

BEFORE INDEPENDENT COMMISSIONERS

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

AND

IN THE MATTER a submission by KiwiRail Holdings Ltd ("**KiwiRail**")
(submitter 408) on Hearing Stream 7 – Rural and
Open Space, District Wide Matters, Special Purpose
Zones to the Wellington City Proposed District Plan
 ("**Proposed District Plan**")

**LEGAL SUBMISSIONS ON BEHALF OF KIWIRAIL HOLDINGS LIMITED
IN RELATION TO HEARING STREAM 7 TO THE WELLINGTON CITY
PROPOSED DISTRICT PLAN**

15 MARCH 2024

1. SUMMARY

- 1.1 KiwiRail is a State-Owned Enterprise responsible for the management and operation of the national railway network. Its role includes managing railway infrastructure and land, as well as freight and passenger services within New Zealand. This infrastructure is of regional and national significance.
- 1.2 KiwiRail is a requiring authority under the RMA and is responsible for designations for railway purposes throughout New Zealand, including the North Island Main Trunk line which passes through Wellington City.
- 1.3 KiwiRail supports urban development around transport nodes. However, such development must be planned and managed thoughtfully and prudently, with the safety and wellbeing of people and the success of the national rail network in mind.
- 1.4 KiwiRail has submitted on the Proposed District Plan to ensure the safe and efficient operation of the rail network by ensuring that development near the rail corridor is appropriately managed to minimise adverse effects on health and amenity of adjoining landowners and reverse sensitivity effects on KiwiRail's operations.
- 1.1 KiwiRail seeks that a 5 metre setback be included in the Proposed District Plan for buildings and structures from the rail corridor boundary in all zones adjacent to the rail corridor, with an associated matter of discretion.

2. SETBACKS

- 2.1 Setbacks are a common planning tool used to ensure the safe and efficient operation of activities such as the railway corridor, particularly when it may come into conflict with adjacent land uses.
- 2.2 In the case of rail, a setback provides a safe physical distance between a building and the railway corridor boundary. Without a sufficient setback, people painting their buildings, clearing gutters, or doing works on their roof will need to go into the rail corridor.
- 2.3 Rail setbacks are not the same as yard buffers or setbacks for amenity, given there are significant and potentially severe consequences that can arise from encroachment into the rail corridor. The risks associated with the rail corridor are very different and have much more significant consequences than property used for residential or other purposes.¹ Heavy freight trains, and frequent commuter services, run on the railway lines through the

¹ Statement of Evidence of Michael Brown dated 5 March 2024 at [4.14].

Wellington region. If a person or object encroaches onto the rail corridor, there is a substantial risk of injury or death for the person entering the rail corridor. The Wellington lines are also electrified, if a person or object encroaches on the rail corridor there is a risk of electrocution. There are not the same risks or consequences for other adjoining land.

- 2.4 There are also potential effects from such activities on railway operations and KiwiRail workers, ranging from the stopping of trains affecting service schedules to creating a health and safety hazard for train operators and KiwiRail workers operating within the rail corridor.
- 2.5 A rail setback control has obvious safety benefits for the users of the land adjoining the rail corridor and users of the rail corridor; and efficiency benefits for rail operations, by mitigating against the risk of train services being interrupted by unauthorised persons or objects entering the rail corridor.
- 2.6 KiwiRail's submission on the Proposed District Plan 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 would be permitted, while activities that do not comply would require resource consent as a restricted discretionary activity.
- 2.7 The Reporting Planner considers a setback of 1.5 metres sufficient but provides no technical basis for this.² As set out in the evidence of Mr Brown, 5 metres is an appropriate distance for buildings and structures to be set back from the boundary of the railway corridor.³
- 2.8 This ensures there is sufficient space for landowners and occupiers to safely conduct their activities, and maintain and use their buildings, while minimising the potential for interference with the rail corridor. This allows space to accommodate other mechanical access equipment required for maintenance, and space for movement around the scaffolding and equipment.⁴

² Section 42A report – Hearing Stream 7 (Open Space, Natural Open Space, Sports and Active, and Wellington Town Belt zones) at [199]. Standard OSZ-S5.

³ Statement of Evidence of Michael Brown dated 5 March 2024 at [4.9]–[4.14].

⁴ Appendix A of Statement of Evidence of Michael Brown, dated 5 March 2024 at [4.9]–[4.11].

2.9 Ms Heppelthwaite also considers that the setback is the most efficient outcome from a planning perspective.⁵ A framework that permits developments adjacent to the rail corridor which cannot be built or maintained safely and lawfully within the site where they are located does not accord with the RMA's purpose to enable people and communities to provide for their social, economic, and cultural well-being and their health and safety. It therefore breaches the Council's obligations under s74(1)(b) of the RMA.

DATED: 15 March 2024

K L Gunnell
Counsel for KiwiRail Holdings Limited

⁵ Statement of Evidence of Catherine Heppelthwaite dated 5 March 2024 at [7.11].