

Before the Hearings Commissioners

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

In the matter of a submission by KiwiRail Holdings Limited (submitter 408 and FS72) on the Hearing Stream 2 Residential

and in the matter of Wellington City Proposed District Plan

Supplementary statement of evidence of Catherine Lynda Heppelthwaite for KiwiRail Holdings Limited regarding Wellington City Proposed District Plan Hearing Stream 2

Dated 14 April 2023

1 INTRODUCTION

- 1.0 My Primary Statement sets out my qualifications, commitment to comply with the Environment Court's Code of Conduct for Expert Witnesses (2023).
- 1.1 My Primary Statement describes KiwiRail's relief which includes:
- a. A new permitted activity standard requiring 5m yard setback from the rail (designation) boundary with associated matters of discretion for the HRZ, MRZ and LLRZ.
- 1.2 The Panel has issued Minute 17 which includes direction¹ that KiwiRail provide the following:
- a. the approximate length of rail frontage within the HRZ, MRZ and LLRZ;
 - b. the approximate range of distances between rail tracks and adjacent residential property boundaries within Wellington City; and
 - c. the setbacks to the rail corridor provided for in other recently finalised District Plans.
- 1.3 In addition, during the hearing, three additional items were raised and are included in this response to assist the Panel:
- a. PDP policy basis for the provisions sought by KiwiRail;
 - b. whether decks and eaves are exempt from meeting yard requirements; and
 - c. whether the plan (as notified) identified KiwiRail as an affected party.
- 1.4 This statement addresses items in 1.3 (a) to (c) with the memorandum of counsel on behalf of KiwiRail dated 14 April 2023 addressing items 1.2 (a) to (c).
- 1.5 I rely on my Primary Statement to address the statutory and higher order planning framework and the details of KiwiRail's submissions and further submissions.

¹ Minute 17: Stream 2, 12 April 2023, Paragraph 2.

2 POLICY BASIS OF SETBACK PROVISIONS

2.0 I have undertaken an analysis of the Proposed District Plan objective and policy framework in the context of KiwiRail proposed building setback controls² for the High Density, Medium Density and Large Lot Residential zones.

High and Medium Density Zone

2.1 The objective and policy framework (Framework) for the High and Medium Density zones is reasonably similar. Both zones have an objective (HRZ-O3 and MRZ-O3) which seeks healthy, safe and accessible living environments. This is supported by policies HRZ-P8(1) and MRZ-P8(1). For example:

*HRZ-O3 Healthy, safe and accessible living environments
The High Density Residential Zone provides healthy, safe and accessible living environments with attractive and safe streets.*

*HRZ-P8 Residential buildings and structures
Provide for a range of residential buildings and structures, including additions and alterations, that:*

1. Provide healthy, safe and accessible living environments;

[...]

5. Responds to the site context, particularly where it is located adjacent to a heritage building, heritage structure or heritage area, or character precinct.

2.2 Policy HRZ-P8(5) also enables buildings and structures to respond to site context.

2.3 Both the High and Medium Density zones contain a policies (HRZ-P4 and MRZ-P4) which promote application of medium density residential standards (**MDRS**) except where qualifying matters are relevant. These policies envisage that qualifying matters (such as rail designation setback) can modify MDRS.

*MRZ-P4 Medium density residential standards
Apply the medium density residential standards across the Medium Density Residential Zone except in circumstances where a qualifying matter is relevant (including matters of significance such as historic heritage and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga).*

² Proposed inclusion of a 5m setback from the rail designation boundary within HRZ-S4, MRZ-S4 and LLRZ-S6.

Other relevant Objectives and Policies

- 2.4 Other relevant objectives and policies that support the proposed setback as providing for the safe and efficient operation of the rail network include:

SCA-O5: The adverse effects of infrastructure are managed having regard to the economic, social, environmental and cultural benefits, and the technical and operational needs of infrastructure.

SCA-O6: Infrastructure operates efficiently and safely and is protected from incompatible development and activities that may create reverse sensitivity effects.

INF-O3: Adverse effects on infrastructure

Manage the adverse effects, including reverse sensitivity effects or subdivision use and development on the function and operation of infrastructure.

INF-O4 Infrastructure availability

Safe, effective and resilient infrastructure is available for, and integrated with, existing and planned subdivision, use and development.

INF-P1 Recognising and providing for infrastructure

Recognise the benefits of infrastructure by:

Enabling the safe, resilient, effective and efficient operation, maintenance, repair, minor upgrade or removal of existing infrastructure;

...

INF-P7 Reverse sensitivity

Manage the establishment or alteration of sensitive activities near existing lawfully established infrastructure, including by:

...

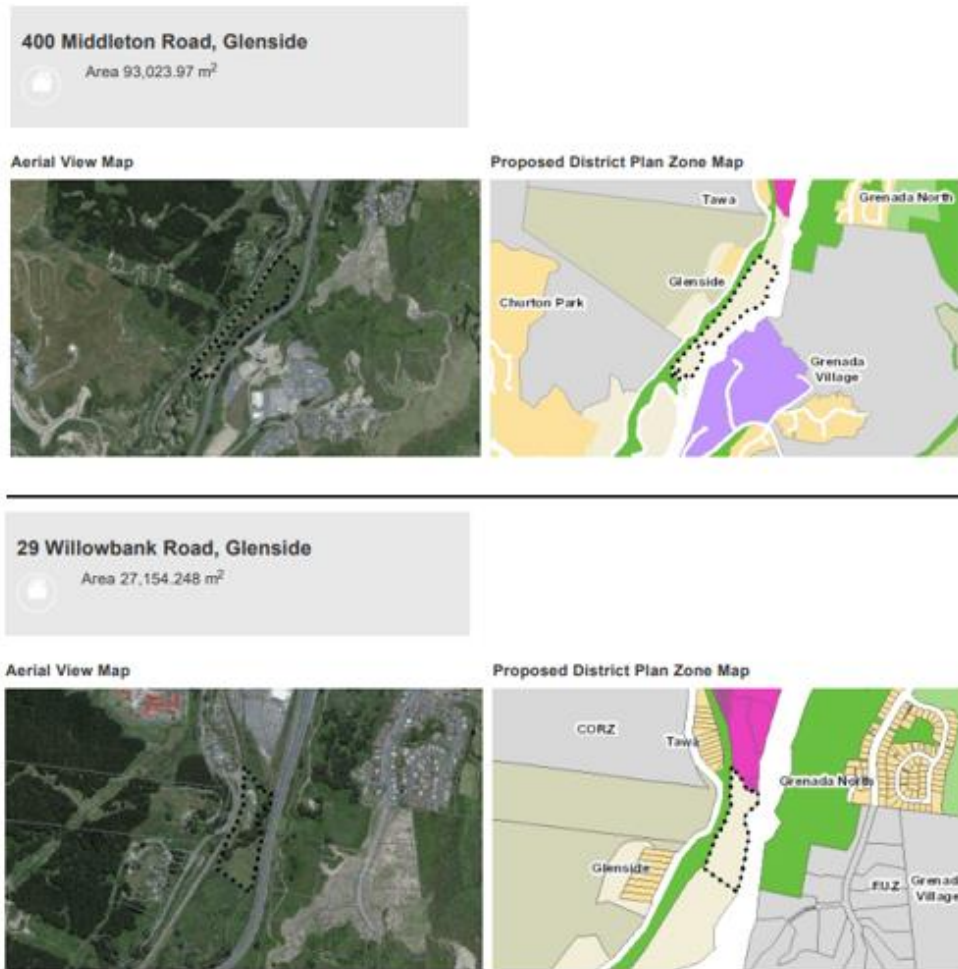
4. Managing the activities of others through set-backs and design controls where it is necessary to achieve appropriate protection of infrastructure.

- 2.5 Overall, I consider the policy framework does not require amendment to accommodate KiwiRail's proposed building setback.

Large Lot Residential Zone

- 2.6 The Large Lot Residential zone objective and policy framework focuses on lower building density (LLRZ-O2, LLRZ-P1 and LLRZ-P6), ensuring infrastructure servicing (LLRZ-P8) and otherwise provides direction on the type of activities anticipated (e.g. LLRZ-P7 – Educational facilities). The provision of a larger yard setback (i.e. the 5m rail designation boundary setback compared with the notified 3m setback) will support the low density building form and is not inconsistent or contrary to the existing framework.
- 2.7 I have reviewed the spatial extent of the LLRZ adjoining the rail designation, it very limited and affects two adjoining sites as illustrated in **Figure 1**. Noting the proposed provision is consistent with the existing objectives and policy framework (it will support a low density built environment) and would apply to a very limited area within the LLRZ, I do not propose policy amendments.

Figure 1: LLRZ Adjoining Rail Designation



2.8 If the Panel hold an alternative view, I provide the following policy wording which could be included in the LLRZ:

[LLRZ-P9 Rail Designation Boundary](#)
[Require activities adjacent to the rail designation boundary to be setback a safe distance in order to ensure the ongoing safe and efficient operation of the rail corridor and the communities who live adjacent to them.](#)

DECK AND EAVE EXEMPTION

2.9 I understand that Mr Patterson has/will be asked to clarify how boundary setback standard exemptions apply for the HDR, MDR and LLR zones in relation to decks and eaves. My interpretation of the provisions are that:

- a. HRZ-S4 allows the following decks or eaves to be constructed in a required building setback:

- d. *Uncovered decks and uncovered structures no more than 500mm in height above ground level;*
- e. *Eaves up to 600mm in width;*³

b. MRZ-S4 allows the following decks or eaves to be constructed in a required building setback:

- c. *Uncovered decks and uncovered structures no more than 1m in height above ground level; and*
- d. *Eaves up to 1m in width*⁴.

c. There are no deck or eave exemptions in LLZR-S6⁵.

2.10 This would enable a range of structures to be constructed within the proposed rail designation setback which may impact the ability to access buildings for maintenance. I would be happy to caucus this with Mr Patterson should he hold a different view.

3 AFFECTED PARTY

3.0 The Proposed Wellington District Plan contains the following in relation to notification for restricted discretionary, discretionary and non-complying activities⁶:

*The notification provisions are set out in sections 95A-95F of the RMA. The provisions of the Act require the Wellington City Council to consider a number of matters when making a notification decision. These are summarised below:
[...]*

When deciding whether any person is affected in relation to an activity for the purposes of section 95E of the Act, Wellington City Council will give specific consideration to the following entities with responsibility for any natural or physical resources which may be affected by the activity, including:

- *In relation to infrastructure, the network utility operator that owns or operates that infrastructure;*

[...]

- *In relation to a rule which addresses reverse sensitivity effects, the operator of the activity which is protected by the rule from such effects.*

³ Section 42A Report, Appendix A: High Density Residential Zone, HRZ-S4.

⁴ Section 42A Report, Appendix A: Medium Density Residential Zone, MRZ-S4.

⁵ Section 42A Report, Appendix A: Large Lot Residential Zone, LLR-S6.

⁶ Part 1, How the Plan Works, General Approach, Notification section.

3.1 While the provisions do not name KiwiRail, they do give very strong direction around who would be considered an affected party for the specified circumstances. Given this direction, I would be very surprised if, when assessing an application for non-compliance with the proposed rail designation boundary setback, KiwiRail was not considered to be an affected party.

Cath Heppelthwaite

14 April 2023