

30 September 2022

To: Waipa District Council (**Council**)

Subject: Submission on Proposed Plan Change 26 – Intensification to the Waipa District Plan (**Plan Change 26**)

Scope and nature of submission

1. KiwiRail welcomes the opportunity to provide feedback on Plan Change 26 to the Waipa 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 proposed zones of Plan Change 26 (as well as any other zones affected by Plan Change 26) which adjoin the railway corridor:
 - (a) Residential Zone (**RZ**); and
 - (b) Medium Density Residential Zone (**MDRZ**).
3. The relief KiwiRail seeks is set out at **Annexure A**. In summary, KiwiRail supports the identification of rail as a qualifying matter pursuant to s771(e) and s770(e) of the Resource Management Act 1991 (**RMA**) and seeks that:¹
 - (a) a 5m setback be required for buildings and structures in the RZ and MDRZ for sites adjoining the rail corridor (and any other zones affected by Plan Change 26 which adjoin the rail corridor) with associated policies relating to setbacks also included;
 - (b) the matters of discretion in the RZ and MDRZ (and any other zones affected by Plan Change 26 which adjoin the rail corridor) be amended to direct consideration of impacts on the safety and efficiency of the rail corridor in situations where there is non-compliance with the 5m setback standard;
 - (c) seeks that provision 2.4.2.29 be amended so that it relates to noise sensitive activities within 100m of a railway track to ensure that noise effects are appropriately addressed, and that appropriate ventilation standards are also included;
 - (d) seeks that provision 2A.4.2.40 be amended so that it relates to noise sensitive activities within 100m of a railway track to ensure that noise effects are appropriately addressed, and that appropriate ventilation standards are also included; and

¹ Either in reliance on the qualifying matter or as a related provision under s80E of the RMA



(e) seeks that a vibration standard be inserted for buildings within 60m of the rail corridor to ensure that vibration effects are appropriately addressed.

4. KiwiRail could not gain an advantage in trade competition through this submission.
5. KiwiRail wishes to be heard in support of this submission.

KiwiRail's operations

6. 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.
7. 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)² 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.
8. The benefits of rail to the New Zealand economy were estimated in 2019 to be in the order of \$1.7 – 2.1 billion.³ 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 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.
9. In the most recent budget, the Government allocated \$349 million to replace and modernise New Zealand rail assets,⁴ 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.
10. The designated corridor of the North Island Main Trunk passes through the Waipa District and carries freight from various ports to the rest of the nation. This makes this corridor a key part of the KiwiRail network nationally. KiwiRail seeks to protect its ability to develop, operate, maintain and upgrade this line into the future.

Urban Development around the Rail Corridor

11. The fundamental driver of the Amendment Act and Plan Change 26 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 which provide passenger connections.

² Half Year Annual Report 2022 and Unaudited Financial Statements for the Six Months Ended 31 December 2021 (KiwiRail, 2022) at page 5
³ The Value of Rail in New Zealand – Report for the Ministry of Transport (EY, Wellington, 2021) at page 8
⁴ Wellbeing Budget 2022 – A Secure Future (New Zealand Government, Wellington, 2022) at page 82



12. It is critical that Plan Change 26 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.

13. The nature of railway operations means KiwiRail cannot fully internalise all its effects within the railway corridor boundaries. Environmental legislation and caselaw recognise 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 Plan Change 26, 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.

14. 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 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.

Waipa District Plan and Plan Change 26

Noise and vibration controls

15. In the Operative Waipa District Plan there are acoustic insulation standards for noise sensitive activities located within 40m of a railway track.⁵ Plan Change 26 also includes similar acoustic insulation standards.⁶ However, there are no vibration controls to ensure that buildings containing new (or altered) sensitive uses are constructed to manage the impacts of vibration. KiwiRail:

⁵ Rule 2.4.2.29

⁶ Rule 2A.4.2.40



- (a) supports the retention of acoustic standards but seeks that it be amended to encompass noise sensitive activities within 100m of a railway track and that associated ventilation standards are included; and
- (b) seeks that a vibration standard be inserted for buildings within 60m of the rail corridor to ensure that vibration effects are appropriately addressed.

16. Acoustic and vibration standards are important controls to ensure the ongoing health and wellbeing of the occupants of the higher density living areas and are instrumental in ensuring that reverse sensitivity effects on rail are minimised particularly where intensive residential development is proposed adjacent to the rail corridor. The acoustic and vibration standards do not affect the density of development near the rail corridor, but rather seek to ensure that where urban development co-locates near the rail corridor, the health and amenity of residents is not adversely affected, and the rail corridor is protected from reverse sensitivity effects. KiwiRail considers it is appropriate that these controls apply on a district-wide basis as related provisions that are necessary to ensure intensification in and around the rail corridor is appropriately managed (particularly in the context of the additional intensification proposed through Plan Change 26).

Setbacks

17. In respect of the Amendment Act and Plan Change 26, the MDRS mandate a 1m setback from side and rear yards, and a 1.5m setback from front yards.⁷ However, the Amendment Act enables the Council to amend the MDRS and intensification requirements where a "qualifying matter" applies. The qualifying matters expressly include:⁸

- (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.

18. The Council has recognised the rail corridor as a qualifying matter in Plan Change 26,⁹ and recognised the potential for reverse sensitivity effects to occur. The 1m setback enabled by the MDRS is insufficient to manage potential safety effects and KiwiRail seeks a 5m setback for buildings on sites adjoining the rail corridor. The need for a greater setback is particularly important given the increased building height, reduced height to boundary controls and greater densities of people living adjacent to the rail corridor enabled under the MDRS. The intensification of land adjacent to the rail corridor increases the risk of potential interference with the rail corridor by building maintenance and other activities being undertaken on sites adjoining the rail corridor. This risk needs to be managed.

General reasons for the submission

19. The amendments sought to the provisions of Plan Change 26 by KiwiRail will:

⁷ 14G2.4 and 14H2.4
⁸ RMA, Sections 77I(e) and (g); 77O(e) and (g)
⁹ 2A.1.9

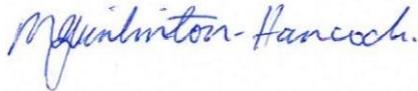


- (a) promote sustainable management of resources, achieve the purpose of the RMA, and are not contrary to Part 2 and other provisions of the RMA;
- (b) meet the reasonably foreseeable needs of future generations;
- (c) enable the social, economic and cultural wellbeing of the community in the Waipa district;
- (d) provide and promote the greatest health, safety and amenity outcomes and preserve operational and developmental capacity and efficiency for nationally significant infrastructure; and
- (e) be, in terms of section 32 of the RMA, the most appropriate way to give effect to the purpose of the RMA and the objectives of the District Plan and the development objectives of the Amendment Act.

Relief Sought

20. KiwiRail seeks the relief set out in **Annexure A** to this submission and such further or other consequential relief, as may be necessary, to fully give effect to the relief sought.

Yours faithfully



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ANNEXURE A – RELIEF SOUGHT

Rule	Relief sought	Amendment (Plan Change 26 text in <u>black underline</u> and strikethrough and KiwiRail's proposed changes shown in <u>red underline</u> and strikethrough)
2A.1.9(h) 2A.1.24	For the reasons set out in its submission KiwiRail supports the identification of rail as a qualifying matter.	Retain as notified.
2A.2.7	For the reasons set out in its submission KiwiRail supports recognition of potential reverse sensitivity effects when noise sensitive activities locate close to existing activities such as railway lines.	Retain as notified.
2.3.2.X 2A.3.4X	KiwiRail seeks the inclusion of a new policy into the zones adjoining the rail corridor to ensure the interface between urban development is appropriately managed. This is appropriate to ensure the setback rules give effects to the objectives and policies of the District Plan. In the alternative, KiwiRail seeks that the existing objectives and policies be amended to provide appropriate policy direction to manage the safety of the rail corridor and the communities who live nearby.	<u>Require activities adjacent to regionally significant network utilities to be setback a safe distance in order to ensure the ongoing safe and efficient operation of those utilities and the communities who live adjacent to them.</u>
2A.3.4.9	For the reasons set out in its submission KiwiRail supports recognition of potential reverse sensitivity effects when noise sensitive activities locate close to existing activities such as railway lines.	Retain as notified.
2.4.2.X	KiwiRail seeks a new permitted activity rule requiring buildings and structures to be setback 5m from a boundary with a rail corridor be added to the setback rules for the Residential Zone.	<u>Buildings and structures must be set back a minimum of 5 metres from the rail corridor.</u>
Matters of Discretion	KiwiRail seeks a new matter of discretion be added to the Residential Zone for activities that do not comply with the new permitted activity rule requiring buildings and structures to be	<u>X. 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>



Rule	Relief sought	Amendment (Plan Change 26 text in <u>black underline</u> and strikethrough and KiwiRail's proposed changes shown in <u>red underline</u> and strikethrough)
	setback at least 5m from the rail corridor.	
2A.4.1.4(a)(vii)	For the reasons set out in this submission KiwiRail supports discretionary activity status for non-compliance with the performance standard for noise insulation and noise sensitive activities. KiwiRail seeks that the provision be amended to also include reference to the vibration performance standard proposed below.	Amend to include reference to the vibration standard proposed below.
<u>2A.4.2.6</u>	KiwiRail seeks a new permitted activity rule requiring buildings and structures to be setback 5m from a boundary with a rail corridor be added to the setback rules for the Medium Density Residential Zone.	<p><u>2A.4.2.6 The minimum building setback depth listed above is modified in the following locations:</u></p> <p><u>(a) Along boundaries adjoining a state highway, a setback of 7.5 metres is required;</u></p> <p><u>(b) On sites adjoining a road where the Character Street policy overlay area applies, a front yard setback of 6 metres is required;</u></p> <p><u>(c) On sites adjoining a reserve, a setback of 4 metres is required along the boundary adjoining the reserve;</u></p> <p><u>(d) On sites adjoining the Te Awa Cycleway, a setback of 5 metres is required along the boundary of the site adjoining the cycleway;</u></p> <p><u>(e) On sites adjoining arterial roads, a setback of 4 metres is required along the boundary adjoining the arterial road; and</u></p> <p><u>(f) On sites adjoining a Significant Natural Area (SNA), setback of 20 metres is required along the boundary of the SNA.</u></p> <p><u>(g) Buildings and structures must be set back a minimum of 5 metres from the rail corridor.</u></p>
2A.4.2.6 Matters of Discretion	KiwiRail seeks the matters of discretion in the Medium Density Residential Zone be amended to provide for activities that do not comply with the new permitted activity rule requiring buildings and structures to be setback at least 5m from the rail corridor. KiwiRail otherwise supports the matters of discretion.	<p><u>Activities that fail to comply with Rules 2A.4.2.4 to 2A.4.2.6 will require a resource consent for a restricted discretionary activity with the discretion being restricted over:</u></p> <ul style="list-style-type: none"> • <u>Building location, bulk and design; and</u> • <u>Visual and aural privacy; and</u> • <u>Reverse sensitivity effects; and</u> • <u>Outlook for adjoining neighbours; and</u> • <u>Effects on existing trees; and</u> • <u>Landscaping; and</u> • <u>Vehicle access to the rear of the site; and</u>



Rule	Relief sought	Amendment (Plan Change 26 text in <u>black underline</u> and strikethrough and KiwiRail's proposed changes shown in <u>red underline</u> and strikethrough)
		<ul style="list-style-type: none"> • <u>Effects on the safe and efficient operation of the state highway network and railway corridor (including the ability to safely use, access and maintain buildings without requiring access on, above or over the rail corridor), where applicable; and</u> • <u>Consistency of front yard building setback and effects on established character along the identified Character Street, where applicable; and effects on the function and associated amenity values of the adjacent reserve, where applicable; and</u> • <u>Effects on the amenity values of the Te Awa Cycleway, where applicable.</u> <p><u>These matters will be considered in accordance with the assessment criteria in Section 21</u></p>
2.4.2.29	KiwiRail seeks amendment to the provision to ensure that the noise controls apply to 100m from the rail corridor and to include associated ventilation standards.	<p>Where a <u>new or altered</u> noise sensitive activity or is proposed to be located within 40<u>100m</u> of a railway track <u>corridor</u>, the building shall be insulated so that:</p> <p><u>(1) it achieves the following noise levels:</u></p> <p>(a) Inside bedrooms 35dBA LAeq (1hr)</p> <p>(b) Inside other habitable rooms 40dBA LAeq (1hr)</p> <p><u>(2) Is at least 50 metres from any railway network, and is designed so that a noise barrier completely blocks line-of-sight from all parts of doors and windows, to all points 3.8 metres above railway tracks.</u></p> <p><u>(3) The levels in the above table must be met based on an assumed level of 70 dB LAeq(1h) at a distance of 12m from the track and reduce at a rate of 3 dB per doubling of distance of up to 40m and 6 dB per doubling of distance beyond 40m.</u></p> <p><u>(4) Where windows are required to be closed to achieve the sound levels in the table above the room or space shall be designed, constructed and maintained to:</u></p> <ol style="list-style-type: none"> a. <u>Provide mechanical ventilation that satisfies clause G4 of the New Zealand Building Code and is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and</u> b. <u>Provide relief for equivalent volumes of spill air; and</u> c. <u>Provide cooling and heating that is controllable by the occupant and that can maintain the inside temperature of the room or space between 18OC and 25OC.</u>



Rule	Relief sought	Amendment (Plan Change 26 text in <u>black underline</u> and strikethrough and KiwiRail's proposed changes shown in <u>red underline</u> and strikethrough)
		<p><u>Ensure that where a ventilation or cooling system is used that it does not generate more than 35dBLAeq when measured 1m away from any grille or diffuser).</u></p>
2A.4.2.40	KiwiRail seeks amendment to the provision to ensure that the noise controls apply to 100m from the rail corridor and to include associated ventilation standards.	<p>Where a <u>new or altered</u> noise sensitive activity or is proposed to be located within 40<u>100m</u> of a railway track <u>corridor</u>, the building shall be insulated so that:</p> <p><u>(1) it achieves the following noise levels:</u></p> <p><u>(a) Inside bedrooms 35dBA LAeq (1hr)</u></p> <p><u>(b) Inside other habitable rooms 40dBA LAeq (1hr)</u></p> <p><u>(2) Is at least 50 metres from any railway network, and is designed so that a noise barrier completely blocks line-of-sight from all parts of doors and windows, to all points 3.8 metres above railway tracks.</u></p> <p><u>(3) The levels in the above table must be met based on an assumed level of 70 dB LAeq(1h) at a distance of 12m from the track and reduce at a rate of 3 dB per doubling of distance of up to 40m and 6 dB per doubling of distance beyond 40m.</u></p> <p><u>(4) Where windows are required to be closed to achieve the sound levels in the table above the room or space shall be designed, constructed and maintained to:</u></p> <p><u>a. Provide mechanical ventilation that satisfies clause G4 of the New Zealand Building Code and is adjustable by the occupant to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour; and</u></p> <p><u>b. Provide relief for equivalent volumes of spill air; and</u></p> <p><u>c. Provide cooling and heating that is controllable by the occupant and that can maintain the inside temperature of the room or space between 180C and 250C.</u></p> <p><u>d. Ensure that where a ventilation or cooling system is used that it does not generate more than 35dBLAeq when measured 1m away from any grille or diffuser).</u></p>
2.4.2.X and 2A.4.2.X– Permitted activity rule for indoor railway vibration	KiwiRail seeks that vibration controls be included to apply to sensitive uses within 60m of the legal boundary of any railway boundary.	<p><u>2.4.2.X and 2A.4.2.X Indoor railway vibration</u></p> <p><u>1. Any new buildings or alterations to existing buildings containing a noise sensitive activity, within 60 metres of the</u></p>



Rule	Relief sought	Amendment (Plan Change 26 text in <u>black underline</u> and strikethrough and KiwiRail's proposed changes shown in <u>red underline</u> and strikethrough)
	<p>Consistent with non-compliance with the noise insulation performance standard, KiwiRail seeks that non compliance with the proposed permitted activity rule be assessed as a discretionary activity.</p>	<p><u>boundary of any railway network, must be protected from vibration arising from the nearby rail corridor.</u></p> <p><u>2. Compliance with standard 1 above shall be achieved by a report submitted to the council demonstrating compliance with the following matters:</u></p> <p><u>(a) the new building or alteration or an existing building is designed, constructed and maintained to achieve rail vibration levels not exceeding 0.3 mm/s vw,95 or</u></p> <p><u>(b) the new building or alteration to an existing building is a single-storey framed residential building with:</u></p> <p style="padding-left: 40px;"><u>i. a constant level floor slab on a full-surface vibration isolation bearing with natural frequency not exceeding 10 Hz, installed in accordance with the supplier's instructions and recommendations; and</u></p> <p style="padding-left: 40px;"><u>ii. vibration isolation separating the sides of the floor slab from the ground; and</u></p> <p style="padding-left: 40px;"><u>iii. no rigid connections between the building and the ground.</u></p>
<p>21.1.2A.8(b) and (h) Setbacks</p>	<p>KiwiRail supports (h) which refers to the extent of reverse sensitivity effects. KiwiRail seeks that (b) also be amended to refer to rail.</p>	<p><u>(a) The extent to which the road boundary setback is appropriate in the location, particularly where located adjoining a Character Street.</u></p> <p><u>(b) The extent to which the road boundary and rail boundary setback affects the safe and efficient operation of the road and railway network.</u></p> <p><u>(c) The extent to which the development provides for the visual and aural privacy of occupants and neighbours.</u></p> <p><u>(d) The degree to which there is a loss of privacy, daylight, sunlight or outlook in adjacent sites.</u></p> <p><u>(e) Whether the building affects existing trees on the site.</u></p> <p><u>(f) The extent to which existing vegetation is retained and landscaping adds to the amenity of the development.</u></p> <p><u>(g) Whether the development will affect the perception of spaciousness on and between sites when viewed from the street.</u></p> <p><u>(h) Whether the proposed activity will have reverse sensitivity effects on adjacent activities or zones.</u></p> <p><u>(i) The extent to which the building precludes the ability to access the rear of the site or dwelling.</u></p> <p><u>(j) Whether the development will impact on the amenity or function of any adjacent reserve or the Te Awa cycleway.</u></p>

