

**BEFORE THE INDEPENDENT COMMISSIONERS**

**IN THE MATTER**

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

**AND**

**IN THE MATTER**

a submission by KiwiRail Holdings Limited ("**KiwiRail**") (submitter 187) on Hearing B1 – Rural Zones and Hearing B2 – Urban Zones of the Timaru Proposed District Plan ("**Proposed Plan**")

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**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED IN  
RELATION TO HEARING B**

**12 JULY 2024**

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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 Main South Line ("**MSL**") which passes through the Timaru District.
- 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 and managed thoughtfully and prudently, with the safety and wellbeing of people and the success of the rail network in mind. The Proposed Plan provides an important opportunity to ensure these twin objectives are achieved.
- 1.4 KiwiRail submitted on the Proposed Plan to ensure the safe and efficient operation of the district's rail network by ensuring that development near the rail corridor is appropriately managed to minimise adverse effects on the health and safety of adjoining landowners and effects on KiwiRail's operations.
- 1.5 KiwiRail seeks a 5 metre safety setback for buildings and structures from the rail corridor boundary in all zones adjacent to the rail corridor, with associated matters of discretion. In our submission, the relief sought by KiwiRail will most appropriately 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 and regionally significant infrastructure in the Timaru District.

## 2. SETBACKS

- 2.1 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.
- 2.2 In the case of rail, a setback provides a **safe physical distance** between a building and the property boundary with the railway corridor. Without a

sufficient setback, people painting their buildings, clearing gutters, or doing works on their roof are at risk of needing to enter the rail corridor.

- 2.3 Rail setbacks are not the same as other yard buffers or setbacks, given there are significant and potentially severe consequences that can arise from encroachment onto the rail corridor. The risks associated with the rail corridor are very different from property used for residential or other purposes.<sup>1</sup> Heavy freight trains run on the MSL through the Timaru District. 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. There are not the same risks or consequences for other adjoining land.
- 2.4 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.
- 2.5 The Proposed Plan currently provides for road and side and rear boundary setbacks in some zone chapters. It does not include any rail setbacks in the zones that are subject to Hearing B1 and Hearing B2. It is not clear why the Proposed Plan requires a setback from a road but not from rail. In KiwiRail's submission, there is no evidential basis for this difference in approach. The Proposed Plan has employed sensible planning practice in these zones to provide a setback from a road but has not taken the same approach to rail. This is a poor planning outcome.
- 2.6 KiwiRail's submission on Hearing B of the Proposed Plan seeks a 5 metre setback in the General Rural and Settlement Zones (subject to Hearing B1) and in the zones subject to Hearing B2.<sup>2</sup> Activities that comply with this control would be permitted, whereas activities that do not comply would require resource consent as a restricted discretionary activity. KiwiRail also seeks the inclusion of associated matters of discretion to ensure Council planners have an opportunity to consider impacts on the safety and efficiency of the rail network where the setback control is not complied with.
- 2.7 The s42A report authors recommend rejecting KiwiRail's relief due to concerns with the efficiency of applying a 5 metre setback to any boundary with a rail

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<sup>1</sup> Evidence of Michelle Grinlinton-Hancock dated 5 July 2024 at [4.10].

<sup>2</sup> General Industrial, Port, General Residential, Medium Density Residential, Large Format Retail, Mixed Use, Town Centre and City Centre Zones.

corridor. They suggest this could result in a substantial area of land being unable to be developed in the absence of a resource consent.<sup>3</sup>

- 2.8 That implies that the setback control is blighting large sections of land in the district. That is not accurate. Other uses that are not buildings and structures are enabled in the safety setback area without resource consent being required. It is also common for development of land to be undertaken through a resource consent process where there is a need for Council assessment of the proposal. The s42A authors' focus on what can / cannot be built next to the rail corridor entirely misses the point of the proposed safety setback. Unmanaged development of land right up to the rail corridor, without any thought paid to the location of the rail corridor or its use, will result in unsafe situations for occupants of the adjoining properties and those working in the rail corridor.
- 2.9 Where development in the safety setback area is able to be accommodated in a safe way, the resource consent process allows for safety to be assessed and resource consent granted. This should not be a novel concept.

#### **Setback distance**

- 2.10 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.<sup>4</sup> This distance ensures there is sufficient space for landowners and occupiers to safely conduct their activities, and maintain and use their buildings, while minimising the potential for interference with the rail corridor. It also allows space to accommodate other mechanical access equipment required for maintenance, and space for movement around the scaffolding and equipment.
- 2.11 The s42A report authors suggest (we think to be read as a criticism of KiwiRail's position) that a setback has a "limited purpose".<sup>5</sup> If what the report authors mean is the setback has a confined purpose, that is accurate – it is to manage effects on the rail corridor and landowners building next to the rail corridor **because of the relevant site's co-location to the rail corridor**. The purpose however is not limited, 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

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<sup>3</sup> Section 42A Report: Rural Zones at [8.6.3]; Section 42A Report: Residential, Commercial and Mixed Use Zones at [6.36.3]; Section 42A Report: General Industrial and Port Zones at [7.25.2].  
<sup>4</sup> Evidence of Michelle Grinlinton-Hancock dated 5 July 2024 at [4.17].

<sup>5</sup> Section 42A Report: Rural Zones at [8.6.3]; Section 42A Report: Residential, Commercial and Mixed Use Zones at [6.36.3]; Section 42A Report: General Industrial and Port Zones at [7.25.2].

services being interrupted by unauthorised persons or objects entering the rail corridor. These are important purposes.

- 2.12 If not enough space is provided, the only option is for people to encroach onto the rail corridor which poses significant adverse consequences. 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.
- 2.13 In any event, requiring landowners to seek permission to enter an operational rail corridor (or if they fail to obtain permission, to trespass) to undertake necessary building maintenance is a poor, and potentially unsafe, planning outcome. As set out in Ms Grinlinton-Hancock's evidence, a much better planning outcome is to simply provide enough space for standard building maintenance works within the property itself.<sup>6</sup>
- 2.14 KiwiRail's proposed setback control is the most efficient outcome from a planning perspective.<sup>7</sup> A district plan 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.

**DATED:** 12 July 2024

**A A Arthur-Young / K L Gunnell**

Counsel for KiwiRail Holdings Limited

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<sup>6</sup> Evidence of Michelle Grinlinton-Hancock dated 5 July 2024 at [4.12].

<sup>7</sup> Evidence of Alex Gifford dated 5 July 2024 at [6.11].