

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER OF a submission by KiwiRail Holdings Ltd ("**KiwiRail**")
(submitter 408 and FS72) on Hearing Stream 2 -
Residential to the Wellington City Proposed District
Plan ("**Proposed District Plan**")

**MEMORANDUM OF COUNSEL ON BEHALF OF KIWIRAIL HOLDINGS LIMITED
IN RESPONSE TO MINUTE 17**

14 APRIL 2023

MAY IT PLEASE THE HEARING PANEL:

1. This memorandum of counsel responds to the Panel's Minute 17 (12 April 2023), which requested that KiwiRail provide the following information:
 - (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.
 - (c) Setbacks to the rail corridor provided for in other recently finalised District Plans.
2. KiwiRail's response to the Panel's request is set out below, as well as a response to matters raised by Commissioner McMahon at the hearing on 5 April 2023.

The approximate length of rail frontage within the HRZ, MRZ and LLRZ

3. Mr Brown has reviewed the rail frontage along the Johnsonville and North Island Main Trunk ("NIMT") lines and has provided the following data:
 - (a) Medium Density Residential Zone has approximately 8.6 km of frontage to the rail corridor.
 - (b) High Density Residential Zone has approximately 3.3 km of frontage to the rail corridor.
 - (c) Metropolitan Centre Zone (Johnsonville) has approximately 200m of frontage to the rail corridor.
 - (d) Mixed Use Zone has approximately 3 km of frontage to the rail corridor.
 - (e) Large Lot Residential Zone has approximately 1.2 km of frontage to the rail corridor.
4. These numbers exclude land that does not directly adjoin the corridor, such as land that is separated from the rail corridor by a reserve or road.

The approximate range of distances between rail tracks and adjacent residential property boundaries within Wellington City

5. Mr Brown has also taken a sample of distances between the rail tracks¹ and adjacent residential property boundaries along the Johnsonville and NIMT lines and has provided the following data:

¹ These distances are measured from rail centreline.

- (a) Johnsonville Line - the shortest distance is approximately 4 metres and the greatest is approximately 50 metres. The difference in distances relates to the terrain through which the line is traversing.
- (i) Through Wadestown – the average distance is approximately 25 metres from the rail line to the nearest property boundary.
- (ii) Through Ngaio this distance decreases to approximately 20 metres, through Khandallah to 15 metres and through Johnsonville down to 10 metres.
- (b) NIMT line - the shortest distance from the rail line to the nearest property boundary is 4 metres, with the greatest approximately 45 metres. The average through Tawa is approximately 10 metres.

Setbacks to the rail corridor provided for in other recently finalised District Plans

6. The below table sets out other District Plan provisions that provide for setbacks from the rail corridor.
7. A number of these setback provisions were agreed by consent orders and in a different context from the MDRS provisions, which enable much higher buildings as a permitted activity.
8. As set out in the evidence of Mr Brown, setbacks are particularly important in areas where buildings are taller, as buildings become more difficult to maintain and require additional equipment like scaffolding for maintenance, which often enter the railway corridor.²
9. There are also a range of other factors which differ depending on location, including whether or not the line is electrified. As set out in Mr Brown's evidence, where rail lines are electrified, the severity of the consequence increase the importance of the setback. Should an object from a neighbouring property come into contact with the wires, like scaffolding, cherry picker cranes or building maintenance crew abseiling down the side of buildings.³

Plan	Distance
Auckland Unitary Plan – Drury Centre (I450.6.15) and Waihohoe (I452.6.11) Precincts	5 metres
Christchurch District Plan - Rule 14.4.2.7	4 metres

² Evidence of Michael Brown dated 16 March 2023 at [4.3].

³ Evidence of Michael Brown dated 16 March 2023 at [4.11].

Plan	Distance
Proposed Second Generation Dunedin City District Plan – Rule 6.7.4	4 metres
Marlborough Environment Plan – Rule 5.2.1.20	3 metres
Proposed New Plymouth District Plan – TRAN R7	5 metres (included by Council in notified plan; hearings completed, decision expected imminently)
Whangārei District Plan Operative in Part – TRA R10	Minimum of 2 metres – 2.5 metres "mapped" setback accepted through the appeals process depending on zone or existing buffers (eg cycle path alongside rail corridor)

Matters raised by Commissioner McMahon at the hearing

10. While not contained in the Panel's Minute 17, Ms Heppelthwaite has also considered the following matters raised by Commissioner McMahon at the hearing on 5 April 2023:
- (a) Proposed District Plan policy basis for the provisions sought by KiwiRail.
 - (b) Status of decks and eaves under the setback rule.
 - (c) Whether the Proposed District Plan as notified identifies KiwiRail as an affected party.
11. Ms Heppelthwaite has prepared a supplementary statement of evidence dated 14 April 2023 to address these matters. This has been provided to the Panel with this memorandum.

Conclusion

12. We trust this responds to the Panel's requests for information. KiwiRail would be very happy to provide any further information if that would assist.

K L Gunnell

Counsel for KiwiRail Holdings Limited