

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 10 – Designations
to the Wellington City Proposed District Plan
("**Proposed Plan**")

**MEMORANDUM OF COUNSEL ON BEHALF OF KIWIRAIL HOLDINGS LIMITED
IN RELATION TO THE DEFERRAL OF THE HEARING OF KIWIRAIL'S
SUBMISSIONS ON HEARING STREAM 10**

12 JULY 2024

MAY IT PLEASE THE PANEL:**Introduction**

1. KiwiRail respectfully seeks deferral of the hearing of its submissions on Hearing Stream 10 to allow it sufficient time to provide the information very recently sought by the Council with respect to the rollover of KiwiRail's designations. In particular, further historical analysis is required in relation to the development of rail tunnels within the district, to enable the efficient and effective rollover of provisions relating to rail tunnels in the Proposed Plan.

Background

2. The Wellington City Operative Plan currently maps the rail corridor and expressly states, by way of a "note", that tunnels and bridges are included.
3. KiwiRail sought to rollover that designation when the Council formally contacted it in 2022 as a relevant requiring authority under Clause 4, Schedule 1 of the Resource Management Act 1991. KiwiRail's rollover (as sought) was notified in the Proposed Plan by the Council in 2022.
4. Two weeks ago, KiwiRail learned that the Council's s42A author had raised questions about the proposed mapping of the rail tunnels. This was of some concern to KiwiRail, in case there is any suggestion that rail tunnels are not lawful, or cannot be shown or otherwise mapped in the Plan.
5. The Council has helpfully confirmed it considers the tunnels are currently designated,¹ but seeks clarity on how they have been "consented" or otherwise enabled, and / or how landowners on land above tunnels know of their existence.
6. Pulling together this historical information will take time. Rail tunnels in Wellington City have been in place from as early as 1885, long before designations, ePlans, and the RMA.
7. Given the late raising of this issue and the information required to be collated, KiwiRail will not be able to present comprehensive evidence on this matter on the current schedule for Hearing Stream 10.

¹ Footnote 5, legal submissions on behalf of Wellington City Council Hearing Stream 10 dated 10 July 2024.

8. KiwiRail respectfully requests a deferral of the hearing of matters relating to KiwiRail's designations. Council has advised that it has no objection.
9. KiwiRail and Council have discussed two options:
 - (a) KiwiRail provides evidence to the Council and Panel by a specified time with the matters being considered "on the papers". KiwiRail considers two months would be a sufficient period of time for KiwiRail to be able to prepare this evidence and legal submissions; or
 - (b) The hearing of KiwiRail's designations is deferred to the "Wrap Up" hearing stream scheduled for later in the year. KiwiRail would provide evidence, legal submissions and appear in accordance with the schedule proposed for that hearing stream.
10. Counsel for KiwiRail is able to attend the start of the hearing on Monday 15 July at 9:00 am to discuss the contents of this memorandum and confirm the Panel's directions. We respectfully request that counsel is able to attend the hearing remotely.
11. We are grateful for the Panel's consideration of these matters.

DATED: 12 July 2024



A A Arthur-Young / K L Gunnell
Counsel for KiwiRail Holdings Limited