

In the Environment Court of New Zealand
Christchurch Registry

I Mua I Te Kōti Taiao o Aotearoa
Ōtautahi Rohe

ENV-2018-CHC-252

Under the Resource Management Act 1991 (**RMA**)

In the matter of an appeal under clause 14(1) of the First Schedule of the RMA
in relation to the proposed Second Generation Dunedin City
District Plan

Between **KiwiRail Holdings Limited**

Appellant

And **Dunedin City Council**

Respondent

Consent memorandum – Transportation (Management of Rail)

22 September 2020

Respondent's solicitors:

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May it please the Court

- 1 This consent memorandum relates to the KiwiRail Holdings Limited (**KiwiRail**) appeal regarding provisions for the management of rail in the proposed Second Generation Dunedin City District Plan (**2GP** or **Plan**).
- 2 The KiwiRail appeal sought to:
 - (a) Provide for rail as an activity by amending a range of provisions including definitions of transportation activities, network utilities, network utility structures, and network utility structures – small scale, Policy 2.3.1.4, Policy 2.3.1.5, the introduction of Section 6 Transportation, Policy 6.2.1.1, and Rule 6.3.2.1 (DCC Reference numbers 229 and 400);
 - (b) Amend provisions to manage potential adverse effects on the safety and efficiency of the rail network from temporary events (DCC Reference number 229);
 - (c) Amend provisions to ensure appropriate management of all types of level crossing, not only those involving roads crossing the railway (DCC Reference number 230);
 - (d) Amend provisions to manage buildings and structures within 5m of the rail corridor, in the residential, commercial and mixed use, industrial and recreation zones (DCC Reference number 233); and
 - (e) Amend Policy 10.2.2.2 and Rule 10.3.3 to take a more enabling approach to rail infrastructure near the coast and water bodies (DCC Reference numbers 232 and 401).
- 3 Federated Farmers of New Zealand, Otago Regional Council, Royal Forest and Bird Protection Society of New Zealand Incorporated and Transpower New Zealand Limited are section 274 parties to this appeal.
- 4 The parties have agreed to the changes to the Plan set out in **Appendix A**.
- 5 The rationale for these changes, and the assessment in terms of section 32 of the RMA, is explained in an affidavit of Elizabeth Lightbourne, a policy planner at Dunedin City Council.
- 6 This is a full settlement of the appeal from KiwiRail; all parts of the appeal are resolved via the changes to the Plan set out in **Appendix A**. On the basis that the changes in **Appendix A** are approved by the Court, KiwiRail will no longer pursue appeal points 400 and 401 on Policy 2.3.1.4, the definitions of network utilities, network utility structures, and network utility

structures – small scale, and Policy 10.2.2.2. No changes are proposed to these provisions as part of the resolution of the KiwiRail appeal.

- 7 The agreed changes shown in **Appendix A** include:
- (a) Amendments to strategic direction provisions to better describe the methods used in the Plan to manage rail (includes amendments to Policy 2.2.6.1, Policy 2.3.1.5, Objective 2.7.2, and Policy 2.7.2.1, and consequential amendments to Policy 2.6.1.4 and Policy 2.6.2.1);
 - (b) Amendments to a range of Plan provisions to provide for the operation, repair and maintenance of the rail network as a type of transportation activity and to provide for rail sidings as a type of industry activity (includes amendments to the ‘transportation activities category’ table, the definition of ‘industry’, the definition of ‘transportation activities’, and the definition of ‘travel modes’, the addition of a new definition of ‘operation, repair and maintenance of the rail network’, amendment to the introduction to Section 6 and Policy 6.2.1.1, addition of new Rule 6.3.2.X, addition of cross-reference to noise and light spill performance standards to Rule 6.3.2, and amendments to Rule 9.3.5 Light Spill and Rule 9.3.6 Noise so that these standards apply to the operation, repair and maintenance of the rail network, with exemptions);
 - (c) Addition of a new method (performance standard) to manage the use of uncontrolled level crossings for access to temporary events (includes amendments to strategic policies 2.3.1.5 and 2.7.2.1 to add references to new method, amendment to Policy 4.2.1.1, amendment to Rule 4.3.2 activity status table for temporary activities, addition of new notification rule 4.4.1, addition of new performance standard 4.5.X, amendments to assessment rules 4.7.2.3 and 4.7.2.4, and addition of new assessment rule 4.7.2.X);
 - (d) Amendments to provisions related to the management of visibility at level crossings (includes amendments to the definition of ‘level crossing’, Rule 6.6.3.10, Figure 6B.18 in Appendix 6B, Policy 6.2.4.6 and assessment rules 6.10.5.7 and 6.12.3.2, and the addition of advice note 6.6.3A.6);
 - (e) Addition of a new method (performance standard) requiring buildings and structures to be set back from the designated rail corridor (includes addition of new definition of ‘designated rail corridor’, amendments to strategic policies 2.3.1.5 and 2.7.2.1 to add references to new method, amendment to Rule 4.5.1, addition of new Policy 6.2.3.X, new notification rule 6.4.X, addition of new

performance standard 6.7.4 and linking rules 15.3.4.2.h, 15.6.13.X, 18.3.6.2.h, 18.6.16.X, 19.3.4.2.g, 19.6.9.X, 20.3.4.2.g, and 20.6.10.X in the residential, commercial and mixed use, industrial and recreation zone sections, addition of new assessment rule 6.10.6.X and linking assessment rules 15.10.4.X, 18.9.4.X, 19.9.4.X and 20.9.4.X); and

(f) Amendments to provisions to take a more enabling approach to earthworks ancillary to the 'operation, repair and maintenance of the rail network', and to causeways near the coast and water bodies (includes amendments to Rule 8A.5.1.1, Rule 8A.5.4 and Rule 10.3.3).

8 There is also a supporting affidavit of Dr Anna Louise Johnson, the City Development Manager at Dunedin City Council, that considers alignment with, and impact of, any changes on the strategic directions objectives and policies and the drafting of the proposed amendments to ensure alignment with the 2GP Style Guide. Dr Johnson considers that the amendments have been drafted to be in keeping with the 2GP Style Guide.

Orders sought

9 The parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the RMA, including Part 2, and request:

(a) That the amendments shown in strikethrough and underline in **Appendix A** are made; and

(b) That the appeal be otherwise dismissed.

10 The parties agree that costs should lie where they fall and accordingly no order of costs is sought.

Dated this 22nd day of September 2020



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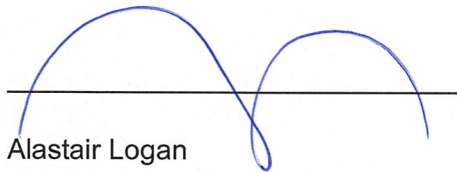
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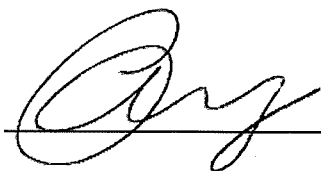
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Appendix A

Amendments to provisions

Section 1.3 Activities managed by this Plan (Nested Tables)

1.3.1 City-wide activities

Transportation Activities Category

Activities	Sub-Activities
Operation, repair and maintenance of the roading network	
<u>Operation, repair and maintenance of the rail network {KiwiRail 229}</u>	
New roads or additions or alterations to existing roads	
....	

Section 1.4 Definitions

Designated Rail Corridor

Land that is designated for railway purposes. {KiwiRail 233}

Industry

The use of land and buildings for any of the following:

- manufacturing, assembly, processing, storage, repair, maintenance, and packing of goods and materials, including machinery or vehicles
- transport facilities including distribution centres, collection points, courier depots and bus depots (except where passengers are picked up or dropped off)
- depots for the storage and dispatch of vehicles, equipment, and/or materials, and the administration and dispatch of workers using these in the field
- laboratory or factory-based research
- waste management facilities including refuse transfer and recycling stations
- property and equipment maintenance services
- vehicle repair and testing stations; and

- wholesale.

For the sake of clarity, this definition includes:

- any ancillary offices and staff facilities;
- the use of rail sidings as part of industry; and
- the generation of energy from the combustion of biomass waste that is the by-product of industry.

This definition excludes:

- bakeries ancillary to food and beverage retail...
- activities otherwise defined as working from home; ~~and~~
- direct 'customer facing' retail sales, which is provided for under the definition of retail and included in 19.3.3 activity status table as 'retail ancillary to industry'; and
- activities otherwise defined as operation, repair and maintenance of the rail network. {KiwiRail 229}

Level Crossing

Any place where a railway line crosses a road, driveway or vehicle track on the same level. **{KiwiRail 230}**

Operation, repair and maintenance of the rail network

The use of the railway for the operation of trains and the maintenance and minor upgrade of rail undertaken within land designated for railway purposes.

For the sake of clarity this includes:

- re-sleepering, re-railing, re-ballasting;
- grouting or repairs to the tunnel linings or rock faces;
- laying of new communications cables, power cables, installing signalling equipment or associated upgrades;
- routine maintenance of the track and rail structure, including in tunnels such as rail grinding, tamping, aligning the track and ballast cleaning;
- replacement of existing equipment such as signal boxes;
- installation of safety related signage and signals; and
- installation of bells and lights and/or half arm barriers at level crossings. {KiwiRail 229}

Transportation Activities

The category of activities that consists of:

- operation, repair and maintenance of the roading network
- operation, repair and maintenance of the rail network {KiwiRail 229}
- new roads or additions or alterations to existing roads
- passenger transportation hubs; and
- heliports

Travel Modes

Travel modes include but are not limited to the following:

- walking
- cycling
- private motor vehicles (e.g. cars, motorcycles)
- rail {KiwiRail 229}
- public transport services (e.g. buses)
- helicopters
- freight moving (e.g. trucks); and
- horse-riding.

Section 2 Strategic Directions

Policy 2.2.6.1

Protect people from noise, light or offensive emissions that may create adverse effects on health or well-being through rules that:

- a. encourage heavier industrial activities into industrial zones, which have lenient noise limits and do not allow residential or other noise sensitive activities in these zones;
- b. require adequate separation distances between noise sensitive activities and activities that may generate excessive noise in the rural zones;
- c. require acoustic insulation of buildings containing noise sensitive activities in mixed use environments and near to railway lines, state highways and airports {KiwiRail 229}
- d. ...

Policy 2.3.1.5

Identify key transportation-routes, and protect the safety and efficiency of these ~~roads~~ routes from inappropriate subdivision or development through: {KiwiRail 229}

- a. rules that control the location and design of access points; ~~and~~
- b. rules that require minimum on-site car parking and loading requirements;
- c. rules that require a minimum setback for forestry, shelterbelts and small woodlots from higher order roads and the designated rail corridor {KiwiRail 229};
- d. rules that require acoustic insulation for noise sensitive activities in identified areas {KiwiRail 229};
- e. rules that require minimum separation distance of vehicle crossings from level crossings; {KiwiRail 229}
- f. rules that require a minimum setback for buildings and structures from the designated rail corridor; and {KiwiRail 233}

g. rules that manage access to temporary events via uncontrolled level crossings. {KiwiRail 229}

Objective 2.7.2: Efficient transportation

The multi-modal land transport network, including connections between land, air and sea transport networks operates safely and efficiently ~~for all road users.~~ {KiwiRail 229}

Policy 2.6.1.4

Note, depending on the outcome of Rural Residential Strategic – Wyber (376) appeal (which may be resolved via the deletion of paraphrasing of Objective 2.7.2 from Policy 2.6.1.4), there may be a need to make a consequential amendment to Policy 2.6.1.4, to amend the paraphrasing of Objective 2.7.2 to reflect the above change.

Policy 2.6.2.1

Amend paraphrasing of Objective 2.7.2 in Policy 2.6.2.1 to reflect the above change (being the deletion of "for all road users" from Objective 2.7.2).

Policy 2.7.2.1

Support the safe and efficient operation of the multi-modal land transport network through rules that:

- a. provide for transportation activities;
- b. manage the location, scale and design of high trip generators;
- c. manage the location, number and design of vehicle accesses;
- d. require on-site vehicle loading where vehicle loading on-street could compromise the safety and efficiency of the transport network;
- e. require on-site car parking where necessary to enable adequate accessibility and to avoid or adequately mitigate adverse effects on the safety and efficiency of the transport network;
- f. manage the design of parking, loading and access areas; ~~and~~
- g. require minimum separation distance of vehicle crossings from level crossings;
- h. require a minimum setback for forestry, shelterbelts and small woodlots from higher order roads and the designated rail corridor; {KiwiRail 229}
- i. require clear sightlines where roads, driveways and vehicle tracks cross an operational rail network via a level crossing; {KiwiRail 229}
- j. require a minimum setback for buildings and structures from the designated rail corridor; and {KiwiRail 233}
- k. manage access to temporary events via uncontrolled level crossings. {KiwiRail 229}

Section 4 Temporary Activities

Policy 4.2.1.1

Require temporary activities to be designed and operated to minimise, as far as practicable, adverse effects on:

- a. the amenity of surrounding properties; ~~and~~
- b. people's health and safety; and
- c. the safety and efficiency of the transport network. {KiwiRail 229}

4.3.2 Activity status table – temporary activities

1.	Performance standards that apply to all temporary activities		a. Development standards b. Light spill
	Activity	Activity status	Performance standards
1.		...	
9.	Temporary events – small scale	P	a. Maximum Duration, Frequency, and Site Restoration b. Hours of operation c. Noise d. <u>Access</u> {Kiwirail 229}
10.	Temporary events – large scale	RD	a. Maximum Duration, Frequency, and Site Restoration b. Hours of operation c. Noise d. <u>Access</u> {Kiwirail 229}

Rule 4.4 Notification

1. With respect to resource consent applications for the following activities, Kiwirail (or relevant authority) will be considered an affected person in accordance with section 95E of the RMA where its written approval is not provided:
 1. contravention of the access performance standard (Rule 4.5.X). {KiwiRail 229}

- X. ~~Activities~~ All other activities {KiwiRail 229} are subject to the normal tests for notification in accordance with sections 95A-95G of the RMA.

Rule 4.5.1

1. Any temporary building or structure, or earthworks or site development activity associated with temporary activities must meet the maximum height, height in relation to boundaries, setbacks, hazard exclusion areas, vegetation clearance standards, and earthworks performance standards of the zone in which they are located, except:
 - a. temporary signs
 - b. setbacks from coast and water bodies, provided the building or structure is set back from the coast or water bodies a minimum of 5m; ~~and~~
 - c. any temporary building or structure associated with construction are exempt from meeting performance standards for maximum height, height in relation to boundary, and boundary setbacks provided they are erected for no more than 90 days; and
 - d. any structure associated with mobile trading or military exercises is exempt from meeting the performance standard for setback from designated rail corridor. {KiwiRail 229}

Rule 4.5.X Access

1. Temporary events that generate more than 100 vehicle movements per day must not rely solely on an uncontrolled level crossing for access.
2. Activities that contravene this performance standard are restricted discretionary activities. {Kiwirail 229}

4.7.2 Assessment of all performance standards contraventions			
Performance standard		Matters of discretion	Guidance on the assessment of resource consents
3.	Hours of operation	...	<i>Relevant objectives and policies:</i> i. Objective 4.2.1 ii. Temporary activities are designed and operated in a

			way that minimises, as far as practicable, effects on: 1. the amenity of surrounding properties; and 2. people's health and safety (Policy 4.2.1.1.a & b). ...
4.	Maximum duration, frequency, and site restoration	...	<i>Relevant objectives and policies:</i> i. Objective 4.2.1 ii. Temporary activities are designed and operated in a way that minimises, as far as practicable, effects on: 1. the amenity of surrounding properties; and 2. people's health and safety (Policy 4.2.1.1.a & b). ...
X.	<u>Access {KiwiRail 229}</u>	<u>a. Effects on the safety and efficiency of the transport network {KiwiRail 229}</u>	<i><u>Relevant objectives and policies:</u></i> i. <u>Objective 4.2.1</u> ii. <u>Temporary activities are designed and operated to minimise, as far as practicable, adverse effects on the safety and efficiency of the transport network (Policy 4.2.1.1.c) {KiwiRail 229}</u>

Section 6 Transportation Changes

Section 6.1 Transportation - Introduction

This section of the Plan manages other key elements of the transport network, including the operation and development of roads, and the establishment of passenger transportation hubs and heliports. ~~Railways are principally managed via designations.~~

This section also manages the effects of activities on the functioning of the transport network. Provisions are intended to encourage the accessibility of land use activities by a range of travel modes (including car, walking, cycling, rail and public transport), and to ensure that activities are located and designed in a way that facilitates the safe and efficient operation of the transport network. These provisions are linked to performance standards located in management and major facility zone sections, including minimum car parking and minimum vehicle loading requirements, and design standards for parking and loading areas and vehicle access.

Rail forms an integral part of Dunedin's transport network. Rail infrastructure including lines is provided for and managed through designations as well as various provisions within the Plan that enable the operation, repair and maintenance of the rail network. The Plan also uses performance standards to ensure that activities adjacent to the railway corridor are designed, located and maintained in such a way as to avoid adverse effects on the safe and efficient operation of the rail network. These standards include requirements for forestry and shelterbelts as well as buildings and structures to be set back from the rail network to ensure the safe and efficient operation of the railway and maintain people's health and safety and a requirement for acoustic insulation for noise sensitive activities near to the railway line to protect people from noise from the railway. {KiwiRail 229}

Policy 6.2.1.1

Enable the operation, repair and maintenance of the roading network and the operation, repair and maintenance of the rail network. {KiwiRail 229}

Policy 6.2.3.X

Require new buildings, new structures, and additions and alterations to be set back an adequate distance from the designated rail corridor to minimise, as far as practicable, the risk of objects or people crossing over or onto the rail corridor as a result of use or maintenance of the building or structure. {KiwiRail 233}

Policy 6.2.4.6

Require sufficient visibility to be available:

- a. at vehicle crossings, to minimise, as far as practicable, the likelihood of unsafe vehicle manoeuvres; and
- b. where a road, driveway or vehicle track crosses an operational rail network via a level crossing, to maintain the safety of road and rail users. **{KiwiRail 230}**

6.3.2 Activity status of transportation activities

<u>Transportation Activity</u>		Activity status	Performance Standards
1.	Operation, repair and maintenance of the roading network	P	a. Design and location – road signs
<u>X.</u>	<u>Operation, repair and maintenance of the rail network {KiwiRail 229}</u>	<u>P</u>	<u>a. Noise {KiwiRail 229}</u> <u>b. Light spill {KiwiRail 229}</u>
2.	New roads or additions or alterations to existing roads	RD	
3.	New roads or additions or alterations to existing roads where part of an approved subdivision consent	RD	a. Design and location – road signs b. Setback from scheduled tree
4.	Passenger transportation hubs	D	
5.	Heliports	D	

Rule 6.4 Notification

1. The NZ Transport Agency will be considered an affected person in accordance with section 95B of the RMA where its written approval is not provided with respect to the following applications for resource consent:
 1. high trip generators on state highways;
 2. any new vehicle accesses onto state highways; and
 3. a subdivision that proposes to have access onto a state highway.
- x. The relevant requiring authority for rail will be considered an affected person in accordance with section 95B of the RMA where its written

approval is not provided with respect to the following applications for resource consent:

y. contravention of the setback from the designated rail corridor performance standard (Rule 6.7.4). {KiwiRail 233}

2. With respect to resource consent applications for the following activities, Manawhenua will be considered an affected person in accordance with s95B of the RMA where their written approval is not provided:

1. all restricted discretionary activities that list 'effect on cultural values of Manawhenua' as a matter for discretion; and
2. discretionary and non-complying activities in a **wāhi tūpuna mapped area** where the activity is identified as a threat to the **wāhi tūpuna mapped area** in Appendix A4.

3. All other activities are subject to the normal tests for notification in accordance with sections 95A-95G of the RMA.

Rule 6.6.3.10 Sightlines to level crossings

- a. ~~Vehicle accesses~~ Driveways, vehicle tracks and roads that cross an operational rail network via a level crossing must maintain clear sightlines with the sight line triangles shown in Appendix 6B, Figure 6B.18. {KiwiRail 230}
- b. Activities that contravene this performance standard are restricted discretionary activities.

Note 6.6.3A – General Advice

...

6. Under Section 73 of the Railways Act 2005, permission must be obtained from KiwiRail Holdings Limited (or relevant authority) to allow access across the rail network. All level crossings, new and existing, require a current and valid Deed of Grant to be in place to allow access across the rail corridor. Early consultation with KiwiRail should be undertaken for any subdivision or development proposals seeking access across a railway. {KiwiRail 230}

Rule 6.7.4 Setback from Designated Rail Corridor

1. In the residential, commercial and mixed use, industrial and recreation zones, new buildings, new structures, and additions and alterations must

be set back a minimum of 4m from the boundary of the designated rail corridor, unless the railway track is underground. {KiwiRail 233}

2. Except that this standard does not apply to:

- a. buildings or structures that are less than 10m² in area and under 2m in height;
- b. fences;
- c. network utility operation as defined in section 166 of the RMA;
- d. signs attached flat to the façade of buildings and structures;
- e. decks that are 1m or less above ground level; or
- f. activities within 4m of the boundary of the designated rail corridor in the following locations:
 1. the eastern boundary of the site at 382 South Road (Sec 2 SO 23278), Dunedin
 2. the north-western boundary of the site at 378 South Road (Part Lot 6 Deeds 67), Dunedin
 3. the eastern boundary of the site at 5 Strathallan Street (Crown Land Block LXXIII SO 14451), Dunedin
 4. the western boundary of the site at 1 Paterson Road (Lot 1 DP 403630) and the eastern boundary of the site at 2 Paterson Road (Part Lot 2 Deeds 319), Wingatui
 5. the eastern boundary of the site at 266 Gladstone Road North (Lot 1 DP 24334), and the western boundary of the site at 270 Gladstone Road North (Sec 106 Block SO 19326 East Taieri SD)
 6. the western boundary of the site at 714 Kaikorai Valley Road (Lot 1 DP 24411), Burnside
 7. the northern boundaries of the sites at 11 and 12 Catherine Street, (Lot 3 DP 2963 & Lot 2 DP 1408)) Caversham
 8. the western boundary of the site at 7 Samuel Street (Part Lot 10 Block VI Deeds 128) and the western and south eastern boundaries of the site at 6 Neville Street (Lot 1 DP 21976), South Dunedin
 9. the north-eastern boundaries of the sites at 2, 4 and 6 Gill Street (Sec 7 Block IX SO 14312, Sec 8 Block IX SO 14312 and Sec 9 Block IX SO 14312), Waikouaiti; and
 10. any boundary of the Hillside Depot designation (D423). {KiwiRail 233}

3. Activities that contravene this performance standard are restricted discretionary activities. {KiwiRail 233}

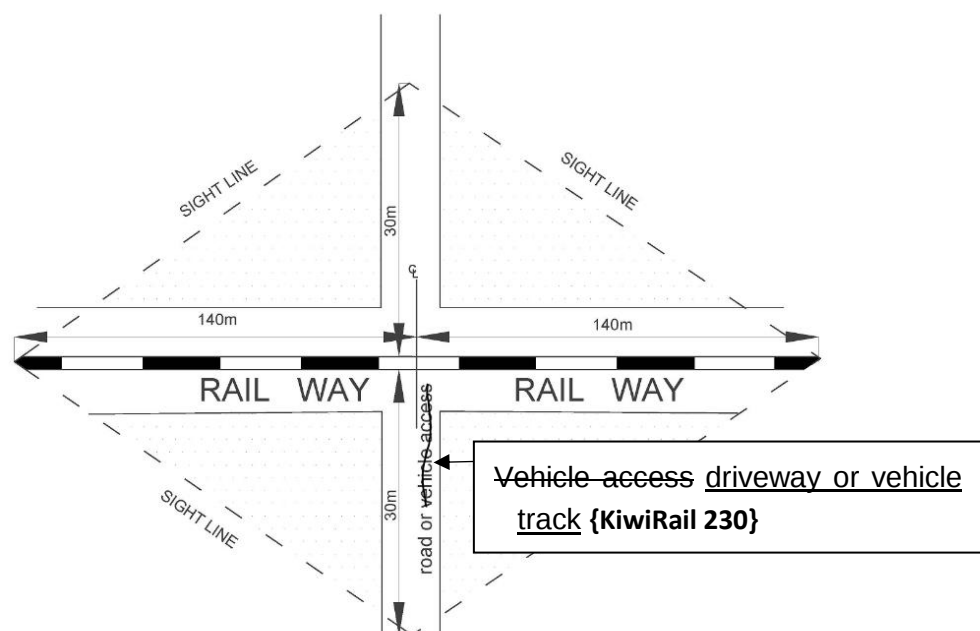
Rule 6.10.5 Assessment of parking, loading and access standards performance standards contraventions			
Performance Standard		Matters of discretion	Guidance on the assessment of resource consents
7.	Vehicle access design and location Sightlines to level crossings (Rule 6.6.3.10)	a. Effects on the safety and efficiency of the transport network	<i>Relevant objectives and policies:</i> - Objective 6.2.4 - Sufficient visibility is available: - Where a vehicle access driveway, vehicle track or road crosses an operational rail network via a level crossing to maintain the safety of road and rail users (Policy 6.2.4.6.b) {KiwiRail 230}

6.10.6 Assessment of general performance standards contraventions			
Performance standard		Matters of discretion	Guidance on the assessment of resource consents
X.	<u>Setback from designated rail corridor</u> {KiwiRail 233}	<u>a. Effects on the safety and efficiency of the transport network</u> {KiwiRail 233}	<u>Relevant objectives and policies:</u> <u>Objective 6.2.3</u> <u>New buildings, new structures and additions and alterations are set back an adequate distance from the designated rail corridor to minimise, as far as practicable, the risk of objects or people crossing over or onto the rail corridor as a result of use or maintenance of the building or structure</u>

			(Policy 6.2.3.X) {KiwiRail 233}
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Rule 6.12.3 Assessment of discretionary transportation activities		
Activity		Guidance on the assessment of resource consents
2.	New roads or additions or alterations to existing roads	<i>Relevant objectives and policies:</i> a. Objective 6.2.1 and 6.2.4 b...d e. Sufficient visibility is available where a vehicle access <u>driveway, vehicle track</u> or road crosses an operational rail network via a level crossing, to maintain the safety of the road and rail users (Policy 6.2.4.6.b). {KiwiRail 230} <i>General assessment guidance</i> f-g... h. Council will require new roads, <u>driveways or vehicle tracks</u> that cross an operational rail network via a level crossing to maintain clear sightlines within the sight line triangles....

Figure 6B.18, Appendix 6B



Section 8A Earthworks

Rule 8A.5.1.1 General

The following earthworks are always considered earthworks - small scale:

- a. post holes for the erection of fences;
- b. post holes for permitted or approved buildings or signs;
- c. driving of piles for building foundations;
- d. earthworks in the Port Zone;
- e. earthworks in the rural or rural residential zones, outside flood hazard overlay zones, associated with burying material infected by unwanted organisms as declared by the Ministry for Primary Industries' Chief Technical Officer or an emergency declared by the Minister for Primary Industries under the Biosecurity Act 1993;
- f. earthworks subject to an approved building consent, except in the rural or rural residential zones or where they are located more than 1.8m from the building;
- g. earthworks for the erection of new fences or the construction of walking tracks or vehicle tracks, where the fence or track is associated with a permitted land use or city-wide activity, provided that the earthworks:
 - i. do not result in a change in finished ground level that exceeds 1m; and
 - ii. do not exceed 2m in width if located in an ASBV or ONF, ONCC, HNCC or NCC overlay zone, or 3m in width outside these areas.
- h. earthworks ancillary to the operation, repair and maintenance of the roading network;
- x. earthworks ancillary to the operation, repair and maintenance of the rail network; {KiwiRail 232}
- i. earthworks ancillary to forestry; and
- j. earthworks ancillary to the operation, repair, minor upgrading and maintenance of existing network utilities.

Rule 8A.5.4

1. Earthworks over 600mm in height or depth must be set back from: property boundaries, foundations of buildings, structures greater than 10m² footprint, and the top or toe of any cliff, the following minimum distances:
 - a. Earthworks not supported by retaining walls:
 - i. a distance at least equal to the maximum height of the fill, as measured from the toe of the fill (see Figure 8A.5.4A);
 - ii. a distance at least equal to 1.5 times the maximum depth of the cut, plus 300mm, as measured from the toe of the cut (see Figure 8A.5.4A); and
 - iii. 300mm, as measured from the crest of any cut (see Figure 8A.5.4A).
 - b. Retaining walls supporting a cut or fill must be set back a distance at least equal to the height of the retaining walls (see Figure 8A.5.4B), except:
 - i. retaining walls supporting a cut that have been granted building consent are exempt from this standard.
 - c. Earthworks ancillary to network utility activities, earthworks ancillary to the operation, repair and maintenance of the roading network, earthworks ancillary to the operation, repair and maintenance of the rail network and earthworks ancillary to forestry are exempt from the setback from property boundary, buildings, structures and cliffs performance standard. **{KiwiRail 229}**
2. Activities that contravene this performance standard are restricted discretionary activities.

Section 9 Public Health and Safety

Rule 9.3.5.1 Light Spill

- c. This standard does not apply to light spill from the headlights of motor vehicles or trains, or from street lighting. **{KiwiRail 229}**

Rule 9.3.6 Noise

Land use activities, public amenity activities, network utility activities, ~~and~~ temporary activities and the operation, repair and maintenance of the rail network must not exceed the following noise emission limits: **{KiwiRail 229}**

...

7. Except, the following activities are exempt from this standard:
- a. noise generated by port activities in the Port Zone (see Rule 30.5.4);
 - b. noise generated by aircraft within the Dunedin International Airport Zone;
 - c. noise generated by events in the Stadium Zone (see Rule 32.5.6);
 - d. noise generated by aircraft within the Taieri Aerodrome Zone between the hours of 7.00am - 10.00pm;
 - e. noise generated as part of normal residential activities, other than from building utilities;
 - f. noise associated with early childhood education and schools between the hours of 8.00am - 6.00pm;
 - g. sport and recreation not involving the use of motor vehicles, amplified sound, or firearms;
 - h. ~~vehicles operating on public roads or trains on rail lines (including at railway yards, railway sidings or stations and level crossing warning devices);~~
 - x. operation of the rail network (including trains on rail lines at railway yards, railway sidings or stations, and level crossing warning devices);
 - y. repair and maintenance of the rail network that complies with the limits for construction noise in Rule 4.5.4.1.a
 - i. ...

Section 10 Natural Environment

Rule 10.3.3 Setback from Coast and Water Bodies

In all zones, other than the Harbourside Edge Zone, St Clair Neighbourhood Destination Centre, Dunedin Hospital Zone, Dunedin International Airport Zone, Mercy Hospital Zone, Moana Pool Zone, Otago Museum Zone, Port Zone and Wakari Hospital Zone, new buildings and structures, additions and alterations, earthworks - large scale, storage and use of hazardous substances, and network utility activities must be set back a minimum of:

1. 20m from mean high water springs (MHWS); and
2. 20m from any wetland identified in Appendix A1.2, Schedule of Areas of Significant Biodiversity Value (ASBV);
3. 20m from any water body with a clearly defined bed of at least 3m in width in the rural zones;
4. 5m from any water body with a clearly defined bed less than 3m in width in the rural zones; and
5. 5m from any water body with a clearly defined bed in all other zones;

6. Except, the following are exempt from this standard:
 - a. natural hazard mitigation activities;
 - b. hydro generators - small scale in the rural and industrial zones;
 - c. network utility poles and masts for the purposes of supporting lines across a water body;
 - d. network utility structures - small scale in existing roads that comply with Rule 5.5.2;
 - e. the operation, repair, minor upgrading and maintenance of existing network utilities;
 - f. river flow recording facilities;
 - g. navigational aids;
 - h. maimai and whitebait stands on the surface of water;
 - i. post and wire fences;
 - j. bridges, causeways, culverts and fords; **{KiwiRail 232}**
 - k. jetties, boat ramps, and wharves;
 - l. signs;
 - m. structures with a maximum footprint of 10m² associated with port activities in the Industrial Port Zone;
 - n. bird hides, viewing structures and viewing platforms with a maximum footprint of 10m² and maximum height of 2m, and boardwalks;
 - o. earthworks associated with the operation, repair and maintenance of the existing roading network;
 - p. irrigation pipes of any size, and other irrigation or stock water structures such as intake structures with a maximum footprint of 2m²;
 - q. earthworks required for any of the activities in (a) - (p) above; ...
7. For the purposes of this standard, setbacks will be measured from the bank of the water body at the point of its annual fullest flow or annual highest level without overtopping its bank (see Figure 10.3.3A and Figure 10.3.3B).
8. Activities that contravene this performance standard are restricted discretionary activities.

Section 15 Residential Zones

Rule 15.3.4 Development Activity Status Table

2.	Performance standards that apply to all buildings and structures activities	a. Boundary setbacks b. Building length c. Fire fighting d. Height in relation to boundary e. Maximum height
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		f. Setback from coast and water bodies g. Setback from National Grid h. <u>Setback from designated rail corridor {KiwiRail 233}</u>
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15.6.13.X Setback from designated rail corridor

New buildings, new structures and additions and alterations must comply with Rule 6.7.4. {KiwiRail 233}

15.10.4 Assessment of development performance standard contraventions			
Performance Standard		Matters of discretion	Guidance on the assessment of resource consents
X.	<u>Setback from designated rail corridor</u>	a. <u>Effects on the safety and efficiency of the transport network</u>	<u>See Rule 6.10.6 {KiwiRail 233}</u>

Section 18 Commercial and Mixed Use Zones

Rule 18.3.6 Development Activity Status Table

2.	Performance standards that apply to all buildings and structures activities	a. Fire fighting b. Height in relation to boundary c. Height d. Number, location and design of ancillary signs e. Setback from coast and water bodies f. Setback from National Grid g. Building colour h. <u>Setback from designated rail corridor {KiwiRail 233}</u>
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18.6.16.X Setback from designated rail corridor

New buildings, new structures and additions and alterations must comply with Rule 6.7.4. {KiwiRail 233}

18.9.4 Assessment of development performance standard contraventions			
Performance Standard		Matters of discretion	Guidance on the assessment of resource consents
X.	<u>Setback from designated rail corridor</u>	<u>a. Effects on the safety and efficiency of the transport network</u>	<u>See Rule 6.10.6 {KiwiRail 233}</u>

Section 19 Industrial Zones

Rule 19.3.4 Development Activity Status Table

2.	Performance standards that apply to all buildings and structures activities	a. Boundary setbacks b. Maximum Height c. Height in relation to boundary d. Number, location and design of ancillary signs e. Setback from coast and water bodies f. Setback from National Grid g. <u>Setback from designated rail corridor {KiwiRail 233}</u>
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19.6.9.X Setback from designated rail corridor

New buildings, new structures and additions and alterations must comply with Rule 6.7.4. {KiwiRail 233}

19.9.4 Assessment of development performance standard contraventions			
Performance Standard		Matters of discretion	Guidance on the assessment of resource consents
X.	<u>Setback from designated rail corridor</u>	<u>a. Effects on the safety and efficiency of the transport network</u>	<u>See Rule 6.10.6 {KiwiRail 233}</u>

Section 20 Recreation Zone

Rule 20.3.4 Development Activity Status Table

2.	Performance standards that apply to all buildings and structures activities	a. Boundary setbacks b. Height in relation to boundary c. Maximum Height d. Number, location and design of ancillary signs e. Setback from coast and water bodies f. Setback from National Grid g. <u>Setback from designated rail corridor</u>{KiwiRail 233}
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20.6.10.X Setback from designated rail corridor

New buildings, new structures and additions and alterations must comply with Rule 6.7.4. {KiwiRail 233}

20.9.4 Assessment of development performance standard contraventions			
Performance Standard		Matters of discretion	Guidance on the assessment of resource consents
X.	<u>Setback from designated rail corridor</u>	<u>a. Effects on the safety and efficiency of the transport network</u>	<u>See Rule 6.10.6 {KiwiRail 233}</u>

Amendments to numbering

Make any consequential amendments to the numbering of Plan provisions, as required.