

**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 9 of the Far North Proposed  
District Plan ("**Proposed Plan**")

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**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED**

**29 NOVEMBER 2024**

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## 1. SUMMARY

- 1.1 KiwiRail is a State-Owned Enterprise responsible for the management and operation of the national railway network. KiwiRail is a requiring authority under the RMA and is responsible for designations for railway purposes throughout New Zealand, including the North Auckland Line ("**NAL**") which is a designated rail corridor that extends through the Far North District and is a key part of the KiwiRail network nationally. Growth is expected in the use of rail. Rail also has a key role in assisting New Zealand's transition to a low-carbon economy through modal shift in freight.
- 1.2 KiwiRail supports urban development around transport nodes and recognises the benefits of co-locating development near the rail corridor. However, such development must be planned and managed thoughtfully, with the safety and wellbeing of people and the success of the national rail network in mind.
- 1.3 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.
- 1.4 In our submission, KiwiRail's relief (as set out in Attachment A to Ms Heppelthwaite's evidence) will better achieve the sustainable management purpose of the RMA, including by enabling people and communities to provide for their social, economic, and cultural well-being and their health and safety.

### **What KiwiRail is seeking**

- 1.5 In its submission, KiwiRail sought a 5 metre setback for buildings and structures from the rail corridor boundary in zones adjacent to the rail corridor (including the zones subject to this Hearing Stream - the Rural Production Zone, Rural Lifestyle Zone, Rural Residential Zone and Settlement Zone ("**Rural Zones**")), with associated matters of discretion.
- 1.6 KiwiRail now proposes a tiered approach to setback distances in the Rural Zones of 4 metres for buildings 4 metres and above in height, and 3 metres for buildings up to 4 metres in height (based on the recommendation of Ms Heppelthwaite).<sup>1</sup> This setback is critical for the health and safety of the

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<sup>1</sup> Evidence of Cath Heppelthwaite dated 15 November 2024 at [7.5] – [7.6].

occupants of those properties, but also for the safe and efficient use and operation of the rail network.

- 1.7 Ms Heppelthwaite has proposed an additional matter of discretion relating to consultation with KiwiRail and proposed an amendment to the relevant policies in the Rural Zones to ensure they clearly reflect the interface with the rail designation boundary.

## **2. SETBACKS**

- 2.1 Setbacks are a common planning tool used in district plans to address potential conflicts between adjacent land uses. In the case of rail, a setback provides a safe physical distance between a building and the property boundary with the railway corridor. A building setback is a safety control and acts to reduce the potential conflict between the safe enjoyment and maintenance of buildings on adjacent properties and the operational rail 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.
- 2.2 Rail setbacks are not the same as yard buffers or setbacks for amenity, given there are significant and potentially severe consequences that can arise from encroachment onto the rail corridor.
- 2.3 The risks associated with building next to the rail corridor as opposed to building next to other activities or residential properties are very different. Heavy trains run at speed. 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 Ms Heppelthwaite's evidence confirms a safety setback is the most efficient and effective option to manage the risk of inadvertent interference with the rail corridor from adjoining land uses.<sup>2</sup>

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<sup>2</sup> Evidence of Cath Heppelthwaite dated 15 November 2024 at [7.0].

### Setback distance

- 2.6 The Proposed Plan currently provides for varying setbacks from site boundaries in the Rural Zones, but does not include any specific rail setbacks.<sup>3</sup> The Council Officer considers a 3 metre setback<sup>4</sup> is sufficient to undertake the maintenance activities KiwiRail is concerned about without requiring landowners to enter the rail corridor.<sup>5</sup> KiwiRail does not accept the 3 metre setback as currently proposed provides a sufficient distance to manage potential safety effects from persons, objects or equipment encroaching into the rail corridor.
- 2.7 As set out in Mr Paetz's evidence, KiwiRail generally seeks a setback of 5 metres to ensure 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.<sup>6</sup> This distance accommodates scaffolding, other mechanical access equipment required for maintenance and space for movement around the scaffolding and equipment, and allows for a dropped object zone.<sup>7</sup>
- 2.8 For the Rural Zones in the Proposed Plan, Ms Heppelthwaite proposes a tiered approach to setbacks where taller buildings have increased setbacks to reflect access requirements (a 4 metre setback from the rail corridor boundary for buildings 4 metres and above in height, and a 3 metre setback for buildings up to 4 metres in height). KiwiRail accepts Ms Heppelthwaite's recommendation as a sensible approach to local conditions, the particular characteristics of the Rural Zones, and relevant built form standards.<sup>8</sup>
- 2.9 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 matters of discretion to ensure Council planners have an opportunity to consider impacts on the safety and

<sup>3</sup> The Rural Production Zone (RPROZ-S3) and Rural Lifestyle Zone (RLZ-S3) include a 3 metre setback from non-road boundaries; the Rural Residential Zone (RRZ-S3) includes a 3 metre setback from all site boundaries; and the Settlement Zone (RSZ-S3) includes a 1.2 metre from all site boundaries except road boundaries.

<sup>4</sup> Section 42A Report – Rural Wide Issues and the Rural Production Zone authored by Melissa Pearson dated 4 November 2024 at [228]. Ms Pearson proposes to retain the existing setback in all Rural Zones except for the Settlement Zone, where Ms Pearson proposes to increase the current setback from 1.2 metres to 3 metres from the rail designation boundary.

<sup>5</sup> Section 42A Report – Rural Wide Issues and the Rural Production Zone authored by Melissa Pearson dated 4 November 2024 at [226].

<sup>6</sup> Evidence of Matthew Paetz dated 15 November 2024 at [4.11] and [4.13].

<sup>7</sup> Evidence of Matthew Paetz dated 15 November 2024 at [4.9] – [4.10].

<sup>8</sup> Evidence of Matthew Paetz dated 15 November 2024 at [4.12].

efficiency of the rail network where the setback control is not complied with. This has been accepted by Ms Pearson for the Rural Zones.<sup>9</sup>

- 2.10 In addition to those matters Ms Heppelthwaite has recommended an additional matter of discretion relating to the outcome of consultation with KiwiRail.<sup>10</sup> This has been included in other district plan provisions and is a helpful mechanism of ensuring Council and applicants are aware of any existing or future changes in the rail network which may impact decisions on building location and maintenance options.

**DATED:** 29 November 2024

**K L Gunnell**

Counsel for KiwiRail Holdings Limited

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<sup>9</sup> Section 42A Report – Rural Wide Issues and the Rural Production Zone authored by Melissa Pearson dated 4 November 2024 at [227].

<sup>10</sup> Evidence of Cath Heppelthwaite dated 15 November 2024 at [7.7].