

**IN THE MATTER**

of the Resource  
Management Act 1991

**AND**

**IN THE MATTER**

of Submissions and Further  
Submissions on the  
Proposed Wellington City  
District Plan

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**Minute 52**

**KiwiRail Designation Issues**

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## Minute 52 – KiwiRail Designation Issues

1. The Stream 10 (Designations) hearing commenced on 15 July. The previous Friday (12 July) we received an application from counsel for KiwiRail Holdings Limited to defer hearing of the KiwiRail designation either to an exchange of submissions and evidence post hearing, or to the wrap-up hearing scheduled for November.
2. The reason for this application is an issue canvassed in the Section 42A Report for Stream 10 around the way in which the rail tunnels forming part of KiwiRail's network in Wellington City are recognised in the designation that KiwiRail seeks be rolled over, with modifications, from the ODP. In summary, the issue is whether the designation is limited to the underground strata within which the tunnels sit, or extends to include the overlying land. If the latter is the case, the designation potentially constrains the uses that might be made of that land on the surface. The ODP appears ambiguous on this point and thus it is unclear what the effect of KiwiRail's request to rollover the existing designation means in practice.
3. We discussed the issue with counsel for KiwiRail, Ms Arthur-Young and Ms Gunnell at the conclusion of the first day of the Stream 10 hearing. Their concern is that the issue is properly examined and that the resulting provisions are clear. Ms Arthur-Young emphasised, in particular, that some of the tunnels date back to 1885 and any historical research will inevitably take some time.
4. Council's position is that it accepts both that the issue was raised somewhat belatedly, and that it is desirable to examine it further, either through exchange of information and commentary after the Stream 10 hearing, or in the wrap-up hearing. No other submitters indicated an interest in the issue.
5. We accept both points made by counsel for KiwiRail in principle, and that we should accommodate KiwiRail's request for more time to address the issue. However, we believe that the need for extensive historical research has been overstated. From our vantage point, the issue we are interested in is the ambit of the existing ODP designation that KiwiRail seeks to roll over. That may be able to be determined from the documentation dating back to notification of what is now the ODP or, it may be necessary to go back to its

predecessor District Planning Schemes to see what KiwiRail's predecessors sought be designated (and which were subsequently rolled over). There are, however, a limited number of planning documents to be researched.

6. While we agree with counsel for KiwiRail that examination of the relevant property rights may assist, particularly if the Plan records do not resolve the matter, we do not consider that a full property audit is required for our purposes (although KiwiRail may well wish to undertake such an audit for its own purposes). We consider that research of one or two selected properties for each tunnel should be enough to provide whatever useful information can be gleaned from that source.
7. On this basis, we do not accept KiwiRail's request for a two month period within which to research and document the position. Rather, we invite KiwiRail to undertake whatever research it is able to do in the immediate future, and we direct that counsel for KiwiRail provide us with a status report of progress in clarifying the matter within two weeks of the conclusion of the Stream 10 hearing, that is to say on or before 30 July.
8. Depending on what progress has been made, we will make further directions at that point. If it emerges that either that the designation does not extend to the overlying land, or that it is unclear whether it does so, KiwiRail will need to make an election as to whether it seeks to modify the existing designation in order to clearly state that it applies to the overlying land. As we observed to counsel for KiwiRail, in that event, the justification for modification/expansion of the designation will come directly into focus, along with the question of possible conditions on the designation. It is likely that we will need both more information (e.g. as to the depth of the tunnels below residential zoned land) and commentary on the matter from KiwiRail. Our present intention would be to direct conferencing between the Reporting Officer, Ms Searle and Ms Grinlinton-Hancock, the planning witness for KiwiRail following receipt of such additional material.
9. We record our verbal advice to counsel, however, that deferral of the matter to the wrap-up hearing is, in our view, a last resort. As its name suggests, that hearing is intended to address issues that have inadvertently fallen between the cracks between hearing streams, or which raise issues across hearing streams, not to deal with new complex and substantive issues such

as this. The Panel's intention is therefore to take the matter as far as possible within the confines of the Stream 10 hearing process.

A handwritten signature in blue ink, consisting of a large, stylized 'T' followed by a series of horizontal strokes.

**Trevor Robinson**

Chair

For the Wellington City Proposed District Plan Hearings Panel

**Dated 17 July 2024**