSIONS ON
BEHALF OF KIWIRAIL HOLDINGS LIMITED**

16 OCTOBER 2023

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1. BACKGROUND AND SUMMARY

- 1.1 KiwiRail is a State-Owned Enterprise responsible for the construction, maintenance, and operation of New Zealand's rail network. KiwiRail is also a requiring authority under the RMA and holds railway purpose designations throughout New Zealand, including for the Westport, Stillwater to Ngakawau ("**SNL**"), Rapahoe, Greymouth, Hokitika and Midland railway lines, which all pass through the West Coast region.¹
- 1.2 The rail network is an asset of national and regional significance. It 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 wider supply chain.
- 1.3 KiwiRail supports urban development around transport nodes and recognises the benefits of co-locating housing near transport corridors. However, such development must be planned with the safety and wellbeing of people and the success of the rail network in mind. The TTPP provides an important opportunity to ensure these twin objectives are achieved.
- 1.4 KiwiRail submitted on the TTPP to protect the safe and efficient operation of the region's rail network by ensuring that development near the rail corridor is appropriately managed. Effects result from the interface between new sensitive activities (in particular, residential activity) developed adjacent to the operational national rail corridor. These must be well managed, to avoid adverse effects on the health, safety and amenity of adjoining landowners and effects on KiwiRail's operations.
- 1.5 KiwiRail supports the TTPP's general approach in terms of recognising and providing for the ongoing operation and resilience of critical infrastructure, but considers the TTPP rules do not adequately provide protection for the rail corridor. KiwiRail's relief relating to rail noise and vibration provisions will be addressed in the Noise hearing stream in 2024. In this hearing stream, KiwiRail seeks the following targeted relief:
- (a) **Safety setbacks:** KiwiRail seeks 5 metre safety setbacks from the rail designation boundary for new buildings and structures in all zones adjacent to the rail corridor, and an associated matter of discretion. This is consistent with the 5 metre setback standard already provided for in the General Industrial, Light Industrial, and

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Statement of Evidence of Michelle Grinlinton-Hancock dated 2 October 2023 at [3.3].

Port Zones. KiwiRail also seeks that the setback standards in those zones apply from the rail designation boundary (not the rail corridor), as the designation boundary is more easily identifiable.

- (b) **Definition of sensitive activity:** the definition of sensitive activity needs to be amended to replace "community facility" with "place of worship".
- (c) **Natural Environment and Connections and Resilience Objectives:** Objectives CR-O3 and NENV-O2 need to be amended to remove references to "functional need and operational need", with "where practicable" retained for CR-O3.

1.6 The relief sought by KiwiRail is the most appropriate way to achieve the sustainable management purpose of the RMA, protect the health and safety of residents within proximity to the rail corridor, and ensure the ongoing safe and efficient use of nationally significant infrastructure in the West Coast region.

2. SETBACK CONTROLS VS NOISE CONTROLS

2.1 The s42A Report states that the noise insulation controls already restrict sensitive activities within 40 metres of the rail corridor.² However, acoustic insulation provisions do not address the safety issues managed by KiwiRail's proposed boundary setback. Setback controls and acoustic insulation controls have different purposes. The setback controls are being heard as part of this Introduction and General Provisions hearing stream. Acoustic insulation provisions will be heard in 2024.

2.2 A **boundary setback control** seeks to avoid health and safety issues caused by people physically entering the rail corridor because they do not have enough space on their own properties to build, maintain, use, or clean their buildings and homes. A setback requires a physical distance between a building and the property boundary with the railway corridor. This ensures people can use and maintain their land and buildings safely without needing to encroach onto the rail corridor. Any encroachment onto the rail corridor has the obvious and serious potential to result in injury or death for the person encroaching, not to mention stopping railway operations.

2.3 **Noise provisions** are controls requiring acoustic insulation to be installed in new or altered sensitive activities built within a specified distance from the

² Te Tai o Poutini Plan – Section 42A Officer's Report – Introduction and General Provisions at [125].

railway corridor. Rail operations can create adverse health and amenity effects on landowners and occupiers adjacent to the rail corridor. KiwiRail seeks noise provisions in district plans throughout New Zealand to ensure new development is undertaken in a way that achieves a healthy living environment for people locating within proximity to the rail corridor, and to minimise the potential for complaints about the effects of the railway network.

2.4 We expand on the boundary setback controls sought in the TTPP below.

3. SETBACKS

3.1 Setbacks are a common planning tool used to ensure the safe and efficient operation of activities such as the railway corridor, particularly when it may come into conflict with adjacent land uses.

3.2 In the case of rail, a setback provides a **safe physical distance** between a building and the railway corridor boundary. Without a sufficient setback, people painting their buildings, clearing gutters, or doing works on their roof will need to go into the rail corridor.

3.3 The risks associated with the rail corridor are very different and have much more significant consequences than property used for residential or other purposes.³ Heavy freight trains run on the railway lines through the West Coast region. If a person or object encroaches onto the rail corridor, there is a substantial risk of injury or death for the person entering the rail corridor. There are not the same risks or consequences for other adjoining land.

3.4 There are also potential effects from such activities on railway operations and KiwiRail workers, ranging from the stopping of trains affecting service schedules to creating a health and safety hazard for train operators and KiwiRail workers operating within the rail corridor.

3.5 A setback control has obvious safety benefits for the users of the land adjoining the rail corridor and 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.

3.6 Setbacks are not the same as yard buffers or setbacks from other properties, given there are significant and potentially severe consequences that can arise from encroachment into the rail corridor. There are obvious safety issues arising from people interfering with or entering a rail corridor.

³ Statement of Evidence of Michelle Grinlinton-Hancock dated 2 October 2023 at [4.9].

- 3.7 Activities that comply with the setback control would be permitted, while activities that do not comply would require resource consent as a restricted discretionary activity. KiwiRail also seeks the inclusion of matters of discretion relating to setbacks to ensure Council planners consider impacts on the safety and efficiency of the rail corridor where a setback control is not complied with.
- 3.8 The proposed control only applies to new or altered buildings and structures and **does not require any changes be made to existing buildings**.⁴ It also does not restrict development or redevelopment in support of the strategic direction of the TTPP.⁵ Setback controls do not blight the land – other uses are enabled in the safety buffer area and resource consent is able to be granted where safety matters are adequately addressed by the applicant.
- 3.9 It would be a disproportionate, extremely costly, and burdensome alternative planning solution for KiwiRail to designate and purchase additional land beyond its existing designation for additional "buffer" land for neighbouring landowners, as seems to be suggested by the Reporting Officer.⁶ This is not an appropriate method for ensuring good planning outcomes.
- 3.10 Clearly, designating adjoining properties would potentially impose a greater blight on private land than a setback control.⁷ For example, designating a property adjacent to the rail corridor would require developers to seek KiwiRail's approval under s176 RMA whenever they wish to undertake activities on that land. A much better planning outcome is to simply provide enough space for standard building maintenance works within the property itself.
- 3.11 KiwiRail's proposed setback control is the most efficient outcome from a planning perspective.⁸ A TTPP framework that permits developments adjacent to the rail corridor which cannot be built or maintained safely and lawfully within the site where they are located does not accord with the RMA's purpose to enable people and communities to provide for their social, economic, and cultural well-being and their health and safety. It therefore breaches the Council's obligations under s74(1)(b) of the RMA.

4 Statement of Evidence of Catherine Heppelthwaite dated 2 October 2023 at [9.1 (c)].

5 Te Tai o Poutini Plan – Section 42A Officer's Report – Introduction and General Provisions at [119].

6 Te Tai o Poutini Plan – Section 42A Officer's Report – Introduction and General Provisions at [125].

7 Statement of Evidence of Michelle Grinlinton-Hancock dated 2 October 2023 at [4.7].

8 Statement of Evidence of Catherine Heppelthwaite dated 2 October 2023 at [9.1 (f)] and Attachment B.

Setback distance

- 3.12 The TTPP currently provides for specific road, and varying side and rear, boundary setbacks in some zone chapters. A 5 metre setback from the rail corridor is included in the General Industrial, Light Industrial and Port Zones but does not include setback standards for rail in any other zones.
- 3.13 Ms Grinlinton-Hancock's evidence is that 5 metres is an appropriate distance for buildings and structures to be set back from the rail corridor boundary. This distance ensures there is sufficient space for people to safely conduct their activities, while minimising the potential interference with the railway corridor. If not enough space is provided, the only option is for people to encroach onto the rail corridor which poses potentially significant adverse consequences.
- 3.14 In KiwiRail's experience, it is uncommon for adjoining landowners to request permission to enter the rail corridor to undertake maintenance activities. It is a health and safety risk for such access to occur without approval, and ultimately for KiwiRail to have to rely on prosecution after the fact.
- 3.15 In any event, requiring landowners to seek permission to enter an operational rail corridor (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 much better planning outcome is to accommodate building maintenance activities within the property itself.

4. DEFINITION OF SENSITIVE ACTIVITY

- 4.1 KiwiRail seeks an amendment to the definition of "sensitive activity" to support the application of the district-wide rail noise standard (which will be the subject of a future hearing). KiwiRail's proposed wording is based on provisions that are commonly used in district plans throughout the country.
- 4.2 As set out in the evidence of Ms Heppelthwaite, the current definition is broadly worded and, unusually, includes noise generating activities such as recreation or sport. This results in uncertainty as to which activity the noise control applies to.
- 4.3 The amendment to the definition proposed by KiwiRail (to replace "community facility" with "place of worship") will ensure the controls target activities that are truly sensitive to noise. This will assist in plan coherency by ensuring there is no confusion around the interpretation and application of the noise controls.

5. AMENDMENT TO CR-O3 AND NENV-O2

5.1 KiwiRail seeks the deletion of "functional and operational need" from Objectives CR-O3 and NENV-O2. As set out in Ms Heppelthwaite's evidence, national direction uses the "functional and operational need" test as a specific direction for particular areas, such as indigenous biodiversity areas.⁹ To align with national direction, the test should only be referenced in objectives and policies relating to those particular areas, not in district-wide objectives such as CR-O3 and NENV-O2.

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⁹ Statement of Evidence of Catherine Heppelthwaite dated 2 October 2023 at [9.24] – [9.27].