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Committee Council  
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## Rail Safety Brief

### 1. Purpose

To outline the rail safety roles and responsibilities of the various parties involved in the delivery of Metlink rail services in the Wellington Region.

### 2. The decision-making process and significance

No decision is being sought in this report.

Officers consider this report to be a briefing on how the rail safety responsibilities are allocated on the Wellington area network in order that Councillors understand their obligations with regard to Greater Wellington Regional Council (GWRC) contracting rail services and Greater Wellington Rail Limited (GWRL) owning rolling stock and infrastructure.

### 3. Introduction

A number of organisations have a role to play in the delivery of the Metlink rail services in the Wellington region, as set out below:

KiwiRail railway infrastructure owner (tracks etc); access provider; network controller; rail operator; maintenance provider; railway premises owner; railway premises manager

GWRC railway premises owner; funder and procurer of rail services

GWRL rail vehicle owner; rail operator (by virtue of providing rail vehicles for KiwiRail to operate); funder and procurer of rail vehicle maintenance; railway premises owner; railway premises manager

NZTA rail regulator

TAIC rail incident investigator

This paper sets out the various rail safety responsibilities of the above organisations. The focus is on public safety and so any additional safety obligations under the Health and Safety in Employment Act 1992 are not covered by this report.

#### 4. Rail safety obligations

Management of operational safety on the Wellington rail network is described by a defined framework. The legislative framework for operating rail vehicles and providing the rail network is provided in the Railways Act 2005 (the Act), which is administered by the New Zealand Transport Agency (NZTA - the Rail Regulator). A full description of the legal position is contained in the legal advice appended as **Attachment 1** to this report.

The Act imposes safety obligations on all rail participants, including GWRC and GWRL. All participants must take all practicable steps to ensure that none of the rail activities for which it is responsible causes or is likely to cause death or serious injury to individuals.

The Act requires that the providers of rail networks (Access Providers) and rail vehicle operators (Operators) must hold a Rail License. In order to obtain a Rail License, access providers and operators must provide the Rail Regulator with a Safety Case describing how safe operations will be managed. The NZTA reviews the Safety Case and will issue a Rail License provided the Safety Case meets the requirements of the Act.

In the Wellington region, KiwiRail holds a Rail License both as the rail access provider and as the operator of the passenger trains under a contract with GWRC.

While the Act requires GWRL, as the supplier of rail vehicles, to hold a Rail Licence, NZTA have granted GWRL an exemption (**Attachment 2** to this report) on the basis that the safety requirements for maintenance of the trains, operating the trains and access to the network are covered under KiwiRail's safety case. GWRL's exemption specifically states [bold added]:

*This exemption is granted on the understanding that you have an agreement with KiwiRail that all safety related activities for the Wellington metro rail operations are covered by the licenses and approved safety cases of that organisation. **This means that GWRC and GWRL should play no part, in a safety management sense, in the activities associated with the provision of Wellington metro rail services unless all of those activities are carried out fully in compliance with the approved safety cases (and underlying safety systems) of KiwiRail and with its agreement.***

The NZTA conducts an annual safety assessment of KiwiRail's safety case.

Major operating incidents are investigated by the Transport Accident Investigation Commission (TAIC). Recommendations from such investigations are made to the NZTA who, although not bound by the recommendations, are responsible for their implementation.

## **5. Functions and duties of the NZTA as rail regulator**

NZTA is the rail regulator and their responsibilities are fulfilled by the Rail Regulation Section.

The role of the rail regulator includes exercising control of the approval process for safety cases, variations to safety cases and the granting of licenses. They appoint safety assessors, who may be employed in-house or contracted.

The regulator monitors rail participant compliance with approved safety cases through a regular safety assessment process and, where necessary, conducts special safety assessments of the whole or part of a rail participant's operations. They can formally notify operators of requirements for improvements to be made, and will monitor the completion of any remedial action required after an assessment.

When required, the regulator can request and then approve a safety improvement plan.

The regulator can control compliance with approved safety cases through the imposition of conditions, suspensions, immobilization of rail vehicles or railway infrastructure, or the revocation of licenses.

The regulator must notify TAIC of all accidents and significant incidents as soon as practicable after their occurrence.

## **6. Functions and duties of the Transport Accident Investigation Commission (TAIC) as investigator**

The principal purpose of the New Zealand Transport Accident Investigation Commission (the Commission) is “to determine the circumstances and causes of accidents and incidents with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person” (Transport Accident Investigation Commission Act 1990).

The Commission will hold an inquiry into a marine, rail or air accident or incident when it believes lessons or recommendations to help improve transport safety might result. The Commission is usually notified of an event which it may decide to investigate by a transport sector regulator (Civil Aviation Authority, Maritime New Zealand, or NZTA) or, sometimes, by an equivalent investigation body overseas, or by the vehicle operator.

Emergency services manage the initial reaction to an accident under protocols for events requiring multi-agency response. They then move to support the Commission's control of the site which is assumed as soon as an inquiry is opened.

The Commission and its investigators have significant powers relating to entry of premises and to the gathering and control of evidence. Strong legal protections exist to recognise the public interest in finding out what happened in a transport accident or incident in order to improve safety, and to make it

easier for people and organisations to contribute freely and frankly to a Commission inquiry.

An inquiry will usually lead to the publication of a report by the Commission which sets out the facts of an event, analyses them, lists the contributing factors, identifies the safety lessons, notes safety actions taken since, and makes recommendations that might help to reduce the chances of a similar event happening again.

Every inquiry has the potential to be systemic and wide-ranging - looking beyond the immediate people, vehicle and environment of the event to consider the likes of human factors, organisational, cultural and other issues within the training, regulatory, traffic control, vehicle design and maintenance, operator, training, industry and other systems or organisations involved.

## **7. KiwiRail's role as Rail Licence holder**

The following section is taken from KiwiRail's Safety Case (Approved by NZTA April 2013). A full copy is available on the KiwiRail website.

### **7.1 Requirement for a Safety Case**

The Safety Case is written under the requirements of the Railways Act 2005, especially sections 29 and 30. This Act has process safety in mind, but as well covers personal safety, though it is focused on preventing serious injuries or worse. As well, KiwiRail is like any other employer subject to the Health and Safety in Employment Act 1992 which seeks to prevent all harm, however minor. The focus of the Health and Safety in Employment Act is more on personal safety.

KiwiRail is no longer the sole participant in the rail industry in NZ. It is part of a wider industry involving a number of operators and contractors. To reflect this, a number of common safety processes and high level standards are included in the National Rail System Standards (NRSSs), which have been developed through industry consultation. They apply to all in the rail industry, including KiwiRail, and are fundamental to the way KiwiRail manages safety. They are administered by KiwiRail and are published on their website. They are referred to in the Safety Case and are part of KiwiRail's safety system.

GWRC purchases four services from KiwiRail; rail passenger, workshop maintenance, operator access and locomotive provision.

### **7.2 KiwiRail as a Licence Holder**

The Railways Act sets out 2 main rail industry roles which require a licence, the rail operator and the access provider. KiwiRail carries out both roles and so the Safety Case covers both.

An **access provider** is a person who controls the use of a railway line by rail operators. KiwiRail carries out this role in a neutral way both for its own operations and in providing access to its tracks for other operators to run trains. Examples include Veolia in Auckland, the Taieri Gorge Railway, and heritage operators. For these operators it also provides track, train control and signalling

systems, and sometimes staff. However the responsibility for the safety aspects of operating the trains themselves rests with the other operator, not KiwiRail.

These third parties mainly access the Controlled Network, and KiwiRail performs its role towards them as Network Controller under the NRSSs, providing train control and signalling services to control track occupation and train movement.

Its other role is as a **rail operator** itself, that is, it runs its own passenger and freight trains over its tracks, and maintains its infrastructure. The train control and signalling system is also used by these trains. The passenger trains include those operated by KiwiRail on behalf of someone else, such as Greater Wellington's suburban trains. For all these trains the complete responsibility for running is with KiwiRail.

**The primary duty under the Railways Act is to take all practicable steps to make sure KiwiRail's rail activities do not cause death or serious injury to individuals.** This means that as well as employees, the Act covers (and this Safety Case covers) passengers, agents and contractors, volunteers, and members of the public impacted by rail activities, on the rail corridor, regardless of whether they are authorised to be there.

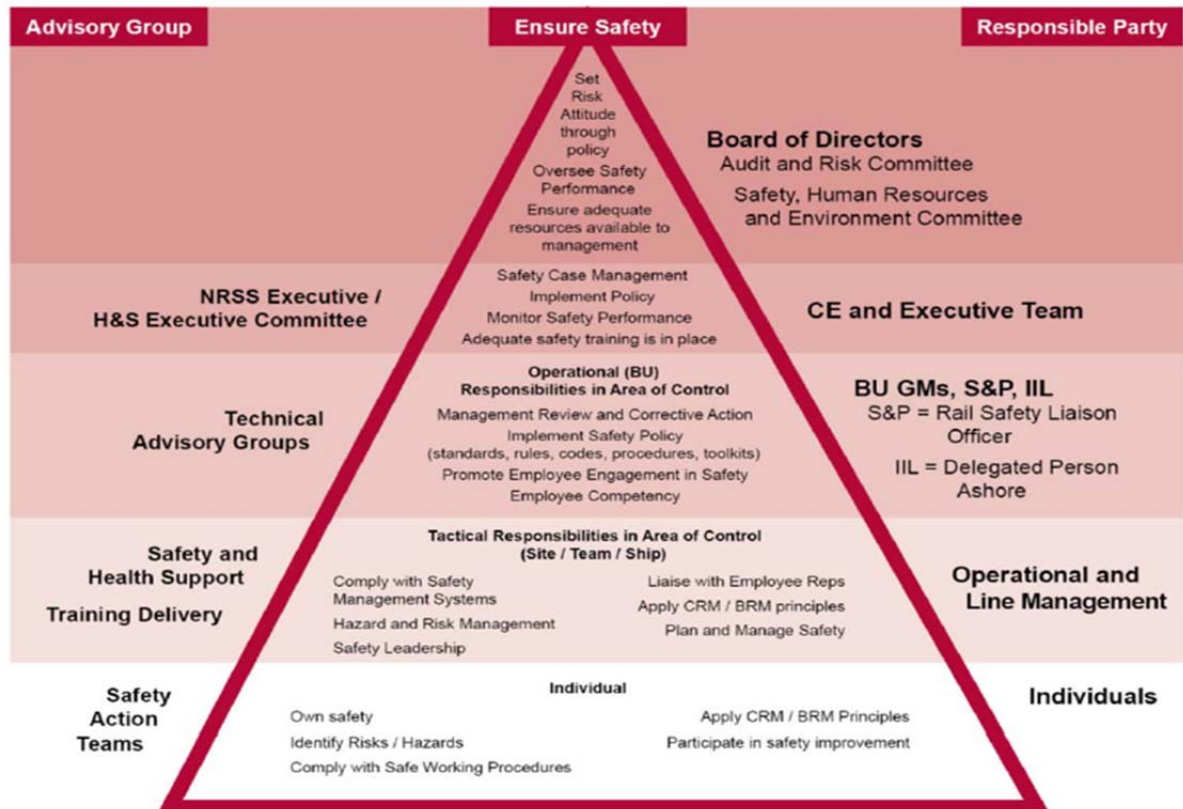
### **7.3 KiwiRail Safety Governance**

The KiwiRail Health & Safety Strategy is approved with the Board of Directors who reviews all significant incidents and safety indices on a monthly basis. The H&S Strategy as demonstrated in the following diagram, is comprehensive and covers process safety and operating risk and mitigation and programs to reduce harm to our people and customers.

## KiwiRail Health and Safety Strategy



The following diagram is from the Safety Case and shows safety responsibilities in KiwiRail.



Notes: References to IIL do not apply to this Safety Case  
 CRM = Crew Resource Management  
 BRM = Bridge Resource Management

## **7.4 Audit**

Internal and external HSE auditing is done throughout KiwiRail to see how effectively it complies with its safety obligations. NRSS/9 (Audit) provides a broad outline for auditing standards in the rail industry including internal audit requirements. This standard specifies levels of auditing from level 1 routine inspection/audit to level 3 Special Audits. NRSS/7 (Rail Operations Interoperability), section 17, sets out further requirements.

KiwiRail has an internal audit plan (including any special audits) that complies with this standard, managed by the National Standards and Risk Manager. The plan includes auditing of KiwiRail activities to achieve and maintain compliance with the standards set internally and by the ACC partnership program. Internal audits may point to issues arising that need fixing (“corrective actions”). These are managed in the following way:

- Level 1 audit corrective actions are managed locally
- Level 2 and 3 audit and special audit corrective actions are given to the managers responsible for the operation or process, overseen by the corporate safety team.

## **7.5 External Audit / Safety Assessments**

Under the Act NZTA can carry out safety assessments (equivalent to external audits) to assess KiwiRail’s safety compliance in its rail activities, and to assure NZTA that they will continue to be run safely, or to decide what action KiwiRail has to take so that NZTA can gain that assurance.

The NZTA conducts a formal safety assessment of KiwiRail annually. This may be followed by a “closure verification assessment” to check KiwiRail’s responses and how effective its actions have been in fixing issues from the annual safety assessment. These actions are managed by the accountable KiwiRail business unit.

KiwiRail uses the incident reporting information system (IRIS) to record, allocate and track the status of the actions it has to take as a result of the external assessment.

Regular safety meetings are held with NZTA to discuss performance and current issues. As well there are informal meetings between the GM Safety and People and NZTA’s Manager Rail Systems.

## **8. Tranz Metro’s role in the rail system**

Tranz Metro is engaged under contract by GWRC to operate suburban metro rail services for the region – including providing adequately trained staff to drive the train, maintain passenger safety and collect revenue. This role requires meeting service level standards and complying with the rules and regulations governing rail and business in New Zealand.

Tranz Metro is covered by KiwiRail’s Safety Case.

In the monthly Tranz Metro Performance report to GWRC, KiwiRail is required to provide information relating to notifiable occurrences.

*Contractually “Notifiable Occurrences” means:*

- *The death of any person where that death is associated with the Rail Services or Infrastructure*
- *A serious injury to any person requiring emergency medical treatment or admittance to hospital where that injury is associated with the Rail Services or Infrastructure*
- *Any serious attack upon a Rail Services passenger or staff member that is attended or investigated by the New Zealand Police*
- *Any derailment of any rolling stock while in revenue service or which results in damage to property in excess of \$100,000*
- *Any significant unplanned delays to the provision of the rail services resulting in emergency implementation of contingency arrangements*
- *Any threat or action that is deemed an act of terrorism by the New Zealand Police*
- *Any collision between any Rail Vehicle and any person, other vehicle, infrastructure or any other obstruction of the Rail Services or Infrastructure which results in significant damage to any property*
- *Any fire, explosion or any other occurrence resulting in significant property damage.*

In the current financial year the following have been notified to GWRC:

| Month     | Occurrence   |
|-----------|--|
| July      | Struck person on track at Wingate resulting in a fatality          |
| July      | Struck person on track at Ava Bridge resulting in a fatality       |
| September | Struck person on track at Solway resulting in a fatality           |
| January   | Struck person on track at Porirua-Paremate resulting in a fatality |
| February  | Vehicle ran into side of train in Wairarapa resulting in fatality  |
| April     | Train collided with stop buffer at Melling                         |
| April     | Train manager assaulted  |
| May       | Mainline derailment at Kaiwharawhara                               |



## 9. Role of GWRC councillors and GWRL directors

The legal responsibilities of GWRC councillors and GWRL directors are set out in the legal opinion included as **Attachment 1**. The opinion states that if a body corporate is convicted of an offence against the Act, every director of that body corporate will also be found to have committed the offence and be liable to the same penalty as the body corporate if it is proved that:

- The act of omission constituting the offence took place with the director's express or implied authority
- The director failed to take all practicable steps to prevent or stop the act, or to remedy the omission.

The opinion goes on to say that councillors or GWRC will be treated as directors of GWRC because they fall within the Act's definition of "director". Therefore, in the event that GWRC or GWRL were held to be in breach of their obligations under the Act (either through breach of a direct safety obligation or resulting from a consequential liability), GWRC's councillors or GWRL's directors could potentially be found liable for those failures. Any such liability would need to be established through a formal prosecution of those individuals, in which each of the elements described above would need to be proved to the criminal standard of evidence (i.e. beyond reasonable doubt).

The legal opinion also includes advice on good practice, essentially saying that GWRC and GWRL should:

- continue to exercise careful monitoring and supervision of the rail activities, but that this does not mean they should seek to get involved in the development of KiwiRail's safety case, or its rail services or maintenance operations
- ensure that KiwiRail and other contractors comply with their safety and incident reporting obligations as outlined in the various contracts, that such reports are carefully analysed, and that any actual or potential failings on the part of the contractor are followed up with them promptly.

The monitoring and supervision should be with a view to GWRC and GWRL satisfying themselves that the agencies with whom they contract for the provision of metro rail services have the appropriate people, systems, and equipment in place to satisfy GWRC/GWRL's safety obligations and those parties own safety obligations under the Act.

While there is a high level of monitoring and reporting from KiwiRail to GWRC, officers are currently working with KiwiRail to see what improvements can be made. For example, KiwiRail are going to provide GWRC with the results of the NZTA audit of the KiwiRail safety case as it applies to the Wellington network, and we will provide this information to Councillors and GWRL directors. We will also provide information on any outstanding TAIC recommendations as they apply to the Wellington network. Officers are also

working to enhance the current reporting of safety issues so that Councillors and GWRL directors are able to satisfy their good practice governance obligations relating to the safety aspects of the passenger rail operations.

**10. Communication**

No communications are necessary.

**11. Recommendations**

*That the Council:*

1. **Receives the report.**
2. **Notes the content of the report.**

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**Attachment 1:** Kensington Swan opinion

**Attachment 2:** Rail safety case exemption letter