



Rail and Maritime Transport Union

Submission on Dunedin Railways Ltd Proposal: 'Mothball Operation and Restructure of Business' dated 20 April 2020

Summary

Dunedin Railways Ltd ('DRL') has failed to meaningfully consult on its so-called proposal to cease train services and mothball its assets with the loss of around 70 jobs.

DRL has failed to follow Dunedin City Council's ('DCC') instruction on '*...mothball[ing] the business with a view to exploring feasibility of a small number of alternative options for the company's assets.*'

Rather DRL has tabled a proposal so lacking in detail as to be meaningless. This raises real questions regarding the competence and fitness of DRL's board and management.

DRL has a recent record of failing to engage in adequate community consultation.

The RMTU calls for:

1. The immediate dismissal of the current board and the appointment of a new board with staff representation;
2. Genuine and good faith engagement by DRL management with staff and their union to investigate alternative options for the future of DRL;
3. This must be a genuine process that considers the wider picture of DRL's valued contribution to Dunedin including, but not limited to ,adding to the city's tourist offering, delivering wider economic benefits, and remaining a part of the city's heritage.

Background

1. The Rail and Maritime Transport Union (“RMTU”) represents almost 50 workers at Dunedin Railways Ltd (“DRL”). These staff have between them, hundreds of years of accumulated service. The RMTU and its antecedent unions have been involved in rail in New Zealand for over 150 years and have represented staff at what was originally Taieri Gorge Railway since its establishment.
2. On 20th March, in the aftermath of the COVID19 pandemic and the imposition of border controls and lockdown restrictions by the New Zealand Government, DRL contacted the RMTU with a proposal to apply for the government wage subsidy subject to RMTU members agreeing to reduce their wages by 20%. That proposal was accepted and the wage subsidy subsequently applied for and received (see annex A).
3. On 6th April Dunedin City Council (‘DCC’) held an extraordinary meeting. The meeting considered a confidential report from Dunedin City Holdings Limited (DCHL) outlining the future of DRL and containing options for its operation. The reasons cited for confidentiality were the commercial sensitivity of the report (Annex B).
4. The report outlined three options for DCC to consider and recommended the first be adopted:
 - a. *Close the business (DCHL’s recommended option)*
 - b. *Mothball the business for ~18 months (or until tourism market recovers), with a view to re-opening train services on the Taieri Gorge line*
 - c. *Mothball the business with a view to exploring feasibility of a small number of alternative options for the company’s assets.*
5. In the event DCC passed a resolution to:
 - a) *Instruct Dunedin City Holdings Ltd (DCHL) to mothball Dunedin Railways Limited (DRL); and*
 - i) *Where possible, redeploy employees made redundant across the DCHL Group and elsewhere; acknowledging that*
 - ii) *DCC has no view on what a permanent outcome might look like; and*

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iii) Provide up to \$1.05m for the mothballing costs from July 2020 - December 2021, noting that any investment in future options would need to be subject to a separate business case and approval process.

b) Requests a report from DCHL, as soon as is practicable detailing [our emphasis]

i) Options for DRL's operating and governance structure in the interim; and

ii) An asset management schedule to protect current assets.

c) Requests, in time for Long Term Plan deliberations; an update report outlining the longer term options for DRL and its assets.

6. At no point before receiving the proposal around the wage subsidy on 20th March or the extraordinary council meeting on 6th April were DRL staff or the RMTU consulted on what was being considered regarding potential closure or mothballing and/or restructuring of the business.

7. This failed to achieve the statutory and contractual good faith obligations to consult

8. This is a wasted opportunity that disregards the wealth of experience and knowledge amongst the staff and their union that, had it been tapped, would have added considerable value to the deliberations that took place.

9. A proposal that is flimsy and ill thought out has been advanced which, should it be adopted, will entail significant job losses, risk to assets, and damage to Dunedin tourist industry. Opportunities for alternative uses of DRL and its assets are also endangered..

9. On 20th April the RMTU received a 'proposal' from DRL that outlining an intent, inter alia, to mothball and restructure the business

The Proposal to 'Mothball' and Restructure the Business

1. The proposal stated

'We propose to:

a) Cease all train services and place the business in a mothball position as soon as practical, for an undetermined period. However, during this time key capital assets will need to be maintained, until such a time the Board and Shareholders can determine a viable restart to our operations.

b) Disestablish 55 current roles

c) The CEO will be retained in an interim 'caretaker' role to plan and prepare the business for re-start, analyse any alternative modes of operation and undertake financial management. d) Establish new roles (a small team) specifically for maintaining the assets (Loco's, carriages and track etc.) and to manage the business during the mothball period... '

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For completeness, the full text of the proposal is attached at Annex C

2. The period set down by DRL for consultation was very short at only ten days, given discussions with DCHL and DCC had been occurring for some time prior to the release of the proposal to the RMTU.

3. In the event, the proposal was supplied to the RMTU on an embargoed basis early on 20th April. Before DRL disclosed it to staff it was announced in the media that day, quoting the Chair of DRL. Staff learned of the likelihood that they would lose their jobs through the media, not from their employer.

4. The RMTU subsequently wrote to DRL requesting that:

- a) The consultation period be extended
- b) More information be supplied, specifically details around the mothballing operation

And

- c) questioning the apparent predetermination of the decision proposed in the timeline (Annex D)

5. An extension of the consultation period was declined, some information regarding the detail of mothballing was released at midday on 24 April, and predetermination was denied.

6. The RMTU's position remains that genuine consultation has not occurred given that the three components of meaningful consultation are sufficient time and information for those being consulted to make comment and suggestions, and that the proposer considers these with an open mind. To date none of the above have been apparent in the manner in which DRL or its shareholder DCHL has approached this matter.

7. The mothballing proposal is flimsy. For example, there is no discussion of the tasks that will be required to maintain assets beyond a superficial list (Annex E). This document was put together by DRL management during the morning of 24th April i.e. after the original proposal was tabled. It is so light on detail to call into question just how serious DRL is in implementing a mothballing plan.

8. The RMTU is currently in discussions with KiwiRail regarding the future of the Scenic Journeys arm of their business, an operation that shares some similarities with DRL. It is accepted that whilst lockdown restrictions are in place tourist train travel will not occur. We have had detailed discussions regarding proposed mothballing of the rolling stock, the required staffing to do this and subsequently maintain the assets, none of which has occurred with DRL. Secondly, the RMTU is involved in discussions with KiwiRail regarding

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alternative employment and redeployment of Scenic Journeys staff and possible use of the assets in alternative operations. Again none of this has occurred with DRL or DCHL after COVID19 restrictions were put in place, nor did it occur prior to the DCC meeting on 6th April, nor prior the subsequent release of the mothballing and restructure proposal to the RMTU and staff on 20th April.

9. The most significant aspect of the proposal is what it does not include:
 - a) There is no discussion of alternative uses for DRL's rolling stock and assets three of which are mentioned but redacted in the DCHL Report and which '*could be explored within 3-4 months*' according to that report.
 - b) There is no discussion around retaining operating staff and reconfiguration of DRL or the potential reestablishment of train services once lockdown restrictions are lifted.
 - c) There is no discussion of the '*significant deferred maintenance required on the Taieri Gorge line*' which was shaping discussion of DRL's turnaround plan prior to COVID19. Specifically, according to the DCHL report '*the line from Wingatui to Middlemarch will require an estimated \$10 million over the next ten years (including \$3m in the short term) for repairs and upgrades of track, sleepers, bridges, tunnels, etc.*' The RMTU and the local community had already engaged with DRL around the assumptions and fallacies in the turnaround plan see: <https://www.odt.co.nz/regions/central-otago/kick-guts-middlemarch-train-trips-cut> and <https://www.odt.co.nz/news/dunedin/middlemarch-rail-excursions-face-financial-threat> It should be noted that DRL has a track record of failing to consult meaningfully.
 - d) Finally there is no discussion *exploring [the] feasibility ...of alternative options for the company's assets* as per DCC's instructions.
10. It appears that the DRL Board and DCHL have engaged in a classic piece of shock doctrine disaster capitalism to try and convince DCC to close DRL and, having had this rejected, have been forced back on one of the ill-thought out and superficial options that were put to councillors as 'strawmen' in order to bolster the case for closure.
11. Under the so-called proposal the skills and institutional knowledge of 67 staff will be lost and there is a real risk the assets will deteriorate further, rendering them useless. In our view, this is the intent all along. There is no evidence that DRL or DCHL is paying anything other than lip service to the fact, stated in its own report, that '*its shareholding in DRL is not a commercially driven investment, or one that is focussed on financial returns or dividends. DRL makes a valued contribution to Dunedin in other ways, including adding to the city's tourist offering, delivering economic benefit and as a part of the city's heritage.*'
12. Finally, and tellingly given the argument that DRL and DCHL have pre-determined this decision and the so-called consultation is a sham, the time for consideration from the deadline for submissions and promulgation of the final decision is less than 24 hours. Consultation closes on 30 April and, on confirmation of the proposal redundancy notices will be issued on 1 May with effect from 30 June. If nothing else this leaves no time to abide by

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the DCC instruction to *'redeploy employees made redundant across the DCHL Group and elsewhere'*.

13. The correct procedure, as per DRL's statutory and contractual obligations, in the event of jobs being disestablished is for redeployment and other options to be investigated first before the incumbent in a disestablished role is declared redundant and notice given. Failure to do this will leave DRL open to legal action by affected staff and the RMTU.

Alternative Options and Ways Forward

1. There are alternative options that require consideration before staff are lost and assets are 'mothballed'.
2. The DCHL Report contains three redacted options listed on page 12 at paragraph 53. Whilst these are redacted it is not difficult to imagine what these might include:
 - a) Reconfiguration of the business away from the overseas tourist and cruise ship market to a domestic tourist market including regional and local patronage.
 - b) Use of staff and rolling stock to provide local/regional commuter passenger services, for example between Port Chalmers and Mosgiel.
 - c) Sale or transfer of ownership of the Wingatui to Middlemarch line to KiwiRail and DRL to operate like other heritage rail concerns and pay a fee for track access whilst refocusing as per 1 and 2 above.
 - d) Establishment of long-distance passenger services between Dunedin and other cities on the main south line using existing staff and rolling stock.
3. Given that in its own proposal DRL does not envisage wholesale job losses taking effect until 30 June then there is clearly sufficient time to investigate alternative options as per the DCC's instruction on 6th April.
4. The above would follow DCC's *'Economic Encouragers Policy'* which includes *"...the ability to directly financially support initiatives in key sectors of the Dunedin economy that generate new business development or expand exiting business. This includes contributions to businesses that are undertaking specific, targeted opportunities to expand their market on an international, national or local basis in order to grow their business."*

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5. It is also within DRL's own mission statement viz: 'To safely and viably provide high quality visitor experiences developed from our core products of tourist and charter train services. To diversify and grow our business by seeking new visitor experience and rail opportunities'

6. Regarding the DCC's instruction around '*options for DRL's operating and governance structure in the interim*' the RMTU calls for the immediate dismissal of the current board and the appointment of a new board with staff representation. Further the RMTU calls for genuine engagement by DRL management with staff and their union to investigate alternative options for the future of DRL, with a view to meeting its objects not just as a commercial operation but as an integrated part of the fabric of the city's and region's infrastructure, in DCHL's own words, '*making a valued contribution to Dunedin... including adding to the city's tourist offering, delivering economic benefit and as a part of the city's heritage*'.