

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 4 Residential Zones

and in the matter of Wellington City Proposed District Plan

**Primary statement of evidence of Catherine Lynda Heppelthwaite for
KiwiRail Holdings Limited regarding Wellington City Proposed
District Plan Hearing Stream 4**

Dated 12 June 2023

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

- 1.0 My full name is Catherine Lynda Heppelthwaite. I am a principal planner for Eclipse Group Limited. I am presenting this planning evidence on behalf of KiwiRail Holdings Limited (**KiwiRail**).
- 1.1 I hold a Bachelor Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute, a member of the Resource Management Law Association and the Acoustical Society of New Zealand. I have more than 25 years' experience within the planning and resource management field which has included work for local authorities, central government agencies, private companies and private individuals. Currently, I am practicing as an independent consultant planner and have done so for the past 18 years.
- 1.2 I have extensive experience with preparing submissions and assessing district plans provisions in relation to noise and vibration, most recently in relation to the New Plymouth, Porirua and Whangarei District Plans where I assisted Waka Kotahi by providing specialist planning evidence on similar issues (noise and vibration).

2 CODE OF CONDUCT

- 2.0 I have read the Environment Court's Code of Conduct for Expert Witnesses (2023) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3 SCOPE OF EVIDENCE

- 3.0 My evidence will address the following:
- a. The statutory and higher order planning framework;
 - b. KiwiRail submissions and further submissions in relation to City Centre, Metropolitan Centre, Local Centre and Mixed Use zones;
 - c. Councils s42A recommendations; and
 - d. Further amendments required.

- 3.1 In preparing my evidence, I have considered the following Section 42A Hearings Reports:
- a. Stream 4 – Part 3, Commercial and Mixed Use Zones – Part 1: Overview and General Matters (**Overview Hearings Report**);
 - b. Stream 4 – Part 3, Commercial and Mixed Use Zones – Part 1: Commercial and Mixed Use Zones (**HDR Hearings Report**);
 - c. Stream 4 – Part 3, Commercial and Mixed Use Zones – Part 2: Metropolitan Centre Zone (**MCZ Hearings Report**);
 - d. Stream 4 – Part 3, Commercial and Mixed Use Zones – Part 3: Local Centre Zone (**LCZ Hearings Report**);
 - e. Stream 4 – Part 3, Commercial and Mixed Use Zones – Part 5: Mixed Use Zone (**MUZ Hearings Report**); and
 - f. Stream 4 – Part 3, General Industrial Zone – Part 6: General Industrial Zone (**GIZ Hearings Report**);
- 3.2 The above reports were prepared by Ms Anna Stevens, Ms Lisa Hayes and Ms Hannah van Haren-Giles (**the s42A Authors**) dated 26 May 2023.

4 THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK

- 4.0 In preparing this evidence I have specifically considered the following:
- a. The purpose and principles of the RMA (sections 5-8);
 - b. Provisions of the RMA relevant to plan-making and consenting;
 - c. National Policy Statement on Urban Development 2020 (**NPS UD**);
 - d. Wellington Regional Policy Statement (**RPS**) with specific reference to:
 - i. Chapter 3.3 Introductory Text:
 - Recognising rail as a significant physical resource¹;
 - *The efficient use and development of such infrastructure can be adversely affected by development. For example, **land***

¹ RPS Introductory text, 3.3 Energy, infrastructure and waste, page 44(b) *Infrastructure*.

development can encroach on infrastructure or interfere with its efficient use. Infrastructure can also have an adverse effect on the surrounding environment. For example, the operation or use of **infrastructure can create noise which may adversely impact surrounding communities.** These effects need to be balanced to determine what is appropriate for the individual circumstances². [bold added]

- ii. Objective 10: *The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected³.*
- iii. Policy 8: *Protecting regionally significant infrastructure – regional and district plans⁴. District and regional plans **shall include policies and rules** that protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure⁵. [bold added]*
- iv. Policy 8 Explanation: *Incompatible subdivisions, land uses or activities are those which **adversely affect the efficient operation of infrastructure**, its ability to give full effect to any consent or other authorisation, restrict its ability to be maintained, or restrict the ability to upgrade where the effects of the upgrade are the same or similar in character, intensity, and scale. **It may also include new land uses that are sensitive to activities associated with infrastructure.***

*Protecting regionally significant infrastructure **does not mean that all land uses or activities under, over, or adjacent are prevented.** The Wellington Regional Council and city and district councils will need to ensure that **activities provided for in a district or regional plan are compatible** with the efficient operation, maintenance, and upgrading (where effects are the same or similar in character, intensity, and scale) of the infrastructure and any effects that may be associated with that infrastructure. Competing considerations need to*

² RPS Introductory text, 3.3 Energy, infrastructure and waste, page 44(b) *Infrastructure*.

³ RPS Table 3: Energy, infrastructure and waste objectives and titles of policies and methods to achieve the objectives

⁴ RPS Table 3: Energy, infrastructure and waste objectives and titles of policies and methods to achieve the objectives and page 96.

⁵ RPS Page 96.

*be weighed on a case by case basis to determine what is appropriate in the circumstances*⁶. [bold added]

v. Method 1 (for Policy 8) identifies District plans as an implementation method⁷.

4.1 Council's *Section 32 Evaluation Report Part 1: Context to s32 evaluation and evaluation of proposed Strategic Objectives*⁸ has (particularly at Section 5) identified the relevant statutory, planning and strategic document provisions with which I generally agree and will not repeat here.

4.2 I have also considered Plan Change 1 to the Wellington Regional Policy Statement and have given this minimal weighting due to its progression through the Schedule 1 process.

4.3 The Emissions Reduction Plan⁹ is a matter to be had regard to by Council; of particular relevance within the Emissions Reduction Plan (for rail) is *Action 10.3.1: Support the decarbonisation of freight* which includes as a key initiative:

- *Continue to implement the New Zealand Rail Plan and support coastal shipping.*

4.4 For completeness, the New Zealand Rail Plan (**NZRP**) lists as strategic investment priorities¹⁰:

- *Investing in the national rail network to restore rail freight and provide a platform for future investments for growth; and*
- *Investing in metropolitan rail to support growth and productivity in our largest cities.*

4.5 While the Emissions Reduction Plan is *to be had regard to*, its support for the NZRP (among other things) illustrates a strategic forward plan to generally improve and increase train services over time.

⁶ RPS Page 96.

⁷ RPS Table 3: Energy, infrastructure and waste objectives and titles of policies and methods to achieve the objectives

⁸ <https://wellington.govt.nz/-/media/your-council/plans-policies-and-bylaws/district-plan/proposed-district-plan/reports/section-32-part-1-context-to-evaluation-and-strategic-objectives.pdf?la=en&hash=C433D3521179B827BBCA3822BD154886D619A463>

⁹ Emissions Reduction Plan, Section 3.2.3

¹⁰ The New Zealand Rail Plan, Part B, pages 25 and 38 for key details.

5 KIWIRAIL SUBMISSIONS AND FURTHER SUBMISSIONS

5.0 In summary, KiwiRail's primary submission seeks:

- a. that rail be identified as a qualifying matter¹¹ pursuant to s771(e) and s770(e) of the RMA; and
- b. a 5m setback standard and matter of discretion for buildings and structures adjacent to the rail corridor in the CCZ, MCZ, LCZ, MUZ and GIZ zones.

6 SECTION 42A ASSESSMENT

6.0 The s42A Authors all agree with KiwiRail's submission that a setback from a railway corridor is a sensible outcome as it ensures that buildings and structures can be accessed and maintained without needing to access or use the railway corridor. They also found that the need for a setback is consistent with the RPS Policy 8.¹²

6.1 The s42A Authors recommend a new setback standard in each of the identified zones¹³ along with an assessment criteria. However, their recommendation is for a 1.5m setback rather than a 5m setback requested in KiwiRail's submission. All the s42A Authors set out their reasons as being the same as that put forward by Mr Patterson¹⁴ in the Hearing Stream 2 section 42A report. Mr Patterson¹⁵ sets out his reason for the 1.5m setback as:

However, I disagree that a 5m setback is required and would instead suggest that MRZ-S4 is amended to require a 1.5m setback from the railway corridor as I consider that this should enable sufficient space to access and maintain buildings safely. I note that the submitter has not provided compelling evidence of why a 5m setback is required.

¹¹ Submission 408.120.

¹² Hearing stream 4 – Section 42a Report Part 3 Overview and General Matters, paragraph 224 and Hearing stream 4 – Section 42a Report Part 6 General Industrial zone, paragraph 201.

¹³ CCZ, MCZ, LCZ, MUZ and GIZ.

¹⁴ Hearing stream 4 – Section 42a Report Part 3 Overview and General Matters, paragraph 224 and Hearing stream 4 – Section 42a Report Part 6 General Industrial zone, paragraph 201.

¹⁵ Hearing stream 2 – Section 42a Report Part 3 Medium Density Residential Zone, paragraph 761.

7 BUILDING SETBACK

- 7.0 I rely on Mr Brown's evidence which:¹⁶
- a. describes why a 5m setback is necessary; and
 - b. describes the risk to persons both accessing the rail corridor (to undertake adjoining property maintenance) and rail corridor users (train operators and passengers).
- 7.1 Mr Brown's evidence provides a technical basis on which the 5m setback is necessary (and consequentially, why a 1.5m setback would not be sufficient).
- 7.2 In addition to Mr Brown's evidence, it is not uncommon for district plans to include provisions which limit uses of land to protect the operation of infrastructure and also to provide safe and healthy environments for people.
- 7.3 For example, Transpower has included in a range district plans¹⁷ a national grid corridor overlay which restricts activities within a specified spatial extent of its network. Airports and ports are another common infrastructure type which restricts activities on surrounding private land¹⁸.

8 CCZ, MCZ, LCZ, MUZ AND GIZ PROVISIONS

- 8.0 With the exception of the 1.5m setback distance, which, based on the evidence of Mr Brown should be amended to 5m, I support the standards and assessment criteria the s42A Authors have proposed in the CCZ, MCZ, LCZ, MUZ and GIZ.
- 8.1 I also recommend one further change to the wording of the standard and assessment criteria to assist with interpretation. I propose replacing reference to *rail corridor* with *rail designation* as the rail designation is an existing mapped layer in the Plan (whereas the rail corridor is not). I have included as Attachment A my proposed amendments.
- 8.2 For completeness, I have also considered other methods (no setback, a 1.5m setback and extending existing designation widths) to provide for building maintenance and safety of adjoining occupants. This is assessed in the

¹⁶ Statement of Evidence of Mike Brown dated 12 June 2023 at [4.1] – [4.12].

¹⁷ For example, Chapter D26 of the Auckland Unitary Plan.

¹⁸ For example, Chapters D24 Aircraft Noise Overlay and D25 City Centre Port Noise Overlay of the Auckland Unitary Plan.

format of Section 32AA and included as Attachment B and I conclude that a 5m setback is the most efficient outcome. I have relied on the evidence of Mr Brown as to the extent of that setback.

9 CONCLUSION

9.0 In conclusion, with an amendment to setback distance and a minor interpretive changes, I support the proposed standards and assessment criteria within the CCZ, MCZ, LCZ, MUZ and GIZ zones requiring a 5m building setback from the rail designation boundary.

Cath Heppelthwaite
12 June 2023

Attachment A: Proposed Changes

Base text is taken from Appendix A – Planners recommendation with changes accepted. All changes are in red text. New text is underlined and proposed deletions in ~~strike through~~.

Centre Zone

CCZ-SX	Boundary setback from a rail corridor
1. Boundary or structures must not be located within <u>5m</u> 4.5m setback from a rail <u>designation corridor</u> boundary.	Assessment criteria where the standard is infringed: 1. The extent to which the location and design of the building relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail <u>designation corridor</u> .

Metropolitan Centre Zone

MCZ-SX	Boundary setback from a rail corridor
1. Boundary or structures must not be located within <u>5m</u> 4.5m setback from a rail <u>designation corridor</u> boundary.	Assessment criteria where the standard is infringed: 1. The extent to which the location and design of the building relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail <u>designation corridor</u> .

Local Centre Zone

LCZ-SX	Boundary setback from a rail corridor
1. Boundary or structures must not be located within <u>5m</u> 4.5m setback from a rail <u>designation corridor</u> boundary.	Assessment criteria where the standard is infringed: 1. The extent to which the location and design of the building relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail <u>designation corridor</u> .

Mixed Use Zone

MUZ-SX	Boundary setback from a rail corridor
1. Boundary or structures must not be located within <u>5m</u> 4.5m setback from a rail <u>designation corridor</u> boundary.	Assessment criteria where the standard is infringed: 1. The extent to which the location and design of the building relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail <u>designation corridor</u> .

General Industrial Zone

GIZ-S7	Boundary setback from a rail corridor
1. Boundary or structures must not be located within <u>5m</u> 4.5m setback from a rail <u>designation corridor</u> boundary.	Assessment criteria where the standard is infringed: 1. The extent to which the location and design of the building relates to the ability to safely use, access and maintain buildings without requiring access on, above or over the rail <u>designation corridor</u> .

Attachment B: S32AA Assessment of Building Setback

Having regard to section 32AA, the following is noted:

Effectiveness and efficiency

- The proposed changes will be more efficient and effective than other methods (such as designating a wider corridor to provide setback) as it provides flexibility of use by resource consent allowing for situations where building within the setback is acceptable. Applying a wider designation means land will not be available for use, the setback could allow future use by way of resource consent. This fits RPS Objective 10 and Policy 8 in providing development which can be, with mitigation, compatible within reasonably close proximity to infrastructure.
- Providing no setback will not support an efficient outcome generally as incursions can lead to disruption to the rail network/ inefficient operation and endanger safety.
- Providing a 1.5m setback is insufficient to achieve the purpose of the control.
- The provisions apply to new and altered structures (not retrospectively).
- The provisions provide clear and specific matters of discretion which gives greater certainty to developers (and the Council) over the matters that will be assessed where resource consent is required.

Costs/Benefits

- The recommended amendments will limit building in some locations (cost).
- The benefits are providing for a safer and more efficient rail network which supports passenger transport (being itself a significant supporting factor for residential intensification).
- The changes will enable greater certainty for home owners and occupiers to undertake maintenance to their dwellings.

Risk of acting or not acting

- Evidence has been provided of the risks to public safety and network efficiency if no action is taken. Not acting could result in an inefficient operation of nationally significant infrastructure due to unexpected shutdowns.

Decision about most appropriate option

- The recommended amendments as set out in my evidence are therefore considered to be more appropriate in achieving the purpose of the RMA rather than the notified provisions.