

**IN THE ENVIRONMENT COURT
WELLINGTON**

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**I MUA I TE KOOTI TAIAO O AOTEAROA
I TE WHANGANUI-Ā-TARA ROHE**

IN THE MATTER of the Resource Management Act 1991 ("**RMA**")

AND

IN THE MATTER of Clause 14(1) of Schedule 1 of the RMA

BETWEEN **KIWIRAIL HOLDINGS LIMITED**

Appellant

AND **WELLINGTON CITY COUNCIL**

Respondent

NOTICE OF APPEAL

20 MAY 2024

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To: The Registrar
The Environment Court
WELLINGTON

KIWIRAIL HOLDINGS LIMITED ("KiwiRail") appeals against parts of the decision of the Wellington City Council ("**Council**") on the proposed Wellington City District Plan ("**Proposed Plan**") ("**Decision**").

BACKGROUND AND DECISIONS APPEALED

1. KiwiRail made a submission on the Proposed Plan on 12 September 2022.¹ KiwiRail presented evidence and legal submissions in support of its submission.
2. KiwiRail is not a trade competitor for the purposes of section 308D of the RMA.
3. KiwiRail is a State-Owned Enterprise responsible for the management and operation of the national railway network. This includes managing railway infrastructure and land, as well as freight and passenger services within New Zealand. KiwiRail is also a Requiring Authority under section 167 of the RMA for land designated for railway purposes throughout New Zealand.
4. KiwiRail's rail network in the Wellington region plays an important role in the regional and national transport network. KiwiRail has an interest in protecting its ability to operate, maintain and upgrade these lines into the future, as well as seeking to ensure the safety and amenity of those parties occupying land adjacent to the rail corridor.

SCOPE OF APPEAL

5. The parts of the Decision being appealed are:
 - (a) use of the term "gross floor area" in the minor alteration or addition provisions of the Proposed Plan; and
 - (b) the setback distance along the railway corridor in the Mixed Use Zone, General Industrial Zone and Large Lot Residential Zone.

¹ Submission Number 408.

GENERAL REASONS FOR APPEAL

6. The Decision does not meet the relevant requirements of the RMA and is contrary to Part 2 of the RMA. The Decision:
- (a) will not promote the sustainable management of the natural and physical resources in the Wellington district, and is therefore contrary to or inconsistent with Part 2 and other provisions of the RMA;
 - (b) is inconsistent with other relevant planning documents, including the Wellington Regional Policy Statement and Wellington Natural Resources Plan;
 - (c) will not meet the reasonably foreseeable needs of future generations;
 - (d) will not enable the social, economic, and cultural wellbeing of the people of the Wellington district;
 - (e) does not avoid, remedy, or mitigate actual and potential adverse effects on the environment; and
 - (f) is not the most appropriate way to achieve the objectives of the Proposed Plan in terms of section 32 of the RMA.
7. In addition to the general reasons outlined above, KiwiRail appeals the Decision for the specific reasons set out below.

SPECIFIC REASONS FOR APPEAL

Noise

8. The Decision includes NOISE-S4 which uses "gross floor area" as a measurement for noise insulation in the context of any alterations or additions to habitable rooms.
9. The use of the term "gross floor area" in the minor alterations and additions Noise provision is unworkable. "Gross floor area" as defined in the Proposed Plan means the sum total of all floors of a building rather than relating to one room (which is the relevant space for the alterations / additions provision). These provisions should reference "floor area".
10. The Decision fails to take into account this inconsistency and the implications which may arise by providing an unworkable definition in the minor alterations and additions Noise provision.

Setback from Rail Corridor

11. KiwiRail's submission sought an increase in the minimum setback from the rail corridor for buildings and structures in all zones to 5 metres, with an associated matter of discretion. Activities that comply with this control are permitted, while activities that do not comply require resource consent as a restricted discretionary activity.
12. The Decision includes a setback distance of 1.5 metres from the rail corridor in the Mixed Use Zone, General Industrial Zone and Large Lot Residential Zone.
13. The Decision stated that a 5m setback for what it termed to be infrequent and/or intermittent maintenance activities was not an efficient way to manage relevant effects in this regard. The Independent Hearings Panel considered that 1.5m represented a more realistic and workable setback.
14. The Decision fails to consider the adverse safety effects arising from having an inadequate setback distance in the Mixed Use Zone, General Industrial Zone and Large Lot Residential Zone.
15. Setbacks are an important planning control which enable safe management of the interface between operations within the railway corridor and activities that may occur near the boundary of adjoining land.
16. A 5 metre setback is required as a minimum in these zones to ensure there is sufficient space for landowners and occupiers to access and maintain their buildings without needing to gain access to the rail corridor, which would pose significant safety risks.

RELIEF SOUGHT

17. KiwiRail seeks:
 - (a) amendment to the term "gross floor area" to "floor area" in NOISE-S4, and any other Noise provisions which relate to minor alterations or additions;
 - (b) amendment from a 1.5 metre building setback from the railway corridor to a 5 metre building setback from the railway corridor as a permitted activity standard in the Mixed Use Zone, General Industrial Zone and Large Lot Residential Zone; and

- (c) such alternative or consequential relief to address KiwiRail's concerns.

KIWIRAIL HOLDINGS LIMITED by its solicitors
and authorised agents Russell McVeagh:



Signature: A A Arthur-Young / K L Gunnell

Date: 20 May 2024

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TO: The Registrar of the Environment Court at Wellington.

AND TO: The Wellington City Council.

Advice to recipients of copy of notice of appeal*How to become a party to proceedings*

1. You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.
2. To become a party to the appeal, you must:
 - (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
3. Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.
4. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.