

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 416) on Hearing 6/7 of the Far North Proposed District Plan ("**Proposed Plan**")

**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED IN
RELATION TO HEARING 6/7 (GENERAL DISTRICT-WIDE MATTERS)**

23 OCTOBER 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 the national railway network. Its role includes managing rail infrastructure and land, as well as freight and passenger services within New Zealand. This infrastructure is of national and regional significance.
- 1.2 KiwiRail is a requiring authority under the RMA and holds designations for railway purposes throughout New Zealand, including for the North Auckland Line ("NAL") which passes through the Far North District. General growth is expected in the use of rail throughout New Zealand. Rail also has a key role in assisting New Zealand's transition to a low-carbon economy through modal shift in freight.
- 1.3 KiwiRail supports development around transport nodes and recognises the benefits of co-locating development 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 avoid, remedy or mitigate adverse effects on the health, safety and amenity of adjoining landowners, as well as reverse sensitivity effects on KiwiRail's operations.
- 1.5 KiwiRail seeks:
- (a) the retention of various objectives and rules relating to noise in the Proposed Plan;¹
 - (b) the addition of a new policy (NOISE-P4) requiring buildings for noise sensitive activities near the rail corridor to be designed and constructed to minimise the level of noise received;
 - (c) the inclusion of an information only noise and vibration alert layer to apply within 100 metres of the railway corridor;

¹ NOISE-O2, NOISE-R2 and Rule Note (4).

- (d) the inclusion of controls in NOISE-S5 requiring acoustic insulation and ventilation to be installed in new (or altered) sensitive uses within 100 metres of the railway corridor that will be triggered when the railway line becomes active;
- (e) the inclusion of a definition for "operational rail line";
- (f) an amendment to the definition for "noise sensitive activities" to include reference to hospitals; and
- (g) an amendment to SIGN-P3 to include reference to level crossing sightlines.

1.6 KiwiRail's relief has been developed and refined over a number of years through multiple planning processes. The provisions are appropriate, pragmatic and reasonable, and support the Council's obligations to prepare and change its district plan in accordance with the provisions of Part 2 of the RMA, including enabling people and communities to provide for their social, economic and cultural wellbeing and their health and safety.

1.7 KiwiRail's proposed provisions are set out in Attachment A to Ms Heppelthwaite's evidence.

2. RAIL NOISE AND VIBRATION

Why KiwiRail seeks noise and vibration controls

2.1 The Panel will be aware of the potential for noise and vibration effects to arise from the operation of the rail corridor. Trains are large, travel at speed, and generate noise and vibration as part of their operation. These effects have been documented by bodies such as the World Health Organisation and are underpinned by robust scientific research.

2.2 KiwiRail is a responsible infrastructure operator that endeavours to avoid, remedy or mitigate the adverse rail noise and vibration it produces, through its ongoing programme of upgrade, repair and maintenance work to improve track conditions. Not only is this important to KiwiRail as a good neighbour, but it is also under a statutory obligation to use the best practicable option to avoid unreasonable noise and to avoid, remedy or mitigate adverse effects on the environment.

2.3 However, the nature of rail operations means that KiwiRail cannot fully internalise all noise and vibration effects within the rail corridor boundaries. In

any case, KiwiRail is not required to internalise all its effects, as the RMA is not a "no effects" statute.

- 2.4 A key concern for KiwiRail in respect of the Proposed Plan is to ensure the development of sensitive activities near the rail corridor does not give rise to health and amenity effects on adjoining residents, nor reverse sensitivity effects that may compromise the safe and efficient operation of the rail network.
- 2.5 Reverse sensitivity is a well-established concept and is an adverse effect for the purposes of the RMA. It refers to the susceptibility of lawfully established effects-generating activities (which cannot internalise all their effects) to complaints or objections arising from the location of new sensitive activities nearby those lawfully established activities. Such complaints can place significant constraints on the operation of established activities, as well as their potential for growth and development in the future.
- 2.6 Reverse sensitivity is a significant issue for transport infrastructure, including the rail network. The Environment Court has recognised the importance of protecting regionally significant infrastructure from reverse sensitivity effects and has declined applications for resource consent where developments have the potential to give rise to such effects. The High Court recently confirmed the vulnerability of infrastructure operators to reverse sensitivity effects.

Controls addressing rail noise and vibration effects

Rail volume in the Far North District

- 2.7 The Council Officer (Mr Baxter) does not consider the addition of a new policy (NOISE-P4), or the inclusion of noise and vibration controls in NOISE-S5, is appropriate given there are currently no operational railway lines in the Far North District. However, Mr Baxter noted the Council would be open to reconsidering its position should KiwiRail provide further information indicating these railway lines may become operational in the Far North District.²
- 2.8 KiwiRail accepts the NAL is not currently active. However, Mr Paetz's evidence confirms "KiwiRail's designation means that, should it be needed, the line could become operational again at any time".³ Should the NAL become operational in the Far North District in the future, the notified version of the

² Section 42A Report – Noise and Lighting prepared by Kenton Baxter at [353] and [386].

³ Evidence of Matthew Paetz dated 7 October 2024 at [5.2].

Proposed Plan will not sufficiently address noise and vibration effects arising from the rail corridor.

- 2.9 Prudent, forward-thinking planning plays a key part in setting community expectations around effects from the rail corridor. Given the NAL may become operational over the minimum 10-year life of the Proposed Plan, KiwiRail seeks the inclusion of both an alert layer and acoustic insulation and ventilation provisions (which only apply when the NAL becomes active) to mitigate rail noise and vibration effects on sensitive activities near the railway line.

Noise and vibration alert layer

- 2.10 KiwiRail would accept the inclusion of a noise and vibration alert layer in the Proposed Plan. Based on Dr Chiles' evidence regarding the extent of the effects of noise and vibration, this alert layer would apply to all properties within 100 metres on either side of the rail designation boundary.

- 2.11 This is an information layer to signal to property owners that higher levels of noise and vibration may be experienced in the area due to its proximity to the rail corridor. There are no rules or other provisions associated with the noise and vibration alert layer. Alert layers still provide some management of the effects, as landowners may be prompted when building new dwellings to consider incorporating measures of their own accord or to locate new buildings outside the alert layer. New purchasers will also be alerted when purchasing a property that they may experience such effects.

- 2.12 Alert layers are commonly used to provide information to plan readers. A rail vibration alert layer has been accepted in a number of district plans throughout the country including in the Whangārei and Waikato district plans. KiwiRail's proposed wording is set out in Attachment A to Ms Heppelthwaite's evidence.

Acoustic insulation and ventilation provisions

- 2.13 KiwiRail also seeks provisions that require new and altered sensitive activities to comply with acoustic insulation and ventilation measures within 100 metres of the rail designation boundary, to manage adverse health effects. Such provisions will apply at such point in time the NAL becomes operational with regular rail services. Dr Chiles' evidence is the 100 metre distance reflects a reasonable compromise to capture the most affected sites without requiring assessment where building treatment is less likely to be required.⁴

⁴ Evidence of Dr Chiles dated 7 October 2024 at [6.1].

- 2.14 Mr Baxter sought clarification as to whether the noise controls sought by KiwiRail would apply to existing buildings within 100 metres of the railway line that currently lack acoustic insulation.⁵ Ms Heppelthwaite explains these controls are not retrospective so will only apply to new or altered buildings constructed after the NAL becomes operational.⁶
- 2.15 KiwiRail's proposed noise provisions are set out in Attachment A to Ms Heppelthwaite's evidence.

3. CONCLUSION

- 3.1 KiwiRail's relief, as set out in Attachment A to Ms Heppelthwaite's evidence, 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 Far North District.

DATED: 23 October 2024

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Counsel for KiwiRail Holdings Limited

⁵ Section 42A Report – Noise and Lighting prepared by Kenton Baxter at [353].

⁶ Evidence of Ms Heppelthwaite dated 7 October 2024 at [7.9].